**आयकर अपीलीय अधिकरण "डी" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

श्री डी. मन्नमोहन, उपाध्यक्ष **एवं** श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D. MANMOHAN, VP AND SHRI SANJAY ARORA, AM**

| Sr. No. | ITA No. | Appellant | Respondent | A.Y. |
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| 1. | 4156 to 4162/M/2010 | Hassan Ali Khan<br>Valentine Society, 1 Tulip, North Main Road, Koregaon Park, Pune-411 001<br>PAN No. AOMPK 8155 J | Dy. CIT, Central Circle-2, Mumbai | 2001-02 to 2007-08 |

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| अपीलार्थी की ओर से / **Appellant by** | : | None (written submissions) |
| प्रत्यर्थी की ओर से/**Respondent by** | : | Shri Girish Dave &<br>Ms.Kadambari Dave |

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| सुनवाई की तारीख / **Date of Hearing** | : | 17.02.2016 |
| घोषणा की तारीख / **Date of Pronouncement** | : | 29.02.2016 |

आदेश / O R D E R

Per Sanjay Arora, A. M.:

Vide his instant Appeals, the Assessee agitates separate orders by the Commissioner of Income Tax (Appeals)-36, Mumbai ('CIT(A)') for assessment years (A.Ys.) 2001-02 to 2007-08. The appeals are with reference to the dismissal of the assessee's appeals contesting his assessments under section 153A read with s. 143 (3) of the Income Tax Act, 1961 ('the Act') for the relevant years. The appeals raising common issues, were posted for hearing along with other connected appeals.

2. None appeared on behalf of the assessee when the appeals were called out for hearing, though vakalatnama/s (dated 09.12.2011) in favour of Shri Nand Kishore and Ms. Rashmi Chaudhary (of HSA Advocates) are on record. No adjournment application has also been made. In fact, despite several attempts, no service of notice of hearing could be affected on the assessee. Under the circumstances, the matters

being pending for long, the hearing was proceeded with *ex parte qua* the assessee, so as to dispose the appeals after hearing the party before us. However, as subsequently some clarifications were required, the appeals (along with the connected matters) were posted for 17.2.2016. A junior counsel, Shri Ramanath Prabhu, for HSA Advocates, appeared, and sought adjournment. No vakalatnama in his favour stands filed. It deserves to be noted that the hearing in these matters, along with the other connected matters, took place in parallel over a period of three months, wherein counsels from both the sides appeared and made representations. It was, accordingly, conveyed that it was not possible to grant adjournment at this stage, even as the court was prepared to hear the parties on a day to day basis. Time was sought for filing written submissions, which was granted. Written submissions were accordingly filed on 22.2.2016 (copy on record), with the copy to the other side.

3.1 Written submissions, separately for each year in appeal, filed along with the application for admission of additional evidence dated 10.12.2013, *are not signed by the assessee or by his Advocate on his behalf*. The same are stated to be presented by the assessee through his Advocates (HSA Advocates). There is also no forwarding letter communicating the assessee's filing of the written submissions, also indicating his preference to rely thereon in prosecuting his appeals. *The same, accordingly, cannot be taken as part of the tribunal's record*. We shall, however, in arriving at our decision, take note thereof, if only to understand the assessee's case, eschewing reference to or reliance on facts not borne out by the record.

Next, we examine the assessee's Application (dated 10.12.2013) for admission of additional evidence under Rule 29 of the Rules (containing 79 pages), which is a combined one for assessment years 2001-02 to 2007-08. The same is accompanied by an Affidavit dated 10.12.2013, avering that the accompanying documents, sought to be admitted, are true and correct to the best of his knowledge and belief. The assessee, per his said application, prays for the admission of the following documents, as

additional evidence, stating the same to have come in his possession in April, 2012, much after the conclusion of the proceedings before the first appellate authority:

a) Copy of 'Note Verbale' dated 12.01.2007 issued by the Embassy of India, Berne to the Federal Department of Justice and Police, Federal Government of Swiss Confederation;

b) Copy of fax response dated 15.01.2007 issued by the Federal, Department of Justice and Police, Federal Government of Swiss Confederation to the Embassy of India, Berne;

c) Copy of letter dated 30.10.2007 from UBS AG to Swiss National Bank along with the Deloitte Report (dated 29/10/2007);

d) Copy of letter dated 28.12.2007 and letter dated 29.02.2008 from UBS AG to ED No.1;

e) Letter by UBS AG dated 8.12.2006 purportedly confirming that the Applicant has balance of USD 8 billion in his account;

f) RBI notification notifying UBS AG as a scheduled bank;

g) Extracts of the White Paper on Black Money published in May 2012; and

h) Newspaper reports on RBI allowing UBS to operate in India.

As a prelude, it is submitted that the Directorate of Enforcement (the agency of the Government of India (GOI) that investigates the economic offences in India) also commenced an investigation under the provisions of Prevention of Money Laundering Act, 2005 ('PMLA' for short), registering an Enforcement Case Information Report (ECIR) (bearing no. ECIR/02/M2O/2007) against the appellant on 08.1.2007. *The ECIR relied heavily on a letter dated 08.12.2006 and certain statement of account stated to be received by the ED from the Income-tax Department*. In pursuance to ECIR, the ED approached the designated court u/s.57 of PMLA, seeking issuance of Letter Rogatory (LR) to various countries, being USA, UK, UAE, Singapore, Hongkong, Switzerland for gathering information regarding the alleged financial transactions by the applicant. The Hon'ble Court issued LRs addressed to the competent authorities of the said countries. The Embassy of India at Berne,

Swizerland vide a 'Note Verbale' dated 12.1.2007 communicated the LR to the competent authority at Switzerland, giving specific reference to the letter dated 08.12.2006 (supra), further requesting it to block the amounts available in various accounts in Switzerland, as well as furnishing details of their transcripts. Vide fax dated 15.1.2007, the said competent authority, on the basis of a domestic enquiry of the said documents, informed the Embassy of India at Switzerland that the letter dated 08.12.2006 (supra) and the accompanying documents are forged documents. In justification, it is explained that the UBS AG, Zurich confirms the assessee to have a limited banking relationship with HAK (assessee).

The ld. Departmental Representative (DR) would, on this being put across to him, object, stating that the same cannot be admitted in-as-much as the documents are not notarized or apostilled. Both India and Switzerland are signatories to the Hague Convention, placing on record the Apostille Convention. Banking industry in Switzerland, it needs to be appreciated, he continued, encourages opening of bank accounts, and information in their respect is protected by privacy laws of that country. With reference to a host of case law, it was pleaded that proceedings under the Act are to be decided on the basis of preponderance of probabilities in the facts and circumstances of the case, based on the material on record. There is no contention with regard to the lack of opportunity granted by the Revenue authorities.

3.2 We may now detail the Revenue's application for admission of additional evidence dated 01.6.2015, which is the combined one for all the appeals of the group, i.e., the assessee, his wife (Rheema Hassan Ali Khan), Syed Ahmed Abbas Naqvi, Kashinath Tapuriah, Chandrika Tapuriah and R.M. Investment & Trading Co. P. Ltd. It is stated therein that in the course of post search enquiry, Enforcement Directorate (ED) provided a copy of a notarized statement dated 30.6.2003 of HAK confirming that he had an account in UBS, Singapore opened in 1982 with a deposit of 1.5 Million USD. All the deposits, as per the statement, pertained to the period 1982 to

1997. The Notary Public of London, who verified the genuineness of the signatures of HAK, has accepted the genuineness of the said notarized statement.

Further, to ascertain the genuineness of the various documents, including the bank accounts, obtained from UBS AG, Mumbai by the Assessing Officer (A.O.), a request was made to the Swiss Competent Authority through FT & TR Division of CBDT. In response, Swiss Authority vide letter dated 18.12.2013 confirmed the veracity of the documents gathered during the post assessment proceedings from the UBS AG. The Switzerland Authority has certified that out of 404 pages, 403 pages (containing bank account statement of HAK) are true, except one page incorporating transaction dated 08.12.2006 of deposit of 8 billion dollars, which was forged.

The details of the documents prayed for admission by way of additional evidence, are as under:

| S. No. | Particulars | Page No. |
|---|---|---|
| 1 | Departmental Petition dated 01.6.2015 (*) | 1 to 3 |
| 2 | Copy of letter received from FT & TR, CBDT, dated 26.12.2013, along with its enclosures, by CIT(Central)-1, Mumbai | 4 to 7 |
| 3 | Copy of letter of Directorate of Enforcement dated 15.11.2010 along with enclosures, to CIT(Appeals). | 8 to 19 |
| 4 | Copy of letter dated 24.4.2008 of CIT, Central-1, Mumbai, to DCIT, Central Circle-2, forwarding information in the case of Hassan Ali Khan along with its enclosures | 20 to 30 |

(*) not an evidence, but an application in its respect.

3.3 In our view, we shall be required to, and would accordingly, discuss the admissibility, in seriatim, of each of the documents prayed to be admitted by way of additional evidence. So, however, before we proceed to do so, it may be relevant to discuss the general considerations that have a bearing in the matter as well as the Revenue's objections, which are again not document specific, but on a broad, general basis. As regards the objection of the documents being not subject to apostille, the

same is essentially a question of authenticity of the document. This is as the apostille only certifies the signature; the capacity of the signer; and the seal or stamp it bears, and does not certify the content of the document for which it is issued. The documents being presented by the assessee would only have been sent directly by the Bank to ED in India, so that it would in any case stand to be verified there-from. The same, as well as the accompanying report by Deloitte AG, Zurich, are marked as 'confidential'. The question as to how the assessee obtained the same does arise. It, in fact, clearly proves the assessee's connections not only in India but even abroad; he being able to access confidential communication between UBS AG and the Swiss National Bank, as well as the accompanying report by an independent auditor, made available directly to the bank for its purposes. But, then, should we allow that consideration to weigh when an issue is to be decided on the basis of 'facts', so that any document that is relevant and purports to reveal the truth, should be, in principle, and subject to the provision/s of law in the matter, considered. In fact, the documents being presented by the Revenue are also, similarly, not apostilled. However, as afore-stated, the documents being presented are direct communications between the relevant (competent) authorities of the two countries, sent through the proper channel, so that authenticity thereof cannot be doubted, or the same insisted for being subject to the regular verification procedure and, in any case, could be got verified from the concerned Department, which (procedure) shall also establish the veracity (of the contents) of the document/s.

Rule 29 of the Income-tax (Appellate Tribunal) Rules, 1963, which reads as under, is a provision regarding production of additional evidence before the Tribunal:

> '**29. Production of additional evidence before the Tribunal.**
> The parties to the appeal shall not be entitled to produce additional evidence either oral or documentary before the Tribunal, but if the Tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause, or, if the income-tax authorities have decided the

> case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them, or not specified by them, the Tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced.'

The rule places a total ban on the parties to the appeal to produce additional evidence, either oral or documentary, before the tribunal. But the tribunal is vested with a judicial discretion to allow the production of the additional evidence in the following circumstances:

i. if the tribunal requires any documents to be produced or any witness to be examined or any affidavit to be filed to enable it to pass orders or for any other substantial cause; or
ii. if the income-tax authorities have decided the case without giving sufficient opportunity to the assessee to adduce evidence either on points specified by them, *or not specified by them*. (emphasis, ours)

On the existence of either of the circumstances mentioned above, the tribunal, for reasons to be recorded, may allow such document to be produced or witness to be examined or affidavit to be filed or may allow such evidence to be adduced. The rule does not thus enable an assessee or the Department to tender fresh evidence to support a new point or to make out a new case.

Additions in the present case are based on the information received from ED as well as that found and seized upon search dated 05.1.2007 at the residences of the assessee and others, including Kashinath Tapuriah, on the ground of the same being not satisfactorily explained. The Revenue, acting through the proper channel, has sought further information and made inquiries into the affairs of the assessee. It is the result of such post search enquiries, received from time to time, which it claims as relevant and material, and seeks admission as additional evidence. How could then, we wonder, it validly object to the assessee's prayer for, similarly, admission of the reports received as a result of such enquiries. If the Revenue's plea is accepted, there is no reason not to accept that of the assessee, the two being of the same genre,

supported by the same reasons. So, however, the terms of rule 29 would have to be regarded and satisfied, i.e., quite apart from the validity of the Revenue's objection, and which (rule) itself obliges the tribunal to record reasons for such admission or, as the case may be, production or examination. The tribunal's power to admit additional evidence is strictly limited. The Hon'ble jurisdictional High Court in *Velji Deoraj & Co. vs. CIT* [1968] 68 ITR 708 (Bom) clarified that the admission of additional evidence is made to depend not on the relevancy or materiality but upon the fact whether or not the appellate court requires the evidence to enable it to pronounce the order or for any other substantial cause. Further, the mere fact that the evidence sought to be produced is vital and important does not provide a substantial cause to allow its admission at the appellate stage, especially when the evidence was available to the party at the initial stage and had not been produced by him. This, it was further explained, is as the rule is not to allow a litigant, who has been unsuccessful in the lower courts, to patch up the weak parts of his case and fill up the omissions in the court of law. The admission of additional evidence by the tribunal is thus dependent on the tribunal requiring it for the purpose of pronouncing its judgment or for the purpose of curing some inherent lacuna which it has itself discovered (refer pgs. 713-715 of the reports). In this context, it would be useful to refer to the constitutional bench decision in *K. Venkataramiah vs. A. Seetharama Reddy* AIR 1963 SC 1526, 1530, wherein it was observed in the context of the provision of Order 41, Rule 27(1) of Code of Civil Procedure, 1908, to which r. 29 is similar in terms, that the appellate court has the power to allow additional evidence not only where it requires such evidence to enable it to pronounce the judgment but also for any other substantial cause. There may well be cases where even though the Court finds that it is able to pronounce the judgment on the state of record as it is, so that it cannot strictly be said that it requires additional evidence to enable it to pronounce the judgment, it still considers that in the interest of justice something which remains obscure should be filled up, *so that it can pronounce its judgment in a more satisfactory manner*. Such a

case will be one for allowing additional evidence for any other substantial cause under Rule 27(1)(b) of the Code. This aspect was again emphasized recently by the Hon'ble Court in *Ibrahiam Uddin and Anr.* [2012] 8 SCC 148, wherein it was explained that the words 'for any other substantial cause' must be read with the word 'requires' in the beginning of the sentence, so that it is only where, for any other substantial cause, the appellate court requires additional evidence, that this rule shall apply, for example, when evidence had been taken by the lower courts so imperfectly that the appellate court cannot pass a satisfactory judgment (refer pg. 168 of the reports). This view stands also expressed by the Hon'ble jurisdictional HC in *Suhasinibai Goenka vs. CIT* [1995] 216 ITR 518, 521-22 (Bom), stating that r. 29 allows the exercise of the power for production of additional evidence for a fair and just disposal of the appeal.

Surely, the result of the enquiries initiated by GOI in the matter or even that subsequently need to be taken on record in arriving at our conclusions thereon in-as-much as they enable us to pass orders which are consistent with and, in any case; the same being not binding on this tribunal, take into account the results of such enquiries. This is more so as the decision/s by the Revenue in the matter are based primarily on the preponderance of probabilities. In fact, copy of the facsimile dated 15.1.2007 by the Swiss Federal Government, or the report dated 30.10.2007 by UBS AG to the Swiss National Bank, etc. are documents which were available at the time of assessment, so that they ought to have been considered or taken into account by the Revenue, providing, in all fairness, a copy thereof to the assessee. The assessee, whatever his conduct in the proceedings before the Revenue may have been, could not possibly have access thereto. A decision, after all, is only to be taken on the basis of the facts established or inferable from the material on record. We are, accordingly, *prima facie*, inclined to admit the material sought to be placed on record, both by the assessee and the Revenue.

We consider the admissibility of the documents prayed for admission on the parameters and anvil of r. 29, as under:

*By the Assessee*

a) The first document is the copy of 'Note Verbale' dated 12.1.2007, purportedly issued by Embassy of India, Berne. The same is unsigned and, accordingly, has no evidentiary value. *The same, therefore, is not admitted*. The same is, in any case, only a request for assistance.

b) The copy of the fascimile dated 15.01.2007, purportedly by the Swiss Federal Government in the Department of Justice to the Indian Embassy, Berne. *The same is admitted*. Even though the designation of the person, whose name is specified at the place marked for signature, which is generally mandatory in official communication, is not stated. This may perhaps be due to the fact of the communication being by fax.

c) This is the copy of the report dated 30.10.2007, marked 'confidential', by UBS AG to Swiss National Bank on the basis of an internal inquiry. The said letter is clearly in respect of the assessee and his alleged relationship with UBS, with which he is claimed to be holding huge amounts, or having banking relationship with. The same, as claimed by the assessee per his written submissions and as stated in the letter dated 28.12.2007 by UBS AG to the ED (which is a document listed at point (d) below), stands communicated to the ED vide the said letter. *The same is admitted*.

As regards the report dated 29.10.2007 by Deloitte AG, which is in fact an accompaniment to the report dated 30.10.2007 by UBS AG, the same is an unsigned document. *The same is not admitted*. The gist of the same though gets included in the UBS AG report dated 30.10.2007, a fact admitted to by the assessee as well (per his written submissions).

d) Copy of letter dated 28.12.2007 and letter dated 29.02.2008 from UBS AG to ED No.1. The said letters are unsigned documents and, accordingly, have little evidentiary value.

e) Letter by UBS AG dated 8.12.2006- held to be forged by purportedly confirming that the Applicant has balance of USD 8 billion in his account, along with confirmation of balances as on 31.8.2006 and 02.11.2006.

*The said document is purportedly communicated by the bank, UBS Ltd., to the assessee (even as the account number stands withheld). The said information, being relevant, apparently sought by the assessee himself, though he claims as not, is admitted in evidence*. These documents are in fact part of the record in-as-much as they form the basis of the corresponding addition for A.Y. 2007-08.

f to h) These documents, in the public domain, have no direct bearing on the assessment of the relevant incomes. *Accordingly, the same are not liable for admission, so that admission thereof is rejected*.

A document, even if not apostilled, could be, for the reasons stated, admitted. However, an unsigned document has no claim to legitimacy or to being genuine. The documents under reference, it is to be appreciated, are not system generated reports, or otherwise emails, etc., which may not require signatures for validation, but official communications between the competent authorities, so that signature/s, by the concerned official/s only would lend credibility to the document.

*By the Revenue*: The ld. DR, on being inquired as to the 403 documents which had been found true, would submit that apart from the confirmation dated 08/12/2006, which has been found as not true, all the other documents which have been found true, as are relevant, form part of the assessee's application. Our decision and/or specific comment/s, if any, *qua* each document, is as under:

a) Copy of letter received from FT & TR, CBDT, dated 26.12.2013, along with its enclosures. *The same is admitted.*

b) Copy of letter of Directorate of Enforcement dated 15.11.2010 along with its enclosures. *The same is admitted.*

c) Copy of letter dated 24.4.2008 of CIT, Central-1, Mumbai, to DCIT, Central Circle-2, forwarding information in the case of Hassan Ali Khan along with its enclosures. *The same is admitted.* In fact, these documents ought to have been confronted to the assessee, and relied upon by the ld. CIT(A) as well.

4. We, next, proceed to adjudicate the assessee's appeals. We shall be required to, however, consider the assessees' Grounds 1 and 2, common for all the years, before we may take up his other grounds, which are on the merits of the various additions made to the returned income. This is as the same raise fundamental issues. Vide Ground 1 (for all the years), the assessee impugns the assessment/s as void *ab initio*

in-as-much as there was no service of notice under section 143 (2) within the stipulated period of 12 months from the end of the month in which the returns of income in response to notices under section 153 A were filed.

In this regard, the ld. Departmental Representative (DR) would, at the outset, draw our attention to Annexures 1, 2 to the assessment order for all the years, even as one would suffice. Annexure 1 is an Acknowledgement of the notice under section 153A (for AYs. 2001-02 to 2006-07), which is at the assessee's Mumbai address, duly receipted. The service of the notice/s is in fact not disputed, with the assessee furnishing returns under section 153A in response to the said notices. Annexure 2 is, similarly, the acknowledgement of notices under section 143 (2) dated 04/10/2007 for A.Ys.2001-02 to 2007-08. The same, marked to his Pune address, bears the signature of Rheema Hassan Ali Khan (RHAK), the assessee's wife, who accepts the same for on his behalf, even as clearly indicated therein. Though the date of receipt is not mentioned by the recipient, the same can only be presumed to be in the normal course of its business by the postal department when the registered post (the notices dated 04.10.2007 being conveyed through speed post), is not returned unserved, as in the instant case, which is also the presumption in law, with the returns for all the years being filed on 23.5.2007 (refer: *Milan Poddar v. CIT* [2013] 357 ITR 619 (Jh.)) . So, however, to amply clarify matters, the ld. DR was called upon to produce the record, and which he did. The same notes of the notices u/s. 143(2) dated 04.10.2007, placed on record, duly served on the assessee on 09.10.2007, with proof placed in the file cover for A.Y. 2007-08, which was confirmed. Copies of the notices for the first and the last year, i.e., A.Ys. 2001-02 and 2007-08, bearing the noting, were obtained and placed on record. The assessee's claim is accordingly without merit; rather, stands disproved.

The assessee's claim is even otherwise legally sustainable in-as-much as notice u/s.143(2) is not a prerequisite for framing an assessment u/s. 153A, which provision itself confers jurisdiction to frame the assessment of the total income for each of the

relevant years. Notice u/s. 143(2), clearly procedural, was considered by the Hon'ble Apex Court as mandatory in *CIT v. Hotel Blue Moon* [2010] 321 ITR 362 (SC) only on account of it assuming a jurisdictional character. The view in this respect, expressed by the Hon'ble Delhi High Court in *Ashok Chaddha vs. ITO* [2011] 337 ITR 399 (Del), rendered considering the decision in *Hotel Blue Moon* (supra), has since been adopted by the tribunal in *Sumanlata Bansal vs. Asst. CIT* (in ITA Nos. 525-530/Mum/2008 dated 20.5.2015 - reported at 2015-TIOL-1053-ITAT-Mum-TM).

5. Ground No.2, which, along with that following it are 'non prejudice' grounds, would accordingly stand to be taken up. Ground No.2 alleges non-grant of reasonable opportunity by the Assessing Officer (A.O.) while framing the assessment, so that there had been violation of the principle of natural justice, vitiating the assessment/s, which aspect has not been appreciated by the ld. CIT(A). The ld. CIT(A), before whom, again, this aspect was raised, has discussed this at para 10 of the impugned order, observing the A.O. to have allowed sufficient opportunity to the assessee, concluding that the assessee's contention in this regard is general in nature. We, again, observe no specific contention in this regard in the assessee's written submissions before us. Per the same, it is claimed that the report of an internal enquiry by UBS AG, which was furnished to the ED, was not confronted to the assessee. The same having not been relied upon by the Revenue, the assessee's plea is not maintainable. On the contrary, we find abundant reference to the various opportunities afforded by the A.O. to the assessee, as well as of being provided with all the materials in his possession, including the incriminating material seized from the residence of Shri Kashinath Tapuriah (KT), a close associate of the assessee. The assessee has been at each stage duly confronted with the materials and/or evidences; the A.O. issuing a series of questionnaires, viz. 05.3.2008, 17.3.2008, 29.4.2008, 24.11.2008, 26.11.2008 and two comprehensive show cause notices, i.e., dated 28.11.2008 and 19.12.2008 (Annexure 6 to 9 to the assessment order). The same were served on the assessee's

counsel (duly authorized to receive the same), and also sent through speed-post at both his known addresses (i.e., Mumbai and Pune residences). The notices, questionnaires and show causes were also served through affixture at the assessee's Peddar Road, Mumbai address. Reference in this context may be made to paras 5 thro' 9 of the assessment order. In fact, the assessee himself furnished replies vide his letters dated 19.11.2008, 01.12.2008, 10.12.2008 and 26.12.2008, the last being, as also noted by the ld. CIT(A), while being in jail. In fact, prior thereto, he had attended personally along with his counsel, Shri Sunil Shinde, on 12.11.2008, and was served all notices issued up to then. Rather, if time was an issue, the assessee, whose case remains essentially one of denial, could have furnished substantive replies even before the first appellate authority. The assessee's case on this ground is without merit, which is accordingly dismissed.

6. Ground 3 is general in nature, warranting no adjudication, while Grounds 4 and 5 relates to an addition in the sum of Rs.6950.97 lacs. With reference to the information gathered from ED, the Revenue found the assessee to be operating two companies, Payson Company Ltd. and Autumn Holdings Ltd., registered in British Virgin Islands. Further, the business transacted during f.y. 2000-01 led to earnings of DHS 151,107.94 (DPB pgs. 34, 37 for A.Y. 2000-01). The assessee was, accordingly, show caused in the matter on 29.4.2008, enclosing along with the copy of account as on 13.03.2001. No explanation in its respect was, however, received. The assessee had, as per the letter dated 17.09.2001, earned commission and consulting fees from these companies (as their Chairman) during the period 01.1.1985 to 31.12.1989, proving his close nexus therewith. The amount was accordingly added. In appeal, the assessee alleged that the A.O. had jumped to the conclusion without waiting for the enquiry by the ED to get over. A document of a third party could not be relied upon unless the assessee is allowed to cross examine him, or otherwise meet the same. In any case, income could not be assessed on the basis of suspicions, but only where it is

proved beyond doubt that the same was generated by the assessee. The presumption of truth u/s.292C shall apply to documents found in search, and not to that provided by ED. The presumption is, in any case, rebuttable, which depends on the nature of evidence, so that in a given case mere denial may discharge the onus, i.e., depending on the facts of the case (refer para 12 of the impugned order – the assessee's submissions, which are common for Grounds 10 to 15 before the ld. CIT(A), with that under reference being Gd. 10).

The addition stood considered vide para 13 (pgs. 24-31) of the impugned order. No evidence had been relied upon without the relevant document/s being given to the assessee, calling for his explanation. The addition had been made not because the ED had informed the Revenue about the evasion of tax, but on account of the inability of the assessee to explain the documents, which clearly indicate evasion of tax. It is the A.O. who is required to be satisfactorily explained, and had he been, there would have been no addition, i.e., irrespective of the status of the investigation by the ED. No evidence and/or explanation had been furnished even at the first appellate stage. *Qua* the assessee's grievance with regard to non cross-examination, it was clarified by the ld. CIT(A) that the documents were not of a third party, but belonged to the assessee himself, which are to be regarded as true and genuine. Proper opportunity was in fact provided to the assessee, duly confronting him with all the materials being relied upon by the A.O. The case law relied upon by the assessee was distinguished on facts by the ld. CIT(A), also stating that section 292C stands since brought on the statute book. True, the presumption of section 292C shall not apply to the documents provided by the ED. The assessee is, nevertheless, required to explain, if not disprove the said information. The said documents in fact correlate with, and are in addition to, the material seized in search from the assessee's residence as well as that of KT, all of which duly were confronted to the assessee. He, accordingly, confirmed the addition.

7. Before us, the assessee per his written submissions claims that the addition in his case stands made presuming a close nexus between him and the stated companies. Again, there was no evidence that the amount had been transferred to or received by him. In fact, KT had during the course of his statement before the investigation authorities submitted that Payson Ltd. was never functional, and had no business dealings. The ld. DR relied on the orders by the Revenue authorities.

8. We have heard the party before us, and perused the material on record.

8.1 The assessee's submissions in this regard are at para D (pages 14-18) of his written submissions for the year (WS-1). The assessee has not denied the fact of the stated companies being registered in British Virgin Islands, a destination preferred, on account of its benevolent tax laws, for opening offshore accounts (and euphemistically called tax havens), and of which he is the Chairman. Such companies are usually paper companies, holding investments, and used to funnel income offshore, for tax considerations. The charter and the certificate of incorporation of Autumn Holdings Ltd. form part of the Departments' paper-book (DPB) (DPB pages 46-49, 38/AY 2000-01). The Director's resolution/s dated 26.02.2001 (of the said company) (at DPB pgs. 30-31) constitute any two of the three, i.e., Bjorn Allan Andersson, Hassan Ali Khan and Kashinath Tapuria, acting together, as true and lawful attorneys of the company. DPB pg. 32 is a notarial certificate dated 14.03.2001 in its respect (DPB refers to the Department's paper-book for A.Y. 2000-01). Then, there is an Agreement dated 07.8.2001 between the assessee and KT, made at Dubai, also noted by the ld. CIT(A) (refer pg.26 of his order). The same was recovered from the residences of both, i.e., from the Pune residence of the assessee (pg. 18 to Ann.5 to Panchnama dated 5.1.2007) and the Kolkata residence of KT (pg. 22 of Ann.7 to Panchnama dated 6.1.2007), which clearly states of the said two companies being the assessee's companies. The said agreement, being of prime relevance, is enclosed as a part of this order (as Ann. A).

The assessee has also not denied the statement of account as at 13.3.2001, or of its reflecting the profit for the year. The assessee seeks to impugn the inference of a close nexus between the said companies and himself, which is in fact self-evident from the facts eminent from the record; he having, rather, received substantial sums by way of income there-from in the past (1985-89), which were again not disclosed to the tax authorities in India. All he was required to do, to exhibit otherwise, was to provide documents with regard to the share-holding or the stake in the said companies, which are formed to serve as mere vehicles for the benefit of the promoters. Then, how does he explain the documents and statements referred to in, and on the basis of which, the letter dated 17/9/2001 supra is issued by the assessee's auditors? The non-receipt of money, in-as-much as income would stand to be taxed either on accrual or receipt basis, would also be therefore of no moment. The money may have been earned abroad, but being a resident of India for the relevant year, the same would stand to be taxed in his hands. Rather, it is for the assessee to explain the nature of the business activities undertaken by/in the said companies, which it seems have business/es also at Dubai, where the assessee was camping during the relevant year, as his letter dated 16.7.2000 to UBS AG, Zurich (refer para 9) indicates.

The assessee has also not denied or explained the letter dated 17.9.2001 supra, which is the format letter by his auditors containing information - verified and certified by them, on commission, consultancy and interest income earned by him from these companies from January, 1985 to December, 1989. The same, in the relevant part, reads as follows (DPB pg. 51):

'Date: 17th September, 2001

Mr. Hassan Ali Khan
Zurich, Switzerland

As requested by you, we have reviewed the available documents and other relevant statements in connection with the commission income and consultancy fees earned by you being the chairman of M/s. Payson

> Co. Ltd., Dubai and Autumn Holdings Ltd. Dubai during the period from 1st January, 1985 to 31st December, 1989, *in which you have sole invested interest*.
>
> On the basis of the said documents, the information and explanation furnished and relying on the representations made, we have summarized the statement of your commission income and consultancy fees earned for the period from 1st January, 1985 to 31st December, 1989 as under:'
>
> [At this place of the letter is the statement of income (in USD) for each of the years, from 1985 to 1989, under the heads, commission, consultancy fees and interest income, aggregating (for these years) to USD 280,540,000. The letter further reads as follows:]
>
> 'Please be noted that the above summary has been compiled on the basis of available documents and related statements provided by you.'
>
> [emphasis, ours]

The same is in fact prepared by the Auditors only at the assessee's instance, and forwarded to one, Mr. Grossman – who (Markus Grossman, as the UBS report dated 30/10/2007 clarifies, is the assessee's relationship manager – para 3.2/pg. 2 of the report) vide fax dated 18.9.2001 (refer: DPB/pgs. 50-51 of DPB for A.Y. 2000-01). On what basis, then, one wonders, the asseessee, assails the inference of either a nexus with these companies or having earned income there-from. Rather, the division of profits between him and KT, vide agreement dated 07.8.2001, is also that earned in and to be transmitted to, their companies. The assessee further states of having not received any commission, consultancy fee or any other income in the past (1985-1989). The reference to the letter dated 17.9.2001, as would be apparent, is only toward establishing a close and clear nexus between the assessee – who in the Agreement declares these to be 'his' companies, i.e., 'owned' by him, and the said companies. The said period, it is to be noted, falls within the period 1983 to 1990, mentioned in the Agreement dated 07.8.2001 (Annexure A) found during search, separately from the residences of the assessee and KT. The UBS AG report dated

30.10.2007, since admitted, also states that UBS was targeted by Mr. Khan from (year) 1987 to 2001 (refer para 1 of the report), indicating his activities abroad dating back to the 1980s, and the corresponding need to establish banking relationship, which could also include for investments purposes, as well as through companies.

As regards the statement supra of KT, a person he states to, in the same breath, to have no business links with, the same would be of no consequence as, as afore-stated, the truth of the statement of account is neither denied nor controverted.

8.2 We are, however, unable to read the statement of account as at 13.3.2001 (annexed as Annexure B to this order) as being the statement of profit of the said two companies or the earnings of the assessee there-from, at least in its entirety, as inferred by the Revenue. The bank particulars, i.e., to which the amount (DHS 151, 197.94) is to be transferred, is also mentioned therein. *To whom does this bank account belong*? The amounts are in respect of different matters, identified by number and brief description, for which invoices (number and date specified) have been raised. The statement also includes fees as well as costs which are yet to be billed, i.e., as on 13.3.2001. The same, even if not in its entirety, pertains to these companies. The assessee has not explained the document in any manner, giving an evasive reply, nor has it been enquired into the Revenue. One thing, however, is clear, i.e., the two companies – *Payson Company Ltd.* and *Autumn Holdings Ltd.*, were existing during the relevant year, and had transactions therein. This is also the unmistakable inference; rather, the admitted position that also flows from the Agreement dated 07.8.2001 supra. True, where the assessee does not lead the best evidence in his possession, which could throw light on the issue in controversy, and withholds it, the court may draw an adverse inference (Section 114, Illustration (g), of the Evidence Act, 1872), even as clarified in, inter alia, *CIT v. Sanjay Jain* [2015] 230 Taxman 550 (Cal). At the same time, however, the inference could only be as arising from the material in the possession of the Revenue. Who has drawn this statement or the

invoices noted therein? What is the nature of the services provided by the assessee in the past, for which consultancy fees and commission had been charged and paid? (refer para 8.1, Annexure B to this order). Are the invoices, as listed in the statement, raised or to be raised in respect of such like charges? If the amount is due from these companies, which are separate companies, why is a single statement drawn? Is the amount already billed accounted for in the books of the corresponding companies? Was the money received, toward which bank account particulars are also specified? The assessee has maintained complete passivity in the instant proceedings, refusing to divulge any information. The assessee's name is conspicuous by it's absence in the document, so that the only link with the assessee could be the bank account specified, as well as the consultancy fees received, similarly, in the past. Also relevant would be the place, circumstances, and the proceedings under which the document was recovered by ED. The information being received from ED, it would surely have probed the matter and, if so, the nature of its finding, if any, may be relevant. The matter is, clearly, factually indeterminate, and requires further investigation before some definite findings are arrived at. Toward the tribunal's competence to direct so, we may refer to s. 254(1) of the Act r/w r. 28 of the Rules (also refer: *Hukumchand Mills Ltd. vs. CIT* [1963] 63 ITR 232, 237 (SC); *Bhor Industries Ltd. vs. CIT* [1963] 48 ITR 376, 403 (Bom); *Tarajan Tea Co. (P.) Ltd. vs. CIT* [1994] 205 ITR 45 (Gau)), to cite few.

Under the circumstances, we only consider it proper to restore the matter back to the file of the assessing authority for adjudication afresh in accordance with the law. Needless to add, the assessee shall be provided due and reasonable opportunity to state his case in the matter. As regards the rate (of conversion into Indian rupees), the assessee has, while challenging the same, not brought the 'correct' rate on record; his written submissions being also silent on this aspect. The A.O. is, nevertheless, directed to apply the correct conversion rate, adopting the same as on 13.3.2001, or for a date as close to that date as possible. Even otherwise, there appears to be some

mistake in-as-much as even the applied rate of Rs.46 per DHS yields a sum of Rs. 69.55 lacs. We decide accordingly.

9. The next and the sixth ground is in respect of unexplained money with UBS AG, Zurich, at Rs.447 crores. The Revenue, on the basis of the information received from the ED, found the assessee to have issued a transfer instruction to UBS AG on 16.7.2000 to transfer funds in the sum of USD 1 million dollars (1000000) from his account number (space left blank) to another account with the said bank (account number specified) of KT (name of the person), further requesting for an immediate action in the matter (annexed by way of Annexure 11 to the assessment order). The assessee was, accordingly, show caused (vide notice dated 19.12.2008), to which no effective reply was submitted; the assessee merely denying holding any foreign bank account. The same was, in the view of the A.O., clearly unacceptable in the face of such specific information, so that the assessee stating of being not aware of any such transaction or being ignorant of the said document would be of no consequence. Rather, several other documents were found during search, which independently established close relationship between the assessee and KT; their frequent travel abroad together, as well as cross border transactions. In fact, some such documents support and complement each other, providing corroboration, as well as establishing their truth. Reference toward the said discussion is drawn to paras 11.1 through 11.5 (pgs. 9-11) of the assessment order. The document clearly established funds to that extent with the assessee on that date (16.7.2000), the source of which had not been satisfactorily explained. The said amount was, accordingly, assessed as 'income' as unexplained money (deposit). The nature of the assessee's arguments in support and toward its case before the ld. CIT(A) stand already discussed at para 6 above.

10. Before us, the assessee per its written submissions for the relevant year (WS-1) (pgs.11-13) relies on the communication dated 30.10.2007 by UBS AG to the Head of

the Department, Swiss National Bank. The same clearly states the assessee to have three accounts with it, opened only in the year 2001, bearing numbers 206-790786, 206-789758 and 206-794786, the third being in the name of his wife (RHAK), with the assessee holding a power of attorney (in his favour) in its respect. The assessee's accounts, opened on 30/7/2001, were never funded and there were no transactions of any kind (including bond and other security transactions). The said accounts were never made operational, and closed on 17.10.2001. The third account, also opened on 30/7/2001, contains only one transaction by way of deposit of USD 61,031.30 in cash on 15.8.2001, of which USD 60,700 was transferred by way of a wire transfer to a third party individual (i.e., not Mr. Khan or his family members) to a account at a bank in United Emirates (UAE) on the same day. There were no other transactions on this account (including no book or remitted bond or other security transaction). This account was also closed on 17.10.2001. The fourth account disclosed in the report is (#760001), which is stated to be in the name of an Indian National (with POA in favour of the account holder's wife), opened in December, 1994, and closed in January, 1998, i.e., over 3 years before the assessee opened an account with UBS. The reason for opening this account was because the account holder was, as stated by him, expecting a transfer from a HAK account with UBS, Zurich (refer para 3.4 of the report). The several Transfer Instructions (TIs) found in search reflect this account as of KT. On the basis of this communication, the assessee claims that it stands established that he did not have any account (No. 6667663) with UBS Zurich, as alleged by the A.O., or any other account for that matter. No tax liability would, therefore, stand attracted on the basis of alleged transfer of funds to another account with the said bank (#760001) in the name of KT.

The ld. DR, on the other hand, would submit that no explanation, apart from denying the said transfer, pleading ignorance, stands advanced by the assessee at any stage. His stating of having no foreign bank account stands also conclusively

disproved. In this view of the matter, the same has to be concluded against the assessee.

11. We have heard the party before us, and perused the material on record.

11.1 The letter under reference, reproduced at para 11 of the assessment order as well as, prior thereto, in the show cause notice dated 19.12.2008, reads as under:

> *'The Union Bank of Switzerland* *July 16, 2000*
> *Zurich*
>
> *Attn. Dr. Walli*
> *(Through UBS Dubai)*
>
> *Dear Sir,*
>
> *Please transfer a sum of US Dollars One Hundred Million (US $ 100,000,000) from my account no…… , to the account of Mr. Kashinath Tapuriah – account No. 760001, with your Bank in Zurich. This may please be treated as my instructions, and I request you to take immediate action and confirm.'*
>
> *Thanking you,*
>
> *Yours Truly,*
>
> *HASSAN ALI KHAN*'

The Transfer Instruction is on the letter-head of 'Hotel Inter-Continental', Dubai, bearing its postal address, telephone and fax numbers. The assessee has not denied having signed the said document (i.e., the original copy, meant for being transmitted to the bank) or of being not in Dubai at the relevant time (July, 2000), or on 16/7/2000 specifically (which would also stand to be confirmed from his passport) and, thus, in fact tacitly admits to having instructed his bank in the manner stated. We are conscious that the document was not found during search (or survey) under the Act, for the presumption of section 292-C to apply thereto. The same has been provided to

it by ED, and there is nothing on record to indicate that it has been requisitioned u/s.132A. *In fact, the ED itself joined the search proceedings undertaken by the Revenue on 05.1.2007* (refer statement of facts by the assessee before the first appellate authority). The document, however, has been officially transmitted by ED, the Government Agency investigating the foreign/cross border transactions of the assessee, including genesis of sums in these accounts (and now under the auspices of a Special Investigation Team (SIT) constituted by the Hon'ble Apex Court), to enable the Revenue to take appropriate proceedings under the Act. For all we know, it may well be one of the documents with the Revenue to form a reason to believe u/s. 132 of the Act. There can be in any case no presumption that the same has been obtained by ED illegally or without following the due process of law. The apex court in *Pooran Mal vs. DIT (Inv.)* [1974] 93 ITR 505 (SC) clarified that the test of admissibility of evidence under the Indian jurisprudence lies in its relevancy, so that unless there is an express or necessarily implied prohibition in the Constitution or other law, evidence obtained as a result of illegal search or seizure is not liable to be shut out. *The reliability of the document cannot be doubted, and it has strong persuasive value*. In fact, the assessee himself, at no stage, denies that the same was not recovered from him. Such like transfer instructions were also recovered from the assessee's residence as well as of KT during search. *Why, one may ask, should the assessee (or KT) retain them for years, which itself is a strong indicator of the truth of the document, i.e., of the transfer instruction having been in fact issued*. It is notable that the assessee does not, at any stage, including before us, explain the reason for, and/or the circumstances under which the transfer instruction was issued. Or, for that matter, any of the transfer instructions, some of which bear his (transferor) account number as well as his signature. That is, on what account was he required to transfer funds to KT. The Agreement dated 07.8.2001 between them (referred to earlier at para 8.1/enclosed as Ann. A) apart, the search revealed several documents and materials evidencing a close relationship between the assessee and KT. The assessee per his notarized statement

dated 30/6/2003 *infra* admits to him being his advisor. They travelled abroad together frequently (pgs. 35, 40, 43-45 of Annexure A-2, seized from KT's residence). A signed power of attorney by KT, jointly with another, as representative of Roberts, Mclean and Company Ltd., Kolkata, in favour of the assessee, to deal with the property at 10A, Prithviraj Road, New Delhi (pg. 98 of Annexure A1) was found, which also shows the assessee to be well connected. Signed blank papers by the assessee were also found from the possession of KT (pages 68-70/Annexure A1). Again, a loan of Rs. 5 crores from assessee (lender) to RM Consulting Ltd., Kolkata (borrower), a company of KT, was found in search (pgs. 71-94 of Annexure A-1). Further, though the transfer instruction under reference predates the said Agreement dated 07.8.2001, *is it that the monies were sought to be transferred to KT in satisfaction of the obligation recognized, in writing, subsequently, by the said Agreement*? We say so as the agreement is only with a view to settle the accounts between the assessee and KT, so that pending final settlement, transfer could take place, i.e., is a distinct possibility.

11.2 The assessee claiming that no transfer of funds had, however, been effected, would be of little moment in-as-much as the addition is toward unexplained money or bank deposit. True, the same may be lying in his account, in whole or in part, from an anterior date, falling in a preceding year. However, it is for the assessee to exhibit so - in explanation of the nature and source of acquisition of the money he is found to be in possession of, as statutory obliged to u/ss. 69/69A, lest the deposit be deemed as his unexplained income for the relevant year, i.e., the year for which he is so found. It is open for the assessee to show that the sum of money – to whatever extent, is brought forward from an earlier period, or otherwise does not represent his own capital – as where it is by way of a loan, or despite being his capital, represents a capital receipt, so that it cannot be brought to tax as his income. He, however, does not do so, and merely denies the existence of the account without adducing any evidence toward the

same. Again, it is open to be argued that the transfer instruction would not by itself establish the balance in account to that extent. A transfer instruction (TI) is akin to a (non-negotiable) cheque drawn on his bank by the account holder, specifying also the account particulars of the transferee. Its' preparation itself is an expert job, with the assessee being assisted in this regard by the bank officials (also refer para 11.4). We have already clarified that the document is to be regarded as reliable, with persuasive evidentiary value. The same implies that such an instruction was in fact issued to his bank (UBS AG) by the assessee. If that be so, the said account, by necessary implication, had balance at least to that extent on the relevant date. True, the burden of proof that there is unexplained money, investment, etc. is on the Revenue. The same, however, can be discharged by it by establishing facts and circumstances from which a reasonable inference toward the same can be drawn (refer: *Sudhakaran (C. K.) vs. ITO* [2001] 279 ITR 533 (Ker)). The assessee is required to disprove the said document, and the logical inference/s that flows there-from.

The assessee has, however, produced before us the copy of the report (dated 30.10.2007) submitted by UBS AG, Zurich to Switzerland National Bank, claiming it to have been since forwarded to ED, as also patent from the UB's letter dated 28.12.2007 to ED (refer para 3.1 - which though being unsigned has not been admitted in evidence). The said letter/report (dated 30.10.2007) has been admitted in evidence. It is therefore clear that the matter is under investigation by ED, which has initiated proceedings under PMLA against the assessee, which are - as per the assessee, and which is not disputed by the Revenue - under-way. Cleary, the charges under PMLA shall only obtain where the assessee is found to have maintained bank account/s abroad, holding substantial sums therein. That is, the very basis on which the amount is sought to be assessed as income in his hands in-as-much as the same has not been disclosed or satisfactorily explained as to its nature and source of acquisition. The question that, therefore, arises is whether it would be proper to, pending the

proceedings under PMLA, which in fact the Revenue is only aware of, conclude the proceedings under the Act.

The assessee has also sought to raise this issue per his written submissions, stating that the ED concluded its initial investigation only in 2011, filing a complaint against him (with the Hon'ble Sessions Court, Greater Mumbai) on 1/5/2011, so that the assessments were liable to be set aside to this score alone. The proceedings under the Act are statutory and independent proceedings, to be decided on the basis of the materials and evidences brought on record as well as the explanations furnished, i.e., on the basis of the facts as established therein. They are, further, to be concluded in a time bound manner, which, being a statutory prescription, cannot be breached. It is the asssessee who, on the contrary, has been recalcitrant, disregarding the said proceedings, even choosing to be not represented before us, relying ostensibly on written submissions instead. The said non-representation is only deliberate, denying valuable assistance to the court/adjudicating authority, a negation of the due process of law, besides causing loss of valuable court time, a national asset, which needs to be conserved and put to optimum use. Be that as it may, the plea of set aside of assessment by the assessee on that ground, which is *de hors* any ground of appeal, is without merit.

11.3 The transfer instruction under reference does not bear the account number of the assessee-transferor, and the A.O. wrongly mentions the same as '6667663' (refer para 11 of the assessment order). We are conscious of this fact, and without which the document is incomplete. It also does not bear the assessee's signature. At the same time, it needs to be borne in mind that the office copy of a document generated is usually retained as such, i.e., without signing, or ascribing thereon information deemed confidential. It is this that prevailed with us, so as to examine the case further despite the document being not complete. Why, Annexure 12 to the assessment order, again a transfer instruction (dated 23.7.2000) by the assessee on UBS AG, Zurich,

*duly signed by him*, bears the said account number (6667663). It the proximity of the dates of the two transfer instructions that perhaps led the A.O. to assume this account number for transfer instruction dated 16.7.2000 as well.

11.4 We, next, consider the UBS report dated 30.10.2007, on which the assessee relies. We appreciate that this is a communication by the bank, located in another sovereign jurisdiction, to another, exercising regulatory power thereon (as per the laws of that country), so that it could be argued that it cannot therefore be relied upon; it being even not clear if the same stands communicated to the Indian investigation authorities. At the same time, however, it needs to be appreciated that the same pertains to the assessee. Why, the same is itself titled: '*Results of investigation into Hassan Ali Khan and his alleged relationship with UBS*'. And is clearly in consequence to the details sought by the GOI (through proper channel), as a sovereign, with regard to the activities of one of its nationals in that country. Surely, GOI is concerned with the underlying activities resulting in the financial flows in-so-far as they relate to or have a bearing on the criminal and civil (including tax) liability of that person as per the laws of India. The same, along with the report dated 29.10.2007 by Deloitte AG to the Bank, has apparently been conveyed by it to ED vide its' communication dated 28.12.2007, as the enclosures to the said letter to ED indicate, and which is also one of the documents sought to be adduced by the assessee as additional evidence. The Deloitte report makes it abundantly clear that the information provided (by UBS) was not complete (refer paras 2.14, 3.3 and 3.5 thereof). Para 3 of the said report clearly brings out the scope of the work performed and its limitations. In respect of a fax dated 05.4.1997 by one, Hassan Ali Khan (from Account No. 710.085) to Account No. 760001 (of KT), it states that there is no evidence if the said person was the same Hassan Ali Khan who is the subject of the report (para 2.13). Then, again, the UBS report (dated 30.10.2007) states that A/c No. 760001 (the beneficiary account in the impugned TI) was closed in January, 1998,

while at the same time stating that the said account was opened as a transfer from HAK account was expected (refer para 9 above). That the said account belongs to KT is admitted, stated to be opened in 1986 and closed in the year 2000 (refer communication by Chandrika Tapuriah (CT) to the A.O. dated 13.12.2011 (at APB-5 – in the case of KT/CT, pgs. 871-873)). The UBS report, however, states of the said account having been closed in January, 1998, pointing to yet another inconsistency with reference to the said report. However, the moot question is: *If there was no HAK account at the relevant time, how could this constitute a basis for opening the said account*? There should thus be a HAK account/s with UBS AG at the relevant time, or, in the very least, one (or more) account, opening of which was certain, for the bank to have opened the said account in December, 1994. Though the letter dated 28.12.2007, being unsigned, has not been admitted by us, it is clear that the report dated 30.10.2007, stated to be on the basis of an internal investigation by the bank, is based on the Deloitte AG report dated 29.10.2007, as admitted by the assessee himself (refer his written submissions, viz. para 10 of WS-1). The ED, by the assessee's own admission per its written submissions, has pressed charges against the assessee u/ss.3 and 4 of PMLA in respect of two transactions (pg. 27 of WS-1):

a) Laundering of 93 million US Dollars to have been acquired by the applicant in the year 1997;
b) USD 700,000 to have been acquired by the assessee in the year 2006.

As afore-referred, the assessee has himself, vide transfer instruction dated 23.7.2000, duly signed by him, instructed UBS AG, Zurich to transfer USD 500,000 from his account number '6667663', disproving the UBS's said report. The complaint under PMLA by ED, in-as-much as it pertains to the year 1997, also suggests that the A/c No. 710.085 (as per the Deloitte Report, relied by the assessee) is of the assessee. UBS officials, such as Markus Grossman, Dr.Peter Weilly, Reto Hartmann, have been found associated with, and been specifically assigned as relationship manager, portfolio manager, etc., to the assessee, to look after his business interests and manage

his accounts. The Agreement dated 18.07.2001 with M/s. Clamai AG (refer paras 20-22 of this order) was facilitated by the Bank, with meetings in its respect being also held at the Bank premises itself. *Complete reliance therefore cannot be placed on the bank's said report. In fact, the transfer instructions or reference to accounts have been found during search where the reference to the account is not by name/s but in code/s*. We may, if only to demonstrate this, refer to the three (3) transfer instructions, which are the subject matter of Gd. 6 for AY 2002-03 (at para 25 of this order), all the three mentioning only the (beneficiary) account number, with one being code named, or euphemistically named, as '*Black Prince*'. The said name, which also appears in TI for USD 72 M (refer para 30.1), has been found by the ld. CIT(A) to be of 'Soir Contracting and General Trading Co., WLL Zurich, i.e., of an existing company, also confirming the account number, which is the same for both the TIs (refer page 37 of his order for A.Y. 2003-04).

The Bank recognizes the account holder only by the code name, providing access upon successfully navigating through a filtering process, including passwords, etc. The UBS report also clarifies (per para 3.5 thereof) on the coding configuration adopted by the Bank *qua* account numbers. We may at this stage also note, as also sought to be emphasized by the ld. DR during hearing, that privacy and banking laws in Switzerland enable opening of bank accounts in such a manner, as well as placing stringent conditions on the exchange of information in respect thereof. The facsimile date 15.1.2007 supra, in response to the request for mutual legal assistance by the GOI, which is the other document admitted by us, very clearly states that the Swiss Federal Office of Justice shall require, besides others, a confirmation that the investigation (in India) is in respect of criminal proceedings and there is a relation between the predicate offences and the accounts of Hassan Ali Khan in Switzerland, before it would be able to proceed with the said request. The same only endorses the concern expressed by the ld. DR, i.e., as far as tax proceedings in India are concerned. We may further add that it is only after September, 2001 attack in New York, USA,

that the banking industry across the globe woke up to the threat of financial flows arising from or in respect of such terrorist and illegal activities, devising KYC (know your customer) norms. And which have since been gradually updated and adopted across nations, including India.

11.5 The Revenue, to proceed against the assessee, must have definite information with regard to the assessee being in possession of monies or holding investment. This is in view of the salutary principle of common law jurisprudence, embodied u/s.110 of the Evidence Act, i.e., that possession implies ownership, so that the onus of proving that the possessor is not the owner is on the person so alleging. This principle is also applicable to tax proceedings, incorporated in the Act (under Chapter VI), so that the principle would be attracted to a set of circumstances that satisfies its conditions. The expression 'income' under the Act, a term of wide import, is applicable to section 69A, among others, of the Act (refer: *Chuharmal vs. CIT* [1988] 172 ITR 250 (SC)). The assessee, claiming to have no foreign bank accounts, concedes subsequently (on the basis of a report by UBS AG, Zurich - which has been taken as part of the record) to have a limited banking relationship with UBS AG, Zurich. The said report, for the reasons afore-discussed, cannot be considered as completely reliable. In fact, a notarized statement by the assessee (by and before Nicholas Ronald Rathbone Smith, Notary Public of London, England on 30/6/2003) at London (provided by ED), referred to in the Revenue's petition dated 01/6/2015 (refer para 3.2) - a part of the record, being in fact annexed to the assessment order for quite a few years (AYs 2005-06 to 2007-08/Ann. 13 for AY 2005-06), is most revealing in this regard, and annexed to this order as part thereof (Annexure C). The same charts or transverses the assessee's relationship with UBS, commencing with the opening of an account with UBS, Singapore (UBS-Sin) with an amount of USD 500,000 in 1982, up to the date of the statement. Further, that the account had a balance of USD 560 million in December, 1997. Dr. Peter Weilly (wrongly spelt as Dr. Walli

in the TI dated 16/7/2000), who also visited India several times during the period the assessee could not travel outside India, is stated to be the assessee's portfolio manager, *and Kashinath Tapuria as his advisor*. The account was later moved to UBS AG, Zurich, Switzerland, as first suggested by Dr. Weilly in 1986. In December, 2002, the assessee authorized one, Philip Anandraj (who was found staying at his Pune residence at the time of search), duly accepted, to operate his Locker with Barclays Bank, Plc, issuing a letter (duly signed) dated 23.12.2002 to the said Bank, at London. In fact, PA's – with whom the assessee entered into a consulting agreement to represent him internationally in April, 2001, extended stay at the assessee's residence itself confirms the assessee's overseas financial and business interests.

We are conscious that no account number is mentioned in the transfer instruction. *Could that, however, be interpreted as it bearing no account number, defeating the exercise or the very purpose of issuing the same*? It is not unusual not to write information, deemed confidential, except in the original copy, i.e., on the basis of which the execution is to be made/is sought. Likewise for the non signing of the transfer instruction; it being usual not to ascribe the signature on the office copy. In fact, TIs have been found in search, as Annexure 12 to the assessment order for the current year, which bears both the account number (written by hand in the place provided for it in the letter, as in the instant transfer instruction), as well as the assessee's signature. The absence of these attributes would, thus, in our view, be of little moment. In-as-much as, however, the account number, which is not mentioned, could be any of the accounts which the assessee is found to be associated with, he shall be required to obtain the relevant record of his accounts (i.e., accounts of which he is either the holder or beneficiary or POA holder), and satisfy the Revenue with regard to the non-maintenance of any balance (or of a lower balance) therein at the relevant time. For the transfer instruction bearing an account number, as the one dated

23.7.2000 supra, the validity or otherwise of the inference could be dislodged by producing the said information with regard to the account number specified therein.

*Conclusion*

12. The matter, in view of the foregoing, would accordingly stand to be restored back to the file of the assessing authority. We are conscious that the transfer instruction bears no account number. To accept, as contended, that the transfer instruction of a sum to an account which, as confirmed by the said report itself, belonged to an Indian national (though since closed) was issued without there being any account of the issuer of the instruction at the relevant time, is fatuous, if not also farcical. The assessee has, as it transpires, issued not one but several transfer instructions, from time to time, which have been found as a part of the seized material from his residences, or that of KT at Kolkata, searched simultaneously. The information/TIs provided by ED, who joined forces with the Department, besides being equally reliable, are corroborative. The same thus have strong evidentiary value, quite apart from s. 292C, which shall apply to all the documents found in search, so that their contents, unless shown otherwise, are to be regarded as true (ref: *Surendra M. Khandhar v. CIT* [2010] 321 ITR 254 (Bom)). The beneficiary is clearly specified, confirmed by the Revenue as an existing person, with complete bank particulars, again, found as correct. That, therefore, there is an account/s, even if unspecified, with reference to which the transfer instruction was issued by the assessee, is the only reasonable inference that emanates in the facts and circumstances of the case. The premise of the assessee's - who has not explained as to why this, or any of the several transfer instructions were issued by him to different persons, for different amounts, and even from different places, from time to time - case is that the Revenue is obliged to prove beyond doubt that income was generated by him. Couple this with a complete denial of the transactions, his case cannot but be discountenanced. The assessee, who is in fact applied for & obtained a new PAN from the Department at

Mumbai in 2005, claiming to be a new assessee notwithstanding he being an existing assessee - filing returns (up to A.Y. 1999-2000) at Hyderabad, shall, therefore, be required to obtain a clear certificate of not maintaining any account, either as an account holder or its beneficiary or as its POA, i.e., of which he is the owner of or could operate, as specified in the various documents found in search or otherwise transmitted to the Revenue. He cannot, after all, it must be appreciated, prove a negative, i.e., that he does not have any account with UBS AG (on which transfer instruction is drawn), other than he is found to be associated with in any capacity, either on the basis of the various documents in the possession of the Revenue or per the UBS AG report, since admitted in evidence. For these accounts, however, he is obliged to produce an authentic statement of account for the relevant period. The assessee could disprove the said document by a certificate from his Bank that no such transfer instruction dated 16.7.2000 (i.e., the specified transfer instruction) was in fact received or processed by it. In-as-much as the account number (on which the TI is drawn), which is unspecified, could be any of the account numbers which find reflection in the various documents found and seized by the Revenue in search or otherwise in its possession from reliable sources, the assessee, to decisively disprove the document, would require a statement of account for the relevant year in respect of such accounts. We may hasten to add that we are, when we state so, not foreclosing the assessee's options in any manner. It is equally open to him to explain the document, as indeed the law obliges him to. That is, why and under what circumstances the TI was issued on his bank, for a specified amount, favoring a specified beneficiary (by name and/or account) and, as a concomitant, the nature and source of the funds in his account/s. The notarized statement dated 30/6/2003 (refer para 11.5), as apparent, does not throw any light on this aspect, except that HAK had access to huge funds and, besides investments, was also called upon to finance projects.

The AO shall, accordingly, adjudicate afresh, based on his findings in the set aside proceedings, in accordance with law. The said findings shall, *inter alia*, address the issues raised and considered pertinent by us. Needless to add, the assessee shall be allowed a reasonable opportunity of hearing. We decide accordingly.

13. Ground 7 is again in respect of a transfer instruction by the assessee to UBS AG, forwarded to the Revenue by ED. The same, dated 09.03.2001, is for the issue of pay orders favouring Steelmet Pte Ltd., Singapore (for the USD 1,500,000) and one, Mr. S.C. Sharma (Singapore Passport No. S25804301) for USD 5,00,000, in the form of bank draft and traveller's cheque respectively. The same, annexed by way of Ann.13 to the assessment order, bears the full signature of Mr. S.C. Sharma and, as it appears, initials of the assessee, whose case remains the same as in respect of transfer instruction dated 16.07.2000 favouring KT, i.e., of denial of its existence or, rather, ignorance thereof, with no foreign bank account/s. The same stands assessed and, in appeal, confirmed as unexplained income.

14. We have heard the party before us, and perused the material on record.

The assessee's written submissions bear no specific explanation or submission *qua* this ground, presumably as he has regarded the additions on account of transfer instructions as one block (refer para C of WS-1). The ld. CIT(A), on the basis of the internet searches, has confirmed the stated company and the associate person (whose passport number stands specified) to be existing persons. Annexure L to the impugned order is the download from the internet of what appears to be the home page/profile of the said company. It states of 'Steelmet Pte Ltd.' to be a Singapore based company led by Shri S. C. Sharma, who has over 27 years of experience, specializing in trading of various metals, non-ferrous and ferrous alloys, besides also providing logistic and trading support services.

The case of the parties, accordingly, remains the same, in view whereof, as well as the similarity of the nature of evidence, we have no reason to take any other view than that in respect of Ground 6 (refer paras 9 to 12 of this order). The assessment of the impugned sum is accordingly restored to the file of the Assessing Officer for fresh adjudication, with the same observations and directions as for that Ground. We decided accordingly.

15. The eighth Ground is in respect of a transfer instruction dated 23.07.2000 issued by the assessee on UBS, Zurich, for transfer of funds (USD 500,000) from his account No. 6667663 to his account No. 661001014641 with ABN Amro Bank (AAB), New York, for onward credit to a new account in his name (Hassan Khan Ghousudin Ali Khan) with AAB, Dubai. The details, making a request for an urgent transfer of funds, as they were immediately needed at Dubai, mentioned in respect of the transfer are as:

- CHIP UID : 095179
- Swift Code AAB, New York : ABNAUS33
- Swift Code AAB, Dubai : ABNAAEAD

The transfer instruction, again received by the Revenue from ED, is signed by the assessee. The second additional feature (of this transfer instruction – placed as Annexure 12 to the assessment order) is that both the transferor and transferee account numbers are mentioned, with the transfer being to the assessee's own account with a different bank, and at a different place. The SWIFT codes are correct. The bank account numbers are also in line with the International Banking Account Numbering system, adopted by most countries. *Though therefore the document is complete in all respects*, with the assessee having not offered any explanation, we yet eschew determining the issue having regard to the UBS AG report dated 30.10.2007. The matter shall, for the same reasons, and with like incidents, stand set aside to the file of the assessing authority for fresh adjudication (also refer paras 9 to 12).

16. Ground 9 is in respect of confirmation of the addition for Rs.7,00,000/- on account of a gift to son. The assessee per his statement on oath dated 05.01.2007 admitted to have gifted a car (Honda City) to his son (Syeed Mohamed Sameer Uddin Ali Khan) at Hyderabad, transferring funds by telex transfer in December, 2000. It was further stated that as the said gift had not been disclosed, the source of which is his business income, the same shall be disclosed to the Revenue. The same being not returned, was assessed as his undisclosed income. In appeal, it was found by the ld. CIT(A) that the assessee's son, vide his statement u/s 131 of the Act dated 08.01.2007, explained the source of the said car (Registration No. AP 9AM 6600) as by way of gift from his father. He, accordingly, confirmed the assessment, finding no merit in the assessee's plea of no opportunity having been allowed to examine his son in the matter (refer para 14 and paras 14, 15 of the assessment and the impugned order respectively). Aggrieved, the assessee is in second appeal.

17. We have heard the party before us, and perused the material on record. We observe the assessee's sworn statement to be prior to and in agreement with that of his son, again on oath, dated 08.1.2007. Where, then, is the question of the Revenue not providing him opportunity to rebut the latter's statement? Neither has the assessee retracted his statement dated 05.1.2007 nor sought opportunity to cross examine his son in the matter, which is in fact not warranted under the circumstances. Rather, the assessee, on being confronted with his son's statement dated 08.1.2007, confirmed his gifting a Honda city car costing Rs.7 lacs to his son in December, 2000 vide statement u/s. 131 dated 01.5.2007. We, accordingly, find no merit in the assessee's case, and confirm the assessment of the impugned sum as income.

18. Vide Ground 10, the assessee agitates an addition on account of living and life style expenses, which, by all available accounts, can only be considered as lavish and

ostentatious. The Revenue has estimated the same at Rs.30 lacs, allowing the assessee credit to the extent of the income returned. This was found faulty by the Tribunal while adjudicating a similar ground for A.Y. 2000-01 (in ITA No. 3726/Mum/2009 dated 09.12.2015), on two counts. Firstly, the estimate, which has to be an informed one, could not solely be on the basis of the assessee's statement, particularly considering that he in another sworn statement also declares his monthly house-hold expenses at Rs.60,000 to Rs.70,000 per month. Two, the credit to be allowed is for the amount reflected toward the same by the assessee. Surely, if the income is appropriated for any other purpose; the addition being in respect of personal expenditure, the same could not be allowed set off of. Accordingly, the Tribunal after discussing the matter at some length, upheld the addition at Rs.7.50 lacs, allowing credit for the amount already disclosed by the assessee toward house-hold and/or maintenance expenditure for self and family (refer para 10 of the said order). The assessee, who had shifted from Hyderabad to Mumbai and Pune (having and maintaining residences at both these places), obtained residency permit for, shifting his base to, Dubai, UAE and is operating there-from, as noted by the AO in his orders, as e.g. para 2.1 of his order for AY 2001-02. The TIs dated 16/7/2000 and 23/7/2000 on UBS AG, Zurich have been issued from Dubai; from Hotel Inter-continental, Dubai, stated as his camp office. Then, the assessee has issued a notarized statement on 30.06.2003 at London, wherein he admits to have visited Switzerland in February, 2001. The same would entail, apart from travel expenditure, boarding and lodging costs, far in excess of that inures while staying at one's residence in India. The assessee is also suffering health problems and undergoing treatment from leading hospitals and clinics at Pune/ Mumbai, as evidenced by the medical reports filed by him and his wife, RHAK, in appellate proceedings, also entailing expenditure in tidy sums. We, accordingly, consider the assessment of living and life style expenditure at Rs. 30 lacs p.a. as reasonable.

The assessee is, without doubt, entitled to credit for the withdrawal for such expenditure booked in accounts. We decide accordingly.

19. Ground 11 impugns the non-grant of telescoping benefit. No such case was made out before the authorities below. How could then the assessee be aggrieved? Even the assessee's written submissions are silent on this. The plea could in fact be available only where the assessee accepts the addition, claiming a double addition, leading to a double jeopardy. Be that as it may, we have already restored the assessment on some grounds, while confirming some additions. The principles of telescoping are well laid out by the Hon'ble Apex Court, as in the case of *Anantharam Veerasinghaiah & Co. v. CIT* [1980] 123 ITR 457 (SC). The AO shall, in the set aside proceedings, consider the assessee's case in this respect, where one is made out, in accordance with law. This disposes the assessee's said ground, as well as similar ground/s for other years as well, where we observe the assessee contends of an addition as having been already returned, i.e., forming part of his returned income. The AO shall allow credit on the basis of verifiable cash flows, assuming annualized income/expenditure on a uniform basis, while taking others on the basis of actual date (of investment, expenditure, etc.), also accounting for the payment of tax, again, on defined dates. We decide accordingly.

20. Ground 12: The same challenges the charge of interest u/ss. 234A/B of the Act, without showing as to why it should not be levied. The charge is compensatory and mandatory. There is no claim for an excess levy; the assessee's written submissions bearing no contention in this regard. The ground is accordingly dismissed. This also disposes similar grounds for other years as well; the written submissions for all the years having been perused.

*Asstt. Year 2002-03*

20A. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 impugns the confirmation of an addition for Rs.1,34,48,12,840/- as undisclosed income. The addition comprises two sums, as under:

a) Transfer of USD 500,000 to the assessee by one, Philip Anandraj (PA) worked out at Rs.243.80 lacs;

b) Purchase of property in Switzerland for CHF (Swiss Franc) 27,999,000, i.e., INR 132,04,32,840/- (Rs.13204.33 lacs).

The specific document in relation thereto is Bundle No. 7 of Annexure A dated 05.1.2007 to Panchanama dated 6.1.2007 (containing 29 pages), found and seized from the assessee's Pune residence. Page 1 contains the details of, among others, the transactions of loan/s of USD 500,000 by Philip Anandraj to the assessee. A note captioned "INDIA" mentions that the State Govt. of Kerala was willing to donate 2,50,000 sq. mtrs. of tea plantation to Philip Anandraj (PA) to set up an 'International Centre for Tourism Research Studies' (ICTRS) in Kerala, where he is planning to set up primary and secondary schools for street children and trust called "Dyveke". Page 2 is a signed document, in original, of the account details fax message dated 21.9.2006 addressed to the assessee, from PA (bearing Fax No. 00442074917476) for USD 1,600,000 to be transferred to his (PA's) account (complete details specified). Page 3 is the fax confirmation report dt. 21.9.2006 (15:30 hrs.) mentioned at page No. 2 above. Page 4 is the bill raised by PA on HAK for USD 1,600,000, mentioned at page No. 2. Page 5 is a letter of authorization dated 05.4.2001 by HAK, issued in favour of PA, authorizing him to act as Mr. Khan's consultant in his interests internationally. Pages 6 & 7 contain hard copy of a bill addressed to HAK, Pune towards the former's commission for having located, negotiated and brought HAK and M/s. Clamai AG,

the seller, together to transact the sale of "Hotel Chateau Gutsah, Luzern, Switzerland". Pages 8 & 9 contain hard copy of an unsigned agreement dated 05.4.2001 between PA, Switzerland and HAK, Pune made at Zurich towards retaining the services of PA. Further, as per information received from the Enforcement Directorate, there is a signed Agreement dated 18.7.2001 for purchase of the said Hotel by the assessee from M/s. Clamai AG for CHF 2,79,99,999. This document and pages 6 and 7 (listed above) complement and support each other (pgs. 80-81 of the Annexure to the assessment order). No substantive reply was received from the assessee despite being questioned in respect of these materials (vide letter that dated 05.3.2008, 13.5.2008 and 17.5.2008) and show cause notices in November, 2008 (on 12/11, 24/11, 26/11 and 28/11) and December, 2008 (19.12.2008) (refer para 10 of the assessment order, as well as para 15 of the assessment order for A.Y. 2007-08). The same stood, accordingly, brought to tax as unexplained income by way of unexplained payments and/or investment. In appeal, the same stood confirmed for the same reasons as prevailing with the A.O., and which are essentially the same as for the preceding year. Further, the internet search of PA, made by the ld. CIT(A), revealed him to be settled in Maur, Switzerland, running an Indian restaurant 'Kormasutra' in Zurich, which though had since ceased operations. His activities since, are also listed (annexing the detail by way of Annexure C to his order). The search in respect of property 'Chateau Gutsah' was also made, which revealed it to be an old hotel built in 1818 in the style of a fairy tale castle at Lucerne, Switzerland. It belongs to M/s. CM Clamai AG, who had purchased it in order to adjust loans advanced to the promoters (Annexure B to his order). The Hotel had been repeatedly offered for sale in the past, to no success. The addition being confirmed thus, aggrieved, the assessee is in second appeal.

21. The assessee's written submissions for the year (WS-2), apart from making reference to the response by various Swiss authorities/UBS, with (through) whom

inquiries were initiated by GOI, already discussed in the earlier part of this order, refer to this aspect of the assessment at Part C thereof. Though PA had raised a bill (dated 05.4.2001) on the assessee, no payment was made by the assessee, as confirmed by PA vide his statement dated 10.3.2011 u/ss. 50(2) and 50(3) of PMLA, categorically stating that in October, 2006 he came to India to recover his money from HAK, who owed him to the extent of CHF 500,000. The amount due was in swiss franc and not USD, as assumed by the Revenue. No addition could under the circumstances be made, i.e., pending the completion of the investigation by ED. The ld. DR, on his part, relied on the orders by the authorities below, stating that no substantive explanation had been adduced by the assessee in reply at any stage.

22. We have heard the party before us, and perused the material on record.

We may, firstly, clarify that we find no merit in the assessee's submission of the A.O. keeping the assessment proceedings in abeyance – which he is even otherwise incompetent to, till the investigation by the ED is concluded. The A.O. has no control over those proceedings, which are even otherwise inconclusive in-as-much as the complaint by the ED is to be adjudicated upon by a court of law. The scope of proceedings, being criminal in nature, is different, while tax proceedings result in a civil liability, and are independent, required to be completed in a time bound manner. The ED, by the assessee's own admission, pressed laundering charges under PMLA for two transactions, being for USD 93 million (in 1997) and USD 700,000 (relating to year 2006) (pgs. 27 & 28 of WS-1). The contention is without any merit whatsoever. This aspect, already discussed earlier (vide para 11 of this order), is again emphasized in view of the specific contention raised by the assessee per his written submissions for this year (WS-2).

We may now discuss the two additions, albeit separately. The raising of the bill dated 05.4.2001 by PA for commission (for having located, negotiated and brought the client (assessee-buyer) and M/s. Clamai AG (seller) together with the intent to

transact the sale of Hotel Chateau Gutsah, Luzern, Switzerland, is established on the basis of pages 5 to 9 (of Bundle 7 of Annexure A to the Panchanama), noted above. The same gets, in fact, reflected in a number of documents; viz. consulting agreement dated 05.4.2001 read with addendum thereto; the invoice raised subsequently (replacing invoice dated 13.11.2005) for USD 1,600,000, comprising eight items, the first of which is the commission for the agreement for this Hotel, at USD 500,000 (forming part of – pages 2-4 of Bundle 7/Ann. A, furnished by the ld. DR during the course of hearing - on 31.8.2015 - as a compilation). Further still, is the copy of the forwarding letter by Philip Anandraj to the assessee (HAK), faxed on 21.9.2006 (at No. 0044 207 4917 476), stating his account details where the bill amount of USD 16 lacs is to be transmitted. These set of documents, being found during search, form part of the assessment record. *The amount, on its basis, has been correctly considered as in USD*. There is, however, nothing to indicate it's payment. Rather, the subsequent invoices raised, being inclusive of the impugned sum, confirm that no payment toward commission was made. The invoice for USD 16 lacs includes remuneration up to August 2006, which remains, similarly, unpaid since April, 2001. No addition *qua* remuneration (at USD 2 lacs p.a.) paid to PA has been made by the Revenue for any year. This corroborates the statement of PA - who was found staying at his Pune residence at the time of search on 05.1.2007, to the Revenue that he came to India in October, 2006 only to pursue the assessee for the payment of his dues. By all counts, therefore, the payment of commission, to any extent, has not been made. It is only where the fact of payment is established that the Revenue can, in the absence of a satisfactory explanation as to its source by the assessee, assess it as income by way of unexplained expense and/or investment. As such, notwithstanding an evasive reply by the assessee in the proceedings before the Revenue, disclaiming the transaction, which it tacitly admits when he relies on the statement of PA before ED (per his written submissions), confirming non-payment of his dues by the assessee, no addition could be made on the basis of the material on record. We decide accordingly.

(b) The Agreement dated 18.7.2001 is signed by both the assessee (buyer) and one, Mr. Franz Glanzmann, as President of the Board of CM Clamai AG (seller). The impression 'AAKRON$^{R}$ management…...' (being not clear)' is inscribed at the top of two page Agreement, suggesting it to be on the letter head of some company. The reliability of the document, which has not been challenged by the assessee, is not in doubt. The total purchase price as per the Agreement is CHF 320 lacs, and not CHF 279.99 lacs, as adopted by the A.O., which represents that of the real estate property, including cost of furniture and fixture, cable car, etc. (refer para 10 of the Agreement). The internet search, the results of which form part of the impugned order, itself shows the property being unsold. It was in fact leased by the Italian THI Group in 2002, as noted at the listing at Sr. No. 2 (pg. 35) as well as Annexure B to the impugned order. The addition, though, could yet become exigible where some sum is paid toward purchase price. Page 19 of the 29 page compilation supra is the statement of transfer. The same states of transfer of USD 20 million to account # 08-06868.6 on account of Chateau Gutsah, Luzern, Switzerland. The information, found in search, is specific, even as we find no reference thereto in the orders by the Revenue for the year. This could perhaps be for the reason that the Revenue had, presuming the purchase, added the entire purchase cost, which amount though incorrectly stated, is of no consequence in-as-much as the purchase did not admittedly mature. If such a payment (USD 20 million) (200 lacs) was made, which would require being verified, it implies that the down payment of CHF 2.5 lacs (refer para 4 of the Agreement), to be made by 03.8.2001, stood also made, at least in all probability. It is in fact difficult to believe that such a deal/agreement was finalised and, further, in subsistence, at least for some time, without any money being exchanged, i.e., even as clearly it was not carried out fully and fell through. The assessee, who has not denied signing the document (on behalf of self), or of being not in Switzerland where the document seems to have been executed (and which could be proved on the basis of entries in his passport), has not

helped matters at all by not issuing any explanation what-so-ever in the matter. No definite findings – the issue being primarily factual – could under the circumstances be issued at this stage, and the matter clearly requires being remanded back for the purpose. The matter shall, accordingly, stand to be set aside to the file of the A.O., who shall re-adjudicate afresh, allowing the assessee proper opportunity to present his case, confronting it all the materials it wishes to rely upon, particularly with regard to the payment aspect of the matter, and decide by issuing definite findings of fact. Reference in this context may be made to the decision by the Hon'ble Apex Court in the case of *Kapurchand Shrimal vs. CIT* [1981] 131 ITR 451 (SC), wherein it stands explained that unless forbidden from doing so by the statute, the tribunal, as an appellate authority, has the jurisdiction and is duty bound to direct the assessing authority to make fresh assessment in accordance with the law. That was a case where there was a clear violation of the procedure prescribed by law, so that the tribunal set aside the assessment, while in the present case all that we have found is that the necessary aspects of the matter have not been enquired into, so that the matter requires to be examined afresh. We decide accordingly.

23. Ground 5 is in respect of an addition for Rs.1,90,73,157/- on account of alleged undisclosed expenditure. This is based on Bundle 7 of Annexure A to Panchanama dated 06.1.2007. Page 17 thereof is the hard copy of the statement of open accounts of the assessee (HAK) with PA as on 09.1.2002 for USD 391,164. The same is the detail of expenditure incurred and advances given to the assessee. The same came to be added and, further, confirmed in the absence of any explanation by the assessee, who denied the same, so that, aggrieved, he is in second appeal.

Per its written submission, the assessee, changing tack, claims that no addition could be made on the basis of the unproved payments. The evidences are mere notings, loose sheets, which are neither audited or authenticated, so that the same cannot be considered as legal evidence. Reliance is placed on *L K Advani vs. CBI*

1997 Cri LJ 2559 and *CBI vs. V. C. Shukla*, AIR 1998 SC 1406. The ld. DR relied on the orders by the Revenue.

24. We have heard the party before us, and perused the material on record.

Page 17 of the compilation is the relevant statement, i.e., of 'Expenses incurred for and advances given to HAK'. Our first observation in the matter is that the invoice date is '09.3.2002' (and not '09.1.2002') and, two, the total amount for which the statement is drawn is CHF 394,164 (and not USD 391,164), i.e., as stated at para 11 of the assessment order. These, which appear to be mistakes, would have a minor impact on the quantum of the addition, even as where and to the extent the same leads to an enhancement of assessment, would require being put across to the assessee. On merits, we observe that the first item (No. 1.1) of the statement is a loan to HAK (via Mr. Tapuriah) for CHF 177,000. *How, we wonder, could an addition toward the same be made*? Even assuming that HAK has since repaid the amount, the source thereof could be easily explained as from the amount borrowed from PA in the first place. Likewise is the entry (No. 1.13) in the invoice, which is in respect of cash loan to Mr. Khan (for CHF 1000). Apart there-from, all the amounts listed, which would thus work to the balance amount of CHF 216,164 (394,164 – 178,000) are in respect of different expenses incurred by PA on HAK and his associates, for and on his behalf. There is no reason to presume that the amount has not been paid in the normal course. Page 4 of the compilation, referred to earlier, which is an invoice by PA on HAK (in substitution of that dated 13.11.2005) for USD 16 lacs, does not bear reference to this expenditure at all, implying its payment. The only reference to expenditure in this, later invoice is for USD 4 lacs, which is in respect of an expense listed (of August, 2001). The document being found in the course of search would have to be regarded as true. The assessee, being in Dubai in July, 2000 (refer para 9 of the order), is found to be staying at Zurich, Switzerland during the relevant previous year, entered into agreements, as with PA (dated 05.4.2001) and Clamai AG (dated

18.7.2001), transacting businesses and entering into deals toward investment in real estate, companies, etc., even going to the extent of appointing a consultant (PA) at an exorbitant cost to represent him internationally. The bank accounts with UBS, Zurich, as per their report dated 30.10.2007, were opened on 30.7.2001. He has also been found to have executed an Agreement at Dubai (with KT, dated 07.8.2001/Annexure A). UBS AG, Zurich, per its said report, confirm him having visited it personally on 15.8.2001. Clearly, the assessee has interests internationally, also apparent from the issue of LRs to various countries (refer para 3.1 of this order). Incurring expenditure of the like stated in the invoice, viz. hotel, telephone, travel, etc., besides being only understandable, is thus corroborative. That the amounts should be accumulated for so long; the period of expenditure covered by the bill extending beyond six months, is itself surprising. Why the payments would not be made, being for expenditure which ought to be financed by the assessee in the first place, belies comprehension. The assessee's case is *sans* any explanation.

Under the circumstances, we find no reason to not to confirm the assessment to the extent noted above. The assessee's reliance on the decisions in *L.K. Advani* (supra) and *V. C. Shukla* (supra) is misplaced. The statements as well as invoices relied upon are not loose sheets, the forwarding letter itself clarifying that the invoice for USD 16 lacs was in fact transmitted to the assessee on 21.9.2006, clearly mentioning the account details of the beneficiary (PA). In fact, each of the expenses are in respect of specific transactions (with mention of, in some cases, their dates), viz. hotel bills of Ms. Fatima Said and Tapuria; train tickets to Geneva for Khan family; Nelson office telephone bills (from September, 2001 to March, 2002); Flight ticket for PA to Dubai (in March, 2002), etc., all, or almost all, of which are in fact verifiable. We, accordingly, confirm the addition to the extent of CHF 216,169, applying the same conversion rate, which is not in dispute.

25. Ground 6 is in respect of an addition for Rs.5267.98 crores *qua* three transfer instructions (TIs) by the assessee on UBS AG, Zurich, information on which stands received by the Revenue from ED, as under:

| Date | Amount | Beneficiary |
|---|---|---|
| 21.1.2002 | USD<br>500,000,000 (five hundred million) | A/c 0835-899786-7<br>Black Prince, Credit Suisse First Boston, Zuirch, Switzerland<br>Att: REMO MAURER/SOBE |
| 21.2.2002 | USD<br>390,000,000 (three hundred & ninety million) | A/c 08-065-45.0<br>Credit Lyonnais<br>Bahanhofstrasse 3, Zurich, Switzerland<br>Att: PATRIC WIPFLI |
| 21.02.2002 | USD<br>200,000,000 (two hundred million) | a/c 08-068-86.8<br>Credit Lyonnais<br>Bahanhofstrasse 3 Zurich, Switzerland<br>Att: PATRIC WIPFLI |

[emphasis, by underlining, ours]

The assessee furnishing no explanation despite being show caused in the matter, the same was assessed as unexplained deposit, adopting the conversion rate, as it appears, as at the relevant date/s – the assessee raising no question in its respect. In appeal, the same stood confirmed for the same reason. The ld. CIT(A), in addition, on the basis of internet searches, confirmed Remo Maurer and Patric Wipfli as being existing persons, enclosing information in their respect by way of Annexure H and M respectively to his order. Remo Maurer was accordingly found by him to be a partner in Portelet Holdings Pte Ltd., Singapore, and managing director of Portelet AG, Zurich. The issue with regard to the additions, based on transfer instructions, particularly *qua* which information has been received from ED, stand discussed in detail at para 9 to 12, 15 of this order. For the same reasons and considerations as

stated therein, the matter shall, with like directions, travel back to the file of the A.O. We decide accordingly.

Before parting, we may highlight and deal with another aspect of the matter. It may be argued that in-as-much as the hard copy of certain documents are only print-outs of different documents found from the laptop of PA, who happened to be staying at the residence of the assessee at the time of search on 05.1.2007, the same cannot be regarded as documents to which the statutory presumption of section 292-C of the Act shall apply. In this regard, in our view, the argument is both legally and factually untenable. The words used in the provision are 'any person', so that it may not necessarily be the assessee himself. On facts, the man (PA), in whose laptop the documents were stored, as also noted by both the AO & the ld. CIT(A), has not owned these documents, clearly stating them to belong to the assessee. He himself, closely associated with the assessee, was engaged for representing the assessee internationally, having several transactions with him (refer para 24). His residing at the assessee's residence, having, by own admission, come to India in October, 2006, only to pursue the assessee for his outstanding payments, was thus only in relation to his work/assignment. The same clearly proves that the two were well known to each other and, further, as between the two, they did indeed enter into transactions, or transacted business/es, entailing financial obligations and commitments on the part of the assessee, which he did not, however, meet in whole or in part. In fact, materials, apart from that found from the seized laptop, were also seized, which are corroborative, independently establishing their veracity. That is, the truth of the documents gets established even independent of the provision of s. 292-C of the Act. The statement/s by PA, made on oath, would be admissible in evidence u/s.132(4) or, as the case may be, s. 131 of the Act. The assessee in fact has not denied or rebutted the statement/s; rather, further presses on PA's statement/s before the ED in proceedings under PMLA, without of course making them a part of the record. The plea that the laptop did not belong to the assessee, but to PA, which may well be true,

would thus be of no moment, both in law as well as in the facts and circumstances of the case.

26. Ground 7 is *pari materia* to the Ground 10 of the assessess's appeal for A.Y. 2001-02, which stands decided vide para 18 of this order. The assessee, for this year, has been found to be staying at Ema House, Zuirch, Switzerland, for an extended period. He has also travelled to Dubai and back, at least once, staying there, even if for a few days. The same definitely entails expenditure, and in foreign exchange. We accordingly consider these incidences as material for assessment (of income) on account of (unexplained) living and lifestyle expenses, made at Rs.30 lacs, which we accordingly confirm. Needless to add, the assessee shall be allowed due credit for the amount, if any, already disclosed towards the same. We decide accordingly, and the assessee gets part relief.

27. Grounds 8 and 9 stand already decided vide paras 19 and 20 of this order respectively, disposing grounds 11 and 12 respectively for A.Y. 2001-02, even as held in the said paras, to which reference is drawn. Grounds 10 and 11 are general in nature, warranting no adjudication. We decide accordingly.

*Asstt. Year 2003-04*

28. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 impugns the confirmation of an addition in the sum of Rs.24,43,14,85,000/- (USD 498.50 million) as undisclosed income by way of alleged unexplained balance in account with UBS. The same is inferred on the basis of several transfer instructions (TIs) (tabulated at pages 8, 9 of the assessment order) aggregating

to the said amount. These were found in the course of search and, thus, based on the material found during search (being pages 10-13, 18-19 of Bundle No. 7 of Annexure A dated 05.1.2007 to Panchanama dated 06.1.2007, containing 29 pages). The addition, on the ground of the account/s having balance at least to the extent of the transfer instruction/s issued, came to be made and confirmed in the absence of any explanation whatsoever by the assessee, who denied having issued any transfer instruction, which were in fact unsigned documents. The case of the parties up to the first appellate stage, thus, remains the same, i.e., as for the earlier years. The ld. CIT(A), once again, confirmed the existence of the transferee entities, whose names are specified in the documents found.

29. Before us, while the assessee relies on its written submissions (WS-3), the ld. Departmental Representative (DR) does on the orders by the Revenue authorities.

30. We have heard the party before us, and perused the material on record.

30.1 Our first observation in the matter is that the total of the various sums listed at para 10 of the assessment order is USD 433.50 million, and not USD 498.50 million, for which the addition stands made. On this being pointed out to the ld. DR during hearing, he would explain that this is on account of a typographical mistake in-as-much as the last entry for USD 65 million (which would stand to be listed at Sr. No. 10 of the table) stands omitted to be typed at para 10 of the assessment order, taking us to the relevant part (Item 112) of Annexure 3 to the assessment order, which is the notice u/s. 142(1) dated 17.3.2008 (for A.Ys. 2001-02 to 2007-08). The same is with reference to pages 18 and 19 of Bundle 7 of Annexure A dated 05.1.2007 to Panchanama dated 06.1.2007, *qua* which addition for USD 498.50 million was proposed and stands made vide para 10 of the assessment order. We find the explanation as correct, which has also not been objected to by the assessee per his

written submissions. The particulars of the instructions are accordingly tabulated at below: (Amount in USD M)

| S.No. | Favouring | Amount | Account Particulars |
|---|---|---|---|
| 1. | Loewengraben Management AG | 68.50 | UBS AG IN FAVOUR OF LOEWENGRABEN MANAGEMENT AG ACCOUNT # 820052.01 P CLEARING NO.251 |
| 2. | Soir Contracting & General Trading Co. W.L.L. | 72.00 | CREDIT SUISSE FIRST BOSTON ZURICH, SWITZERLAND<br>FOR FURTHER CREDIT TO CREDIT SUISSE PRIVATE BANKING ZURICH, PARADEPLATZ 8, CH 8070 ZURICH<br>SWIFE CODE: CRESCHZZ 80A<br>BENEFICIARY ACCOUNT # 0835-899786-7 (BLACK PRINCE)<br>ATTN: MR. REMO MAURER |
| 3. | Dianoor Jewellers | 22.00 | CREDIT LYONNAIS, Bahnhofstrasse 3, ZURICH<br>SWIFT: CRLYCHGG<br>ACCOUNT # 08-06545.0 |
| 4. | Gulf Stream | 46.00 | CREDIT LYONNAIS, Bahnhofstrasse 3, ZURICH |
| 5. | Geneva House | 20.00 | SWIFT: CRL YCHGG |
| 6. | Chateau Gutsch | 20.00 | ACCOUNT # 08-06868.6 |
| 7. | Personal requirements | 50.00 | |
| 8. | Roberts, Mclean & Co. Ltd. | 100.00 | CREDIT SUISSE FIRST BOSTON ZURICH, SWITZERLAND<br>FOR FURTHER CREDIT TO CREDIT SUISSE PRIVATE BANKING ZURICH, PARADEPLATZ 8,<br>CH 8070 ZURICH<br>SWIFE COUE: CRESCHZZ 80A<br>BENEFICIARY ACCOt1NT # 0835-357902-3 (CHANDRIKA)<br>ATTN: MR. REMO MAURER |
| 9. | Roberts Mclean Services Pvt. Ltd. | 35.00 | TO UNION BANCAIRE PRIVATE ZURICH<br>ATTN. Mr. W. Mueller |

| | | | |
|---|---|---|---|
| | | | In favour of account # 713.169 AC<br>Correspondent Bank -<br>JP MORGAN CHASE BANK NEW YORK<br>(SWIFT ADDRESS CHASUS 33) FOR FURTHER<br>CREDIT UBP GENEVA (UBPGCHGG) FOR FURTHER CREDIT UBP ZURICH (UBPGCHZZ) |
| 10. | R M. Investment and Trading Co. Pvt. Ltd. | 65.00 | CREDIT L YONNAIS, Bahnhofstrasse 3, ZURICH<br>SWIFT: CRL YCHGG<br>ACCOUNT # 08-06702.7 |
| | | **498.50** | |

[emphasis, by underlining, ours]

In fact, the last three entries in the table (at Sr. Nos. 8-10), as it appears, pertain to a single document, being the Agreement dated 07.8.2001 between HAK and KT (annexed as Annexure A to this order).

30.2 We, next, consider different amounts comprising the impugned sum of USD 498.50 million. The first amount (USD 68.50 million), as claimed by the assessee, is not *qua* any transfer instruction, but based on a letter dated 16.9.2002 by PA to the assessee (page 11 of the compilation). *We find this is as not correct*. Page 13 of the said compilation is the transfer instruction for USD 68.50 million dated 7.11.2002 (also referred to at para 10(i) of the assessment order). On further enquiry, it was explained by the ld. DR, with reference to the order by the ld. CIT(A), that Loewengraben Management AG, i.e., the named beneficiary in the transfer instruction, is the proprietary concern of PA. The swift codes have been found as correct by the Revenue. This, then, is a TI, with complete details as well as the purpose for the transfer being also available. In fact, toward the same there are supporting documents as well, for example, one of the amounts comprising the sum of USD 68.50 million is USD 15 million for Villa 'ZR' (mentioned at item no. 5 of letter

dated 16.9.2002/pg. 11 of the compilation). The letter dated 19.6.2002 by PA to the assessee (placed at pg. 14 of the compilation) is *qua* purchase of the said Villa, the initial 'ZR' being the abbreviated form of 'Zum Rebgarten', in Uerikon, Stafa. Surely, these are not loose sheets or random notings, but payments made or to be made in pursuance to definite arrangements, for which the assessee had entered into agreements, camping in Switzerland, appointing a person (PA) to represent him and advance his interests. The assessee, vide his notarized statement dated 30.06.2003 at London (forming part of the assessment orders for A.Ys. 2005-06 to 2007-08) stated that upon arriving at Zurich again in 2001, i.e., after his acquittal in a complaint case in India in 2000, he met PA and expressed his desire to invest in hotel projects in Switzerland, which the latter promised to search. The reliance by the assessee on the decisions in the case of *L K Advani vs. CBI* 1997 Cri LJ 2559 and *CBI vs. V. C. Shukla*, AIR 1998 SC 1406 is misconceived.

30.3 A scrutiny of the compilation (i.e., Bundle 7 of Annexure A dated 05.1.2007, comprising of 29 pages) shows the TIs have been issued only for USD 68.50 million and USD 72 million, i.e., as listed at item nos. 1 and 2 of the Table. For the balance, it appears to be a table of the various payments, either made or proposed to be made by the assessee. The payments are for the purchase of real estate or towards investments (for which evidence in the normal course events should be available). In our view, for the amounts for which TI/s have been found, which are dated, the presumption would be that the same have been issued, irrespective of whether the same bear the assessee's signature or his account particulars (from which the transfer is to take place) or not. The onus in such a case is on the assessee to show that, despite the same, no addition to his returned income is called for on that account.

For the balance, the onus is clearly on the Revenue. A probability in favour of the TI being issued, being firstly proposed and, further, only for the purpose of being issued, is certainly higher by far than it being not issued, which would only be where

there is a hiccup or change in plan or circumstances, warranting non-issue or deferring the issue of the TI/s. However, by itself, it cannot be said that the statement was indeed followed by a TI for the said amount. Then, is the question of date thereof. Though, again, the two sums for which the TI/s are issued, i.e., USD 68.50 million and USD 72 million, being dated 07.11.2002, the presumption *qua* the balance 'transfers' would be of the same being around the same time, particularly considering that all the payments stand tabulated and aggregated, so that they were being considered for being executed together, this cannot be said as a fact. We are conscious that the addition is toward the amount held in bank account against which the TI/s is issued, so that the very fact that the TI was proposed implies balance in the account (on which TI is issued), making the actual issue of TI as of little consequence. At the same time, it could also be said that the TI was not issued as the assessee could not arrange the requisite funds, so that the inference of a balance (to that extent) on the basis of a proposed TI would be presumptuous. The matter certainly calls for investigation before any definitive findings can be issued, even as there is strong circumstantial evidence against the assessee. The assessee can, and it is open for him to, as also clarified earlier, explain the circumstances under which the TI was <u>not</u> issued or otherwise explain the nature and source of the relevant funds as not being his income. The Revenue, on its part, can also enquire into the transactions, which are apparently in relation to acquisition of the property or rights therein or other investments in listed/public companies. The matter, though may appear so, is not vexed. This is, as clarified by us at para 12 of this order, the assessee shall, *qua* each of the TIs issued, be required to produce the transcript of his account/s (the account statement) for the relevant year, which would at once exhibit whether any of the ten (10) contemplated transfers comprising the impugned sum, including the two dated 07/11/2002, were in fact executed or not, as also the balance, if any, in the account/s, *toward which in fact the addition/s is made*.

30.4 At this stage, it may also be relevant to dwell on the three (3) transfers, for USD 200M, listed at serial numbers 8 to 10 of the Table. The same are apparently in pursuance to the Agreement dated 07/8/2001 (refer Ann. A). Though not so contended, it may be argued, and is indeed open to be so, that the same are in pursuance to the said Agreement and, therefore, being only toward transfer of the share of the profits (of KT) earned in the past, no taxable event arises for the current year. The argument, appealing at first sight, is not tenable. Firstly, in-as-much as the payment under the Agreement dated 07/8/2001 is to be made latest by end December, 2001, the onus is on the assessee to show that no payment/s there-under was made, and it is this payment/s, sought to made/made in November, 2002 (or around about). That is, the onus to prove the nexus, by exhibiting that no payment had been made prior thereto, is squarely on the assessee. Continuing further, the Agreement, found in search from the residences of both – the assessee and KT, is, on close examination, found to be a make-believe, entered perhaps with a view to transfer funds without attracting corresponding tax liability by ascribing their origin or source to past profits. The total amount of profit, worked meticulously (at USD 280.54 M), matches the amount stated to have been earned *by the assessee* (from 1985-1989) from his two companies, stated to be not functional, in which he has *sole invested interest* (refer para 8.1). Do the two identical figures refer to the same profit/s, stated to be earned in the same time frame, at one place, by the assessee abroad (no such income reported in India) and, at another, through their companies, from their business operations mainly in India. Both the assessee and KT being tax residents in India for those years, with their profit sharing ratio - from their joint venture, being clearly defined, the amount ought to have been, and would therefore have been, where so, returned for those years by the joint venture company/entity. As also the income, claimed as earned by the assessee from the said companies, which assumes the character of his personal income. Much less, the same finds no reference in the accounts of any of the companies. *What are their businesses, stated to be carried on mainly in India, and*

*how did it result in accumulation of funds abroad*? Is there any link between the two identical profits? How is the share of KT, at 50%, worked to USD 200M? Is there any contemporaneous proof of earning of profits, or of their yielding further returns, either in India or abroad? How has the quantum been worked out, suggesting maintenance of elaborate accounts. That, despite so, the two did not settle accounts, or even appropriate their respective share in accounts, or even otherwise signify the same, much less return or report the same to the competent authorities in the relevant jurisdictions, for over two decades. *It calls for a complete and willing suspension of the sense of reality to accept the statement at face value*. In fact, KT, per his written notes (APB-5, pgs. 918-919) himself states that the said document is fabricated, and that he came to know HAK only in 1994. There is no gainsaying that the entire endeavour, which should under normal circumstances yield a host of evidences or trail, is *sans* any in the present case, viz. as to the joint venture or any business operations undertaken, the nature of which is itself unspecified, yet, profits were earned there-from, transmitted and invested - as it appears, abroad, all without any evidence. And all that has been retained – by both the parties, or survives, is the Agreement dated 07/8/2001! Even if therefore it is shown by the assessee that the TIs for USD 200M are in pursuance of the Agreement dated 07/8/2001, the source thereof as being profits earned – to that or whatever extent, in the past, shall require being shown or reasonably proved, for it to be accepted. Then, again, is the question of avenues where the profits were invested, in India or abroad, or partly in one and partly in another, and also the returns fetched during the intervening years.

30.5 The matter, accordingly, for both the sums, i.e., USD 140.5 million (for which the two TI/s dated 07.11.2002 have been found), as well as for the balance, is restored to the file of the assessing authority for adjudication afresh, with observations and directions as contained at para 12 and, as the case may be, para 8 of this order. We may further add that there is nothing to show that any TI was proposed for an amount

of USD 50 million, which is stated to be for personal requirements (appearing at Sr. No. 7 of the table). *The addition toward the same is deleted*. Two, the payment as listed at Sr. No. 6 of the table, being in relation to an Agreement dated 18.7.2001, due to be paid, has been also noted by us for A.Y. 2002-03 (vide para 22(b) of this order). Without doubt, the same being in respect of a single payment, could, even assuming so, be brought to tax for either year. The A.O., who has added the purchase amount as well as *qua* payment in its respect, shall have regard to this aspect. We decide accordingly, and the assessee's ground is partly allowed and partly allowed for statistical purposes.

31. Ground No. 5 is in respect of an addition for Rs.1,98,000 toward gift/s to son, Syed Mohammad Sameer Uddin Ali Khan, Hyderabad. The same, being per telex transfer/s to his SB A/c No. 561 067 with ABN Amro Bank, were assessed in the assessee's hands on the basis of the donee-son's statement u/s. 131 dated 08.1.2007, stating the source of the said sums, comprised of three amounts credited to his bank account on 24.7.2002 and 26.3.2003, as being gifts from his father, the assessee, who though confirmed the same vide his statements on oath dated 26.4.2007 and 01.5.2007, did not return the same. The addition being confirmed, the assessee is in second appeal.

31A. We have heard the party before us, and perused the material on record. The assessee's written submissions are silent on this aspect of the matter. We find no reason, in view of the undisputed facts stated above, not to confirm the addition. We decide accordingly.

32. Grounds 6 and 7 correspond to Grounds 11 and 12 respectively for A.Y. 2001-02 and, accordingly, stand decided vide paras 19 and 20 respectively of this order.

33. Grounds 8 and 9 are general in nature, warranting no adjudication.

*Asstt. Year 2004-05*

34. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 impugns the addition for Rs.5.48 lacs on account of gift to son, Syed Mohammad Sameer Uddin Ali Khan. The basis of the orders by the Revenue authorities is the sworn statement dated 08.1.2007 of the donee-son, followed by admission by the assessee per his sworn statements on 26.4.2007 and 01.5.2007 in respect of the gift, which amount had though been not returned u/s.153A (refer paras 10 and 13-14 of the assessment and the impugned order respectively). Aggrieved, the assessee is in second appeal.

35. Before us, the assessee states of having honored his statements, and that the income disclosed for the year (Rs.11.09 lacs) includes the impugned sum.

36. We have heard the party before us, and perused the material on record.

The assessee's plea is quizzical indeed in-as-much as, if it were so, what is the dispute about? That it is not so is precisely the Revenue's – which has allowed full credit for the returned income of Rs.11,08,730/- for the year against addition toward household expenses (G # 6), case/grievance. Rather, before the ld. CIT(A), the assessee making a turn-around, stated that the amount transferred to his son represented a loan thereto by his wife, Rheema Hassan Ali Khan (RHAK), which was not accepted in the absence of any substantiation.

The assessee, in view of his revised plea before us, effectively confirms the impugned sum to be a gift/s, as in the preceding year, to his son at Hyderabad. No

evidence, however, of the same being out of the income returned, has been led before us. It needs to be appreciated that the assessee's contention would be valid only where the amount is debited to his capital account, and a mere disclosure of income to an extent equal to or exceeding the gift amount would be by itself of little consequence. The addition is accordingly confirmed.

37. Ground No. 5 is in respect of investment in a Mercedes car, for Rs.23 lacs. The assessee's marriage with RHAK was solemnised on 24.12.2000. The certificate of Nikah, duly notarised, found during search, revealed the Mehr amount to be at Rs.21 lacs. The assessee, vide his statement u/s.131 dated 19.2.2007, explained to have gifted a Mercedez car (Registration No. MH 12BP 7860), purchased in 2003, at a cost of Rs.23 lacs, to his wife, as part of the Mehr. Though no evidence in its respect was produced before the A.O., resulting in an addition for the said amount, the assessee furnished a copy of the invoice dated 12.2.2003 for Rs.26,84,244/- toward purchase of the car. Copy of the vehicle registration, as well as of 'No Objection Certificate' (NOC) from GMac Financial Services India Ltd. dated 16.2.2006 cancelling the hypothecation of the vehicle, were also furnished. Cash statement (for F.Y. 2003-04) was also produced to exhibit payment by cash during the year. The same, however, did not find favour with the ld. CIT(A). The loan is to be repaid per 36 Equated Monthly Instalments (EMIs) of Rs.22,631/- each. The 11 EMIs falling during the year, worked out to Rs.2,48,941/- only. The books of account were not audited or otherwise authenticated, to be able to place any credence thereon or on the cash statement. Then, again, the assessee would have, besides repayment of loan, also incurred expenditure toward household expenditure, maintenance of car, etc. The cash statement, thus, could not relied upon. The addition for Rs.23 lacs was accordingly confirmed. Aggrieved, the assessee is in second appeal.

38. We have heard the party before us, and perused the material on record.

Our first observation in the matter is that there is nothing to show that the car, purchased by the assessee and registered in his name, was gifted by him to his wife, so as to be considered as in discharge of the Mehr for his marriage, solemnised in December, 2000. The addition, however, is toward unexplained investment in car. The same was purchased in February, 2003 for Rs.26.84 lacs. The down payment, to which reference is made by the ld. CIT(A), would therefore only be in February, 2003, i.e., assessable for A.Y. 2003-04.

Our second observation is that the 36 EMIs (for Rs.22,631/- each) work to a total of Rs.8.15 lacs. The loan amount, on the other hand, which the assessee states (refer para B of Written Submissions – WS-4), in part explanation as to the source of investment, is Rs.18 lacs. Two, the same is from ICICI Bank Ltd. As it appears, therefore, the EMIs to GMac Financial Services India Ltd. are toward a loan for a different purpose/investment. Again, how could that be in-as-much as it is the latter institution to which the vehicle is hypothecated and has issued the NOC. Surely, only either of the loans from ICICI Bank and GMac Financial Services is toward the car under reference, while EMIs, as it appears, have been paid to both during the year. The matter definitely requires verification to arrive at definite findings.

As regards the payment per EMIs, registration and insurance charges, falling during the year, the assessee has produced a cash statement, which has been disregarded for want of both, authenticity and adequacy. When separate addition is being made by the Revenue for household expenses, being part of the living expenses, which should also include that toward running of vehicle, denial of credit for the income applied toward the payment of EMIs for the year cannot be appreciated. The ld. CIT(A) could have definitely proposed, and where unexplained, made an enhancement toward unexplained payment of EMIs falling in other years, which surely cannot be considered for the current year, so that reference thereto is misplaced. Further, even assuming to be unexplained, how we wonder the addition for

the current year could exceed the EMIs paid, of course, as increased by the registration and insurance cost, if any, paid during the year.

Under the circumstances, we only consider it fit and proper to restore the matter back to the file of the assessing authority to adjudicate afresh, after examining and verifying the assessee's claims, in accordance with the law, allowing the assessee a reasonable opportunity of hearing. We decide accordingly.

39. Vide Ground 6, the assessee impugns the addition on account of living and life style expenses. This aspect of the assessment stands adjudicated vide paras 18 and 26 of this Order. For the reasons stated therein, we confirm the assessment as made for the year, allowing the assessee credit for the amount, if any, disclosed toward the household and/or maintenance expenditure for self and family. We decide accordingly.

40. Ground 7 is in respect of an addition for Rs.2 lacs on the ground that the assessee declared the said amount as his additional income for the year before the Hon'ble Settlement Commission. The assessee did not raise any ground in respect of the said addition before the first appellate authority and, resultantly, the same is not subject to his findings/adjudication. That is, does not arise out of the impugned order. No application for the admission for additional ground has also been made. The same is accordingly not maintainable. The declaration before the Settlement Commission is accompanied by verification by the Applicant, affirming it to be a true and correct disclosure. We, accordingly, confirm the assessment. However, in-as-much as and to the extent the declaration is not toward any specific expenditure/investment, etc., the A.O. shall consider the said income as available toward application for living expenses, as explained while disposing Ground no. 6 above. We decide accordingly.

41. Grounds 8 and 9 correspond to Grounds 11 and 12 respectively for A.Y. 2001-02 and, accordingly, stand decided vide paras 19 and 20 respectively of this order.

42. Grounds 10 and 11 are general in nature, warranting no adjudication.

*Asstt. Year 2005-06*

43. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 relates to an addition for Rs.17.99 lacs. The assessee (HAK) and his wife (RHAK) were found to maintain huge balances in their savings bank accounts with ABN Amro Bank, M.G. Road Branch, Pune, being account no. 949548 (HAK) and 498572 (RHAK). The cash deposited for different years, as revealed by the statements of account, are as under:

| Financial Year | Amount |
|---|---|
| 2004-05 | 17,99,000 |
| 2005-06 | 24,69,900 |
| 2006-07 | 10,05,500 |
| **Total** | **52,74,400** |

The assessee, on being confronted, admitted the cash deposits in the bank account to be out of his income by way of horse racing, and which had not been disclosed to the Department (vide statement u/s. 131 dated 19.2.2007). In appeal, the assessee contesting the addition made in the assessment, with reference to the date-wise cash deposit, which included Rs.3 lacs (out of Rs.17.99 lacs) on 31.3.2004, i.e., falling in A.Y. 2004-05, pleaded for its exclusion. The source of deposit for the balance Rs.14.99 lacs was also submitted. The addition, however, came to be

confirmed in-as-much as the assessee failed to substantiate his claims. Aggrieved, the assessee is in second appeal.

44. We have heard the party before us, and perused the material on record. Apart from merely stating that the ld. CIT(A) had erred, no definite case has been made out before us. The same, even otherwise; the matter being factual, would be of little consequence in the absence of any material on record to establish the assessee's case, which has been held as an after-thought by the ld. CIT(A) before whom the books of account were not produced. We, accordingly, have no reason to interfere with his order, except for deleting Rs.3 lacs, being in relation to the cash deposit on 31.3.2004, which is apparent from the date-wise statement of cash deposit, listed in the assessment and the impugned order itself. Further, the A.O. shall, while giving effect to her order, take into account the said cash deposits, including Rs.3 lacs on 31.3.2004, while reckoning the availability of finance for other purposes with the assessee. We decide accordingly.

45. Ground No. 5 is in respect of unexplained deposit/investment by way of repayment of bank loan. The assessee and his wife were found to have availed loans from Muslim Co-operative Bank, Yerawada Branch, Pune. Copies of accounts revealed repayment in the said account, as under:

| Name/AY | A.Y. 2005-06 | A.Y. 2006-07 |
|---|---|---|
| Shri Hassan Ali Khan | 135000 | 1075038 (cash) |
| Smt. Rheema Khan | 135000 | 1075038 (cash) |

The assessee, on being confronted, admitted the repayment of Rs.12,09,932/- made for both the years in his account as from his horse racing income, not disclosed to the Revenue, agreeing to pay tax thereon, vide statement dated 26.4.2007. The same, however, having been not so included, came to be added to the returned income, and confirmed in appeal in view of the undisputed facts.

46. We have heard the party before us, and perused the material on record. The loan under reference is a housing loan in the name of RHAK, advanced on 13.3.2004. The repayment during the year has been confirmed by the ld. CIT(A) at Rs.1.35 lacs, as against Rs.1.20 lacs, as contended by the assessee before him. We, accordingly, find no ground for interference.

47. Ground No. 6 is in respect of an addition of Rs.25 lacs. The brief facts are that the assessee executed a sale deed for sale of property at Bangalore for Rs.35 lacs on 18.5.2005 (pgs. 1-13 of Bundle 4/9 of Annexure A dated 05.1.2007 to Panchnama dated 06.1.2007). The assessee disclosed short-term capital gain (STCG) on the said sale per the return u/s. 153A for A.Y. 2006-07 at Rs. 10 lacs. The assessee being unable to show the source of the investment toward the stated acquisition cost of Rs.25 lacs, the same came to be added for the current year.

48. We have heard the party before us, and perused the material on record. The ld. CIT(A), on the basis that the investment toward purchase cost of the Bangalore flat, though undisclosed, was made during f.y. 2002-03, so that the addition in its respect could only be for A.Y. 2003-04, has deleted the addition (refer para 19 of the impugned order). The assessee's ground is accordingly not maintainable.

49. Ground No. 7 is in respect of an addition for Rs.10,494 crores (USD 2.4 billion) toward transfer instructions. The same, tabulated as under, were found during search from the residence of KT loaded on a pen drive, hard copy of which was subsequently taken, forming part of the seized material (Annexure 7 to Panchanama dated 06.1.2007, containing 22 pages):

| S. No. | Reference Annexure/ Page No. | Remittance request via telegraphic transfer | Value date | Conversion rate of USD | Amount in Rs. |
|---|---|---|---|---|---|
| 1 | A-7/9 | TRIPLE 'A' UBS bonds of the value of | 07.1.05 | 43.90 | 4390,00,00,000 |

| | | | | | |
|---|---|---|---|---|---|
| | | US $ 1 billion | | | |
| 2 | A-7/10 | TRIPLE 'A' UBS bonds of the value of US $ 0.4 billion | 07.1.05 | 43.90 | 1756,00,00,000 |
| 3 | A-7/18 | TRIPLE 'A' UBS bonds of the value of US $ 1 billion | 04.1.05 | 43.48 | 4348,00,00,000 |
| | **Total** | **USD 2.4 Billion** | | | **Rs.10494,00,00,000** |

The same bears specific instructions, drawn on the assessee's account number (206-794.786). The valuation date is the material date, on which the instruction is executed and, accordingly, the conversion rate is adopted for that date. The same being found during search, from his control and possession, in the form of a pen drive at the residence of KT, is to be regarded as true as regards its contents in view of section 292C of the Act. In this regard, reference may also be made to para 25 of this order. The assessee denying any knowledge thereof, despite several reminders, the same came to be added as income by way of unexplained investment. The assessee being unable to improve his case in any manner in appeal, the same stood confirmed; the assessee continuing to deny the existence of the accounts, and his arguments being general as in nature, as adopted for the earlier years as well, duly met by the ld. CIT(A) (refer para 6 of this order). Further, there is reference by him to Annexure 13 of the assessment order (pages 94-97), which is a notarized statement dated 30.6.2003 (wrongly noted as 20.6.2005) by the assessee at London (pg. 29 of the impugned order), also referred to earlier (paras 11.1, 11.5, 12 & 18). The first general comment in the statement is that all the investments made by Dr. Peter Weilly were safe investments, with guarantee of no loss on account of price, as assured by him. This is, in fact, otherwise patent from the investment option chosen; being AAA rated bonds (of UBS). The said statement dated 30.6.2003 clearly states of the assessee's (HAK) intention to invest in hotel properties in Switzerland, and for which he seeks assistance of PA. The assessee could have surely expanded the horizon of his

investment options to include securities as well. In any case, it only implies that he has investible monies or access to resources for investment purposes, and which could, pending investment in profitable ventures, be parked or invested in safe investment avenues.

The assessee per his written submissions refers to the letter dated 28.12.2007 by UBS AG, Zurich, ED, New Delhi, rejecting the allegation that the assessee has or had millions in USD in accounts with UBS, at Switzerland or Singapore or elsewhere or in AAA or any other type of securities. The report, being unsigned, has not been admitted. Yet, it is clear that the same is based on the UBS report dated 30.10.2007. We have upon considering the said report clarified that nevertheless the onus to explain the transaction in all the cases where a TI is issued, or apparently so, effectively rebutting the logical inference of the balance in the account at the relevant time, is on the assessee. This is so even where the TI is not found in search, but transmitted to the Revenue by ED, while being more so, as in the instant case, where the TI is found during search. Reference may be drawn to the discussion at paras 11-12, 15, 25 and 30 of this order. In the present case, the account on which the TIs are issued, is, rather, one of the accounts of the assessee confirmed by UBS AG. We have under the circumstances no reason to take a different view in the matter.

We are acutely conscious that the amount under reference is astronomical. At the same time, however, we cannot disregard the clear evidences found in or as a result of search. The additions made, it may be appreciated, are only on the basis of objective materials – totally unexplained and, further, in agreement with the other materials found and in possession of the Revenue. Why, the notarized statement dated 30.06.2003 supra (Ann. C), itself contains details of the assessee's relationship with UBS, with account opened as far back as in 1982, with USD 5M, as also details of transfer of huge funds. The assessee's stand of complete denial is only toward stalling the process of law, which continues even before us. The same is clearly aimed at providing no clue whatsoever to the Revenue as to how he, at best only a horse trainer

in India, had access to such sums, visiting and staying at Switzerland, Dubai, London, Hongkong, etc. on a regular basis, in fact since 1980s.

The matter is accordingly restored to the file of the A.O. for adjudication afresh in accordance with the law by issuing definite findings of fact, and after allowing the assessee reasonable opportunity to present his case. We decide accordingly.

50. Ground No. 8 of the appeal is in respect of living and life style expenses at Rs.26,54,830/-, made in-as-much as the assessee returned an income of Rs.3,45,170/- for the year u/s. 153A of the Act. The same is a subject matter of appeal for the other years as well and, accordingly discussed at paras 18 and 26 of this order. For the reasons stated therein, the addition for this year, and with the same incidences, is confirmed at Rs.30 lacs.

51. Ground 9 is in respect of undisclosed income by way of unexplained investment in race horses. An enquiry with Royal Western India Turf Club Ltd. (RWITC) and other stud farms by A.O. revealed the assessee to have purchased nine horses during the relevant year. Valuing one horse at Rs.1 lac, the addition for Rs.9 lacs was proposed and made. In appeal, though the assessee produced the voucher (dated 20.11.2004) for Rs.1,65,000/- toward purchase of horses, the same did not specify the number of horses, from whom purchased, etc. The ld. CIT(A), disregarding the same, confirmed the assessment.

52. We have heard the party before us, and perused the material on record. We find little merit in the assessee's case. The assessee per his written submissions (WS-5) challenges the valuation, without bringing any material on record. So, however, the detail of the nine horses purchased, listed at paras 14 and 22 of the assessment and the impugned order respectively, reveals one horse 'Bu Attifel' to be purchased on 19.8.2005. The said date falls outside the relevant previous year. Accordingly, the addition is confirmed at Rs.8 lacs. We decide accordingly.

53. Ground No. 10 concerns the addition on account of additional income disclosed before the Hon'ble Settlement Commission. The same we find stands not challenged before the first appellate authority. For the same reasons as stated at para 40 of this order, we confirm the addition, with like directions. We decide accordingly.

54. Ground 11 is the disallowance of loss on horse betting, claimed by the assessee against its business income on horse racing. The same stands disallowed in the absence of any substantiation of the loss, and confirmed for the same reason/s. The assessee, before us, has sought to plead its case with reference to section 74A.

55. We have heard the party before us, and perused the material on record. The Revenue has denied the claim of the impugned loss in view of it being unevidenced. The assessee's alluding to section 74A is thus of no moment. In fact, even section 74A refers to the activity of owning and maintaining race horses, while the loss under reference is on horse betting, which is a different activity altogether. The assessee's claim is thus not maintainable of all fours. We decide accordingly.

56. Grounds 12 and 13 correspond to grounds 11 and 12 for f.y. 2001-02 and, accordingly, stand decided vide paras 19 and 20 respectively of this order.

57. Grounds 14 and 15 are general in nature, warranting no adjudication.

*Asstt. Year 2006-07*

58. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 is in respect of an addition, since confirmed, of Rs.1,22,297/-

toward unexplained expenditure on air ticket. An air ticket, issued in the assessee's name, for travel from London to Bombay on 28.11.2005, was found during search (refer para 10(i) of the assessment order). Cost thereof came to be added as unexplained income in its respect. Though the assessee in appeal claimed the same to be a part of his drawings, no detail thereof was produced and, hence, confirmed.

59. Before us, the assessee claims per written submissions (para D of WS-6) that merely because the ticket was in his name, it did not conclusively prove that he had incurred the expenditure. The ld. Departmental Representative (DR) relied on the orders by the authorities below.

60. We have heard the party before us, and perused the material on record. The document has been found during search from the assessee's residence. The fact of travel is not denied. It is for the assessee under the circumstances to prove that, despite so, expenditure was incurred by someone else, which he now claims as by KT. Merely stating so is of no consequence. We find no reason not to confirm the addition. We decide accordingly.

61. Ground no. 5 is *qua* unexplained cash deposit in the savings bank account with ABN Amro Bank, at Rs.24.699 lacs during the year (date-wise detail at para 10(ii) of the assessment order). The case of the parties is the same as for Ground 4 for A.Y. 2005-06 (for Rs.17.99 lacs/para 43). Ground 6 is, similarly, on account of cash deposit in account with Muslim Co-operative Bank, Yerwada, Pune, made at Rs.1.35 lacs for A.Y. 2005-06, and subject matter of Ground 5 for that year (para 45). The assessee's declared income has been found by the Revenue as not sufficient to meet household and personal expenses. If, as claimed before the ld. CIT(A), bank withdrawals is a source of cash deposit, the source of bank deposit/s itself needs to be explained. The assessee before us, in addition, states that the sale proceeds of the Bangalore property (at Rs.35 lacs) has been utilized. The capital gain on the said sale

(Rs.10 lacs) has been offered to tax for the current year, discussed with reference to Ground 6 for A.Y. 2005-06 (refer para 47). The same is definitely a source of cash, which could be deposited in bank, i.e., *that made after the date/s of realisation of the sale proceeds*.

Our second observation in the matter is that out of the total deposit of Rs.12,09,932 in Muslim Co-operative Bank, for which amount addition is made, Rs.1.35 lacs stands deposited during the preceding year, so that the addition for the current year could not exceed the balance amount, determined at Rs.10,75,038/- (para 19 of the impugned order). The matter accordingly stands restored to the file of the Assessing Officer (A.O.) to compute the quantum of the two additions on the basis of the short fall in the availability of cash, which accordingly has to be worked out with reference to different dates. The utilisation of cash for household/personal purposes is to be taken on a uniform basis over the year, while that toward income-tax paid, on the definite dates. Similarly, the business income (from horse racing), disclosed by the assessee at Rs.15.69 lacs, would be taken proportionately during the year, at (say) each month-end. The assessee shall furnish the relevant data. Ground 6 of this appeal shall again stand to be addressed in the like manner and, thus, is disposed of accordingly.

62. The facts in relation to Ground 7 are that a cancellation deed dated 29.4.2005 was found during search. The same, being in respect of the lease of the assessee's Bangalore property, was accompanied by two receipts of Rs.2.20 lacs and Rs.3.30 lacs by the lessee, Rahmathulla, toward refund of the security deposit and cost of furniture and fixture respectively. The same came to be added on account of being undisclosed, with the ld. CIT(A) finding the assessee's case totally un-evidenced. Aggrieved, the assessee is in second appeal.

63. We have heard the party before us, and perused the material on record. The cancellation deed is in respect of lease deed dated 11.4.2005. The assessee's case (refer para G of WS 6) is that the amount (Rs.5.50 lacs) refunded by him to the lessee on cancellation is only that deposited by him upon entering the lease agreement. *How can that be faulted with*? The cancellation deed itself would bear this out. Surely, it implies that the assessee expended a similar, or perhaps a larger, sum on furniture and fixture. However, the question is of time. It cannot, on the basis of the material on record, be said that it was during the current year. The Revenue has also not questioned the assessee on this aspect, for us to draw any adverse inference on non-furnishing of proper explanation by the assessee. The only impact that we discern is that the assessee's cash flow would witness an inflow and outflow for that sum on 11.4.2005 and 29.4.2005 respectively. The addition is deleted. We decide accordingly.

64. Ground 8 is toward cost (Rs.26,950/-) of travel ticket, found and seized during search. Similarly, Grounds 11, 12 and 16, for Rs.92,699/-, Rs.1,25,180/- and Rs.1,25,000/- respectively, are all toward journeys undertaken by the assessee, either domestic or foreign. These facts, stated at paras 12, 14, 15 and 19 of the assessment order, are not denied, much less rebutted. The facts are borne out by the record. The case of the opposing parties is the same, as for Ground no. 4 (refer para 60 of this order and para D of WS-6). The additions are, under the circumstances, confirmed, dismissing the relevant grounds. We decide accordingly.

65. Ground 9 is toward unexplained monies with Bank. The amount for which the addition has been made and confirmed and, thus, under challenge, is Rs.54,266.41 crores, being the aggregate (at USD 11.999 billion) of 16 Transfer Instructions (TIs) or requests for various amounts, listed at para 13(ii)/pgs. 13-15 of the assessment order. The conversion rate, not specifically challenged, adopted, is that obtaining for each value date, separately, listed at para 13(x)/pgs. 22-23 of the assessment order.

The same were found from the residence of KT in the course of search on 05.1.2007, in the form of data on a pen drive seized, hard copy of which was subsequently taken (Annexure A7 to Panchanama dated 06.1.2007, consisting of 22 pages). The same reveals them to be issued by the assessee, from London in December, 2005, on UBS AG, Zurich *qua* his account number 206-794-786 therewith, by direct transfer. These monies are transferred, by telex transfer, from Switzerland to various beneficiary accounts at New York, Dubai, Zurich, Singapore, London, etc. For each transfer, the beneficiary details are given. While some are toward transfer simpliciter, others are requests for AAA rated UBS bonds for a particular amount, specified with beneficiary details. The assessee, despite being questioned and show caused several times in the matter, denied any knowledge thereof, further emphasising that he had not comments to offer (refer para 13(iv) of the assessment order).

65A. We have heard the party before us, and perused the material on record.

The TIs are on an account confirmed by UBS AG report to be of HAK in the name of RHAK, *qua* which the assessee holds power of attorney (POA). We have already noted that the names of the persons mentioned in the TIs, different banks and their addresses, particulars, etc. of the beneficiary accounts, are existing persons, as confirmed by the ld. CIT(A), in fact, for each year under reference, under the section 'Supporting Evidences' of his order. We have already explained that the fact of the document, a word of wide amplitude, being found on electronic/magnetic media (viz. pen drive, CD, etc.), and not on paper, would not in any manner impact its evidentiary value or the statutory presumption of section 292C in its respect (refer para 25 of this order). Strict rules of evidences are even otherwise not applicable to the proceedings under the Act, so that any material, otherwise reliable, where found relevant and material, can be considered. A decision, further, is to be taken considering the entirety of the facts and circumstances of the case, of course upon duly confronting the assessee therewith, providing adequate opportunity to explain the same.

The assessee's case, across all the years, is the same, i.e., of denial, alluding to the UBS AG report dated 30.10.2007 and the result of the investigations by ED, stating of complaints by it being ultimately filed only in May, 2011, and only on two counts. The reliance on the UBS report stands discussed at paras 11 and 12 of this order. The contention *qua* ED is not supported by any material on record. We have further explained that the proceedings under PMLA stand on a different footing, and that the request for mutual legal assistance by the Indian authorities would stand to be considered and responded to by the Swiss authorities on a clear nexus between the predicate offences and the funds, i.e., for/*qua* which information/assistance is sought. The investigation by ED, which is thus at a trial stage, would be of little consequence in the proceedings under the Act, which are or can be decided upon on the basis of preponderance of probabilities, and toward which the ld. DR has cited abundant case law, viz. *CIT vs. Empire Builtech Pvt. Ltd.* [2015] 228 Taxman 346 (Del)(Mag.); *Umakant B. Agrawal vs. Dy. CIT* [2014] 369 ITR 220 (Bom); CIT *vs. Narinder Kumar Sekhri* [2015] 228 Taxman 35 (P&H)(Mag); *Edayanal Constructions vs. CIT* [1990] 183 ITR 671 (Ker). In fact, that apart, the decision in the case of *Sumati Dayal v. CIT* [1995] 214 ITR 801 (SC), rendered considering four precedents by the hon'ble Apex Court, is a *locus classicus* on the subject.

In view of the foregoing, we see no reason to deviate from our decision as delineated at paras 11-12, 15, 25, 30 and 49 of this order, to which therefore reference is drawn. We decide accordingly.

66. Ground 10 is *qua* an addition, since confirmed, for Rs.113.04 lacs, in respect of five TIs for a total of USD 152,200 issued by the assessee in favour of S.K. Financial Services from 16.11.2005 to 15.2.2006, valued at the obtaining conversion rate on the relevant value date. The inference, since validated on the basis of the enquiry by FTD division of CBDT, of the same representing income, was accordingly added in the absence of any explanation by the assessee, drawing support on the fact that TI dated

16.2.2007 to S.K. Financial Services, was also found during search from the assessee's Pune residence (refer para 107 of this order). The matter, in view of the discussion at para 107, is restored to the file of the AO with like directions. We decide accordingly.

67. Grounds 11 and 12: Kindly refer para 64 of this order.

68. Ground 13 is in respect of living and life style expenses. The same is subject matter of appeal for each year and, accordingly, decided by us for each preceding year, following a consistent stand. The assessee, for the current year, is in London for an extended period of time, issuing a notarized statement in June, 2005 and 16 TIs in December, 2005, which is itself indicative of it being preceded by several discussions/meetings, entailing stay at London, and perhaps even travel to different locations. Then, the assessee is also required to travel to India and Dubai, whereat he has business interests. There is evidence toward travel to India, viz. from Bombay to London in October, 2005 and back on 28.11.2005 (refer paras 15 and 19 of the assessment order). The quantum for this year is accordingly confirmed at Rs.30 lacs, the amount assessed on this basis of the assessee's sworn statement, in agreement with that for the earlier years. We decide accordingly.

69. Ground 14 relates to disallowance of loss of Rs.8,42,124/-, adjusted against income for the year, returned at Rs.15.69 lacs. The same stood disallowed in the absence of any evidence toward incurring the same. The ld. CIT(A) in fact found the assessee's stand contradictory and confused; he stating of having earned profit on sale of horses in August and September, 2005 (at Rs.82,500/-). The assessee before us, as per his written submissions (para I of WS-6), contended that he is a member of RWITC, which provides facilities for maintaining & training of, as well as stable for, horses, and from which he receives stake monies in respect of horses that win (races). Reference is made to sections 2(24)(xii), 56(2) and 74A. The activity of owning and

maintaining race horses, which is clearly in the nature of a business, is regarded by the Act as a separate and distinct activity, loss incurred in which stands to be set off only against income from the said activity, which is precisely what the assessee has claimed. True, there may be no evidence, but then there is equally no evidence toward earning of income from the said activity as well. The assessee's return is *sans* any supporting material, so that all he has done is to return an income from the said activity at Rs.15.69 lacs – nothing less and nothing more. The Revenue's stand could only be sustained when there is clear evidence of the assessee having earned Rs.24.11 lacs (i.e., 15.69 + 8.42), so that the loss is assailed for want of evidence. The Revenue's stand becomes all the more untenable considering that the entire returned income ( Rs.15.69 lacs) is adjusted against living expenses. If the loss is disallowed, on which penalty is also initiated, it only implies that there is availability of cash at Rs.24.11 lacs. This causes a double jeopardy for Rs.8.42 lacs. We have further clarified that the deemed income on account of said expenses can be set off only against amount shown or taken as utilised, in accounts or otherwise, toward such expenses. The set off of loss is accordingly allowed. We may, before parting, clarify that the income from horse betting, assessable u/s. 56, is a separate and distinct activity, so that our decision shall not in any manner, impact our decision *qua* Ground 11 for A.Y. 2005-06.

70. Ground 15: The assessee was during the relevant year found to have purchased 10 horses on different dates, viz. 23.4.2005, 19.8.2005, and then intermittently from 23.12.2005 to 21.3.2006. The same being not accounted for, and the assessee being unable to satisfactorily explain the source of their acquisition, was deemed as income for the year, valuing each horse at Rs.1.0 lac (refer para 18 of the assessment order). The assessee, before the first appellate authority, did not dispute the acquisition, but the valuation. The ld. CIT(A) found the same reasonable and, in fact, consistent that reflected in the assessee's accounts toward purchase of horses on October 1 and

November 1, 2005. The assessee's written submissions are silent on this ground and, in any case, the facts are undisputed. We, accordingly, find no reason to interfere. We decide accordingly.

71. Ground 16: Kindly refer para 64 of this order.

72. Ground 17 impugns the income of Rs.10 lacs, additionally offered before the Hon'ble Settlement Commission. The assessee's case, as well as that of the Revenue, being the same as far the preceding years, *qua* which our discussion appears at paras 40 and 53 of this order, we find no reason to deviate there-from. Needless to add, the assessee shall be allowed due credit while computing the availability of cash, distributing the additional income uniformly every year. We decide accordingly.

73. Grounds 18 and 19 correspond to Grounds 11 and 12 for A.Y. 2001-02, decided per paras 19 and 20 respectively of this order. Grounds 20 and 21 are general in nature, warranting no separate adjudication.

*Asstt. Year 2007-08*

74. Grounds 1 and 2 are common to that for A.Y. 2001-02 and, accordingly, stand disposed of vide paras 4 and 5 of this order respectively. Paras 5 through 9 of the assessment order, we may add, contain detailed discussion on the provision of due and adequate opportunity to the assessee. Ground 3 is general in nature, warranting no adjudication. Ground 4 is in respect of undisclosed jewellery, at Rs. 44,80,000/-, deemed as income by way of unexplained investment. This is on the basis of a statement drawn on a loose sheet of paper, containing details of 12 items of jewellery, captioned 'Mr. Khan', found & seized from his Mumbai residence during search. No explanation was furnished before the Assessing Officer, who accordingly assessed it as income. In appeal, the assessee challenged the valuation,

explaining the same as by way of a gift from his sister; belonging to his mother-in-law; and purchased on 31/12/2006, besides a part of it comprising watches. The contention being unproved, besides bearing inconsistencies, was rejected by the ld. CIT(A), confirming the addition.

75. We have heard the party before us, and perused the material on record. The document is found during search, and clearly specifies the jewellery, item by item. Only the assessee, whose name is clearly spelt out and, in fact, admits the same, can tell when and how the same was acquired by him, lest the same be deemed as his unexplained income for the year in which it is found in his possession, the document being otherwise required to be regarded as true. The assessee renders no explanation before the assessing authority, whose satisfaction in the matter the law contemplates and, as it appears, prior thereto, even before the Authorized Officer. The explanation rendered in appeal, which would in any case have to cross the hurdle of rule 46A, is wholly unsubstantiated.

We, however, observe two things. Firstly, that the jewellery stated as gifted to the assessee on the occasion of his marriage by his sister, Amia Khan (at Rs. 2.22 lacs) can only be regarded as reasonable, and is thus accepted. Secondly, even if the jewellery stated to be purchased in December, 2006 (at Rs.13.16 lacs) cannot be accepted in absence of any bill or other evidence, its' being accounted, assuming so, implies absorption of cash to that extent, so that non-acceptance of the explanation would release cash to that extent, for being considered toward other applications. This is further subject to the cash availability being properly explained. The AO shall verify the same, clearly recording his findings, upon allowing the assessee an opportunity to state his case in the matter. Subject to foregoing, we confirm the assessment, and decide accordingly.

76. Ground 5 concerns an addition for Rs. 12,07,000/- towards unexplained payment. A ICICI Lombard envelope, addressed to one, Nilesh V. Padhye, was found and seized in search from the assessee's residence. The page containing the following details, had '5' of every month, Jan., 2007 (EMI Rs. 14,625), inscribed thereon:

'12,07,000
(-) 6,38,000 Loan
5,69,000
(-) 6,07,000 Cash
38,000 Diff.'

Addition for Rs. 12.07 lacs was proposed and made in the absence of any explanation and, further, confirmed on the same basis.

77. We have heard the party before us, and perused the material on record. As apparent from the document, to which s. 292-C applies, the same is in respect of an investment for Rs. 12.07 lacs, partly financed by loan from ICICI Lombard, and partly by cash, with the loan being (or to be) repaid per EMIs, payable on 5th of every month, at Rs. 14,625/-, to ICICI Lombard, through one, Nilesh V. Padhye. The difference of Rs. 38,000/-, as it appears, is the excess repayment in-as-much as the loan would also carry interest, which gets included in the EMIs. Further, the same is clearly unaccounted. The addition under the circumstances could be for the cash component of Rs. 6.07 lacs, plus the EMIs falling due for payment and/or paid during the year. The assessee furnishing no details, it is reasonable to presume 12 EMIs during the year, i.e., Rs. 1,75,500/-. The addition is accordingly restricted to Rs. 7,82,500 (i.e., 6,07,000 + 1,75,500), and the assessee gets part relief.

78. Ground 6 is in respect of an addition for Rs. 10,30,750/- for unexplained investment in Honda City Car. An insurance policy for a car (Honda City), stating

the premium at Rs 41,005/-, in the name of Abbas A. Abbas, the assessee's father-in-law, was found during the search from the assessee's Mumbai residence, which further stated the value of car at 10,30,750/-. Abbas A. Abbas being aged, a non-assessee, working as a horse trainer, so that he could not afford to purchase and maintain the vehicle, the same was considered as beneficially belonging to the assessee, from whose residence the insurance policy was found and, accordingly, assessed as his income, and confirmed for the same reason, so that the assessee is in second appeal.

79. We have heard the party before us, and perused the material on record. We do not find any infirmity in the Revenue's stand in the facts and circumstances of the case. The assessee has been found to own several cars; in fact gifting some, for which one may advert to paras 17 & 118 of this order. His stand that the car belongs to his father-in-law, unsupported by any evidence toward the latter's financial capacity for purchasing and maintaining the vehicle, cannot be countenanced. In income-tax law, primacy is accorded to beneficial ownership as against titular ownership. The addition, it must be appreciated, is toward investment in car, not explained from disclosed sources, and the Revenue is entitled to draw an inference consistent with the facts and circumstances of the case (refer: *H. Shahul Hameed vs. Asst. CIT* [2002] 258 ITR 266 (Mad)). The addition, however, could only be where the car stands purchased during the relevant year. A car is a registered movable property, the purchase date of which can easily be found. Addition could though be made for the repayment of the loan/s, if any, financing the vehicle, during the year, and toward which an endorsement on the RC book would be there. Reference in this regard may also be made to para 87, in relation to Gd. 10 of this order. Subject to this verification by the AO, we confirm the addition. The AO shall, in addition, in any event, include

the premium of Rs.41,005/- as an outflow on account of car insurance while preparing the cash flow statement for the year. We decide accordingly.

80. Ground # 7 is toward unexplained investment by way of payment of membership fee of RWITC. The assessee became a member of RWITC during the year on payment of Rs. 5.0 lacs. A cash receipt dated 09/05/2006 for Rs. 2.50 lacs toward its entrance fee was found during search from his Mumbai residence. The Revenue, however, added the entire amount of Rs. 5.0 lac, as it was not clear if the amount of Rs. 2.50 lacs, stated to be paid by cheque drawn on ABM Amro Bank, had been accounted for. Aggrieved, the assessee is in second appeal.

81. We have heard the party before us, and perused the material on record. We observe that the assessee's consistent stand is that of the sum of Rs. 5.0 lacs, Rs 2.50 lacs is paid by cheque, and the balance Rs. 2.50 lacs by cash, out of his horse racing income, not disclosed to the Revenue (refer statement u/s. 131 dated 26/04/2007). Surely, if cash payment has also been accounted for in books, as claimed, even this sum may not stand to be included in the assessment. The stand of the ld. CIT(A) that the cash payment is reflected in the books on 10/05/2006, while cash receipt is dated 9/05/2006, may not be material where cash is also available in books on 9/05/2006. The basic issue is of the source of cash in the books as well as the balance in the ABN Amro Bank, which cannot be considered as explained merely because the payment is by cheque. The matter needs proper verification of the assessee's claim of the entire sum being duly accounted for and, thus, explained, and, is accordingly restored to the file of the AO for fresh determination in accordance with law, issuing definite findings. We decide accordingly.

82. Ground # 8 is again in respect of investment in a motor car (Porscha Cayennes, 2005 Model/ Reg. No. KA 08M 969), purchased from one, Anil Shankar, for Rs. 61.50 lacs. The addition, based on the material found during search from the assessee's Pune residence in the form of a delivery note (dated 6/12/2006) issued by the assessee and receipt-cum-confirmation dated 8/12/2006 issued by the said Anil Shankar, is further supported by the assessee's deposition u/s. 131 dated 27/12/2007. In appeal, the assessee produced an account of payment, as:

- Rs. 3,50,000/- (cash) on 4/12/2006
  (self cheque No.41245 on ABN Amro Bank)
- Rs. 46,50,000/- (cash) on 6/12/2006
- Rs. 11,00,000/- (cheque on Union Bank of India, dated 7/03/2007)

The cash was sought to be explained as received from RWITC on 6/12/2006 on account of horse racing (Rs.45 lacs) and horse betting (Rs.15.70 lacs), which were dismissed by the ld. CIT (A) as not credible as never in the past had receipts for such amounts been issued on a single day. Aggrieved, the assessee is in appeal.

83. We have heard the party before us, and perused the material on record. The payment of the full cost of Rs. 61.50 lacs during the relevant year by the assessee toward the purchase of car is not denied. The assessee has not produced any voucher or certificate from RWITC toward release of cash payment of Rs. 60.70 lacs (or for any other sum) to the assessee on 6/12/2006. How does it, however, matter, whether the source of payment is unexplained or, as stated, income by way of horse race winning and betting, both being incomes chargeable to tax (Sec. 115 BB). The same would impact the head of income under which the impugned sum would stand to be assessed, i.e., as income from other sources u/s. 56 r/w s. 69/69A or u/s. 28. This aspect has in fact been neither impugned by the assessee nor properly addressed by the Revenue. *What though is relevant is whether the*

*returned income of Rs. 124.04 lacs u/s. 153A for the year on 23/05/2007 includes the said amount as income, stated to be applied toward payment of car (Rs. 61.50 lacs)*, as we understand to be the purport of the cash statement (which though is for Rs. 61 lacs) produced by the assessee before the ld. CIT(A). Also relevant would be the source of the balance in the ABN Amro Bank, on which the cheque of Rs 3.50 lacs is drawn. The head of income, *qua* which we are inclined to be in agreement with the Revenue in-as-much as no definite evidence toward horse racing/betting income is produced, apart, the moot question is whether any, and to what extent, addition is called for considering the purported inclusion of the impugned sum in the income returned, i.e., of having returned the same as income. It is also not clear if the assessee's balance-sheet as on 31/03/2007 reflects the investment in the said car. Under the circumstances, we only consider it proper to set aside the matter to the file of AO for necessary verification and determination in accordance with law, issuing definite findings of fact, after allowing the assessee opportunity to state his case. We decide accordingly.

84. Ground # 9 is *qua* unexplained investment in a Mercedez car (Reg. No. MH 12BP 7861) for Rs. 26,84,244, being it's cost, added as the assessee's income in the absence of any explanation by the assessee, and confirmed for the same reason.

85. We have heard the party before us, and perused the material on record. The Registration Certificate (RC) (found in search) shows the car model as '2002'. A car bearing registration number MH 12BP 7860 was found as purchased for like amount (Rs. 26,84,244) in Feb., 2003 (refer Gd. 5 for AY 2004-05/paras 37 & 38 of this Order). The car under reference, thus, also seems to be purchased in Feb., 2003, even as admitted by the assessee before ED - at a cost of Rs. 27.91 lacs (refer para H of WS-7). Two, the car is stated by the assessee to be financed through loan from GMac Financials. It is only the EMIs falling, or otherwise the

loan repaid, during the year that can, in that case, where unexplained as to its source, deemed as income. Of course, no addition is called for to the extent the EMIs are explained on the basis of cash available, so that it essentially amounts to an addition *qua* cash where and to the extent unexplained. The matter is accordingly restored to the file of the AO for being decided afresh, in accordance with law, allowing the assessee opportunity of hearing. We decide accordingly.

86. Ground 10 is toward part payment of Honda Civic MTABs. Cash receipt dated 17/11/2006 for Rs. 1 lac by Deccan Honda Bafna Autocars, favouring Abbas A. Abbas, the assessee's father-in-law, was found in search from the assessee's Pune residence, and added and confirmed as his income in the absence of any explanation; the assessee's father-in-law being aged and not an assessee on the Revenue's records.

87. We have heard the party before us, and perused the material on record. We have in respect of another addition for purchase of a Honda City car in the name of the assessee's father-in-law, found the Revenue's inference as valid in the facts and circumstances of the case, though held that addition could be made only where the car stands purchased during the year (refer para 79 of this order). We endorse the said decision for this ground as well. The assessee's father-in-law has no known source of income, being not even an assessee with the Revenue. Even the banks/finance companies finance only on the basis of documented income in-as-much as the repayment of loan would only be, or is likely to be, there-from. The vehicle is further not only to be purchased but maintained as well and, as it turns out, is the second vehicle, an upmarket brand at that, purchased by Mr. Abbas. The assessee, a close relative of the 'buyer', from whose residence the RC is found, is an avid purchaser of vehicles, having in fact bought a sports car this year at an admitted cost of Rs.61.50 lacs. We decide accordingly.

88. Ground No. 11 is in relation to an addition toward unexplained cash deposits with ABN Amro Bank, at Rs.10,05,500/-. Cash deposits for a total of Rs.52.74 lacs in the assessee's savings bank account (# 949548) therewith, which had a balance of Rs.52 lacs as on 05.1.2007, were found (from f.y. 2004-05 to 2006-07) and, accordingly, addition made for each of these three years. The facts and circumstances, as well as the case of both the parties, being the same, we confirm the addition, as for the preceding two years, for which reference may be made to paras 44 and 61of this order. We may, however, add that there can be no double addition for the same amount, as where the cash deposited is utilised, as by issue of bearer cheque for Rs.3.50 lacs for payment of car (refer paras 82,83). In other words, the addition is confirmed in principle, though the assessee can show that it results in a double addition, which aspect, where so claimed, the A.O. is obliged to verify, and satisfy himself that there is no double addition. We decide accordingly.

89. Ground 12 is *qua* an addition for Rs.3.50 lacs toward payment of membership fee of 'Le Royale Residency Club'. The assessee confirmed the same, paid in cash, to be out of his race horse winnings, vide statement u/s. 131 dated 15.3.2007. The addition is confirmed subject to the A.O.'s verification of the same not resulting in a double addition in-as-much as the amount is stated to be paid through ABN Amro Bank. We decide accordingly.

90. Ground 13 is, at Rs.25.50 lacs, toward investment in house property at Bangalore. On the basis of the material seized in search, the assessee was found to have paid Rs.25 lacs as advance (in November, 2006) to M/s. H.M. Constructions for purchase of an apartment at Bangalore, and another Rs.50,000/- to M/s. Khaitan & Co., Advocates, for title search of the said property. The advocates not giving a clear report, the advance was refunded to the assessee

on 28.2.2007. The payments being not disclosed, were deemed as income by way of unexplained investment or, as the case may be, expenditure, and confirmed for the same reason. In second appeal, the assessee per its written submissions states of the booking amount to M/s. H. M. Construction being sourced by way of loans, and for which the assessee referred to his statement u/s.131 dated 01.5.2007.

91. We have heard the party before us, and perused the material on record. We find little merit in the assessee's case. The explanation, now furnished, firstly confirms the transaction. Two, there is nothing on record to establish the stated source (loans), in terms of identity, capacity or genuineness. We are aware that the payment of Rs.25 lacs is from ABN Ambro Bank, cash deposits in which have been separately brought to tax (Gd. # 11). However, the cash deposits, assessed as income, total to Rs.52.74 lacs, as against a balance of Rs.52 lacs in the said account on 05.1.2007, the date of search. The impugned amount of Rs.25 lacs, though routed through the said bank account, cannot therefore be ascribed to the said cash deposits; the assessee himself claiming the source as loans raised by him. Clearly, therefore, there is no case for double addition/telescoping nor any stand in its respect taken or case made out, either before the Revenue or before us. The assessee fails. We decide accordingly.

92. Ground 14 is toward an addition for Rs.63,391/- by way of unexplained expenditure on clothing, evidence in respect of which was found in search, and added on account of it being undisclosed. We observe no separate addition toward household or living expenses for this year, nor is the amount toward such expenses for the year stated. The addition is accordingly confirmed. We decide accordingly.

93. Ground 15 is *qua* an addition for Rs.50 lacs in respect of investment in a property on account of it being unexplained. Pages 30 and 43 of Bundle No. 6 of Annexure A dated 05.1.2007 (to Panchnama dated 06.1.2007) show the assessee to

be in deal for purchase of a Flat (admeasuring 4000 sq. ft.) in a housing project by the name 'Indulgence' from M/s. Prestige Estate Projects Pvt. Ltd. Further, notings for Rs.50 lacs were found below the name 'Rizwan Razad', also mentioned of these pages. The investment being not disclosed, the amount of Rs.50 lacs was added and confirmed in assessment, so that, aggrieved, the assessee is in appeal.

94. We have heard the party before us and perused the material on record. The assessee's case is that these are mere notings and do not constitute evidence. The Revenue's case, on the other hand, is that it is clear that the assessee was in the process of purchase of the subject property. There is nothing on record to show that the same was not purchased, or that the deal did not take place, as by furnishing a confirmation letter from the builder to that effect. The very fact that the assessee states that the purchase did not fructify itself confirms the document, to which section 292C applies, and is thus not a dumb document. The question, to our mind, is not whether the purchase fructified or not, but whether the assessee paid any amount/s as advance or for the booking the said flat to M/s. Prestige Estate Projects Pvt. Ltd., which appears to be through one, Rizwan Razad. The onus on the assessee would stand discharged only on satisfactorily explaining the document/s. The Revenue's case, on the other hand, can sustain only if the payment to the extent of Rs.50 lacs can be inferred on the basis of the said document, which is ostensibly toward purchase of the flat. In whose hand the noting was made, which the law presumes as of the assessee, and which could also be of Rizwan Razad, may be relevant. In whose name the phone numbers mentioned on the pages are registered. The onus to rebut the inference is on the assessee.

The document is not before us. We, accordingly, only consider it proper that the matter is restored back to the file of the A.O. We may clarify that where the inference of purchase or payment toward the subject property is manifest from the document, the onus to exhibit that the purchase – which could be in the name of a

close relative as well, did not materialise, or no payments were made, would be on the assessee. We decide accordingly.

95. Ground 16: Page 33 of Annexure A supra is a receipt dated 30.12.2006 for Rs.20,000/-, added for want of explanation. In appeal, the assessee admitted the said payment, stating the same to be debited to his capital account for the relevant year. The addition was, however, confirmed for want of correlation. We find this strange. The receipt would bear out whether the payment, made on 30.12.2006, is by cheque or cash, specifying the cheque number in the case of the former. *What, then, is the dispute about*? The A.O. shall verify the assessee's claim of the debit of the impugned sum to his capital account, and where-so, delete the addition, else not, issuing specific findings. We decide accordingly.

96. Ground 17 is in respect of an expenditure of Rs.1,22,380/- on the booking of a ticket for 30.12.2006 (page 34 of Annexure A). The assessee's case is that the booking of the ticket does not necessarily imply travel. The argument is misconceived. The question is of the source of money expended on the purchase or booking of the ticket for foreign travel by the assessee. If the assessee did not undertake travel, it may result in a refund as per the rules governing the same, where cancelled within the prescribed time. We, accordingly, confirm the addition.

97. Ground 18 is toward cash payment of Rs.32,500/- on the basis of a receipt dated 30.12.2006, issued by one, Sameer Zamiar (page 36 of Annexure A). The same came to be added and confirmed in the absence of any explanation by the assessee. The assessee's case before us remains the same, i.e., that the evidence with the Revenue is no sufficient to impugn him. The fact of the payment by the assessee is clearly established by the receipt, found from the assessee's residence

in search. The same being not disclosed, its' deeming as unexplained income cannot be faulted with. We decide accordingly.

98. Ground 19 is again *qua* unexplained payment of Rs.20,87,500/-. Two pages, numbered 37 (of Bundle 6/Annexure A) and 21 (of Bundle 7/Annexure A), were found from the assessee's residence during search, containing similar entries, i.e., a balance of Rs.4,52,696/- as on 23.12.2006, part payments on 23.12.2006 and 28.12.2006, with Rs.20,87,500/- written on the reverse. The same came to be added and confirmed for want of any explanation. The paper is captioned 'Ritesh', a person the assessee states he does not know, besides denying any payment to him. The assessee's denial of the payment, or of knowing Ritesh, cannot be countenanced. The payments being noted on different dates, and the balance drawn, under a captioned name, cannot be considered as a dumb document, to which the presumption of section 292C shall also apply. At the same time, addition could only be for the amounts stated as paid as per the document. Accordingly, only payments up to 28.12.2006, as recorded, could be considered as paid during the relevant year. The impugned sum of Rs.20.88 lacs may represent the amount for which the payment is to be made. That would, by itself, will not imply that the payment to that extent stands made during the relevant year. The addition, thus, is directed to be restricted to the extent afore-stated. We decide accordingly.

99. Ground 20 relates to an addition for Rs.74,000/-, again, based on seized material, being a receipt issued by one, Zahir Shaikh for purchase of an electronic item. The assessee claims the same to be debited to his capital account, which though did not find acceptance by the ld. CIT(A) in view of non-correlation. The onus to exhibit its reflection in accounts is clearly on the assessee. We consider it appropriate under the circumstances to allow an opportunity to the assessee to

discharge the said onus, only subject to which the addition is to be deleted. We decide accordingly.

100. Ground 21 is for Rs.1,85,76,000/-. Page 4 (of Bundle 6/Annexure A) is a working of USD 400,000, which amount stands converted at the peak rate of Rs.46.44 for the relevant previous year (f.y. 2006-07). The assessee has, despite sufficient opportunity, not issued any explanation with reference to the document, which the Revenue finds as being true in view of the provisions of sections 132(4A) and 292C, deeming the amount as income.

101. We have heard the party before us, and perused the material on record. The document further bears the name of 'Couster, HB, Weholi' and telephone numbers, all of which are to be regarded as valid, i.e., unless shown to be not so. Only the assessee could explain the document, or the working made therein/thereby, which he chooses not to. Again, we are conscious that the same could either be a payment or a receipt. In either case, the same being undisclosed, is liable to be regarded as undisclosed and, thus, as unexplained income. Further still, no date is mentioned. The presumption, consistent with the document being valid, is of it being current, or even of the amount due for receipt as on 05.1.2007, the date of search. Per contra, the inference of income is valid. This leaves us with the amount as representing a payment due as on 05.1.2007, i.e., a liability to the named person. The inference of 'income' even in such a case cannot be faulted. This is as the liability incurred would only be against value – to that extent, received, and in respect of which the liability is incurred. The assessee can only be considered as having discharged the liability in the normal course of 'business', so that, being undisclosed, the deeming of income to that extent follows. Looked at from any angle, even as it is improbable that the assessee should prepare or retain a

document concerning his liability, the amount is liable to be, in the absence of any explanation with reference thereto, which is only to be presumed as in his hand, construed as his deemed income on account of unexplained money or receipt or, as the case may be, payment. We, accordingly, confirm its assessment. We decide accordingly.

102. Ground 22 is, again, *qua* an unexplained expenditure for Rs.74,500/- toward cost of one canon camera and speaker. The assessee's case is general, stating of the evidence with the Revenue as being not conclusive. We find the argument untenable. The document is speaking, in respect of purchase of electronic items of common day use. It is nobody's case that the camera cannot or had not been purchased. Further, what explains the document at the assessee's residence? The amount is nowhere even contended to be disclosed. The addition is, accordingly, confirmed.

103. Ground 23 is for Rs.739.04 lacs. Seized material from the assessee's residence revealed a signed document, in original, of the account details fax message, addressed to HAK, received from PA, on 21.9.2006, bearing fax number 00442074917476 for USD 1,600,000. Also found along with, was a bill for USD 1,600,000, raised by PA on HAK (assessee) as well as the fax confirmation report dated 21.9.2006 (pages 2, 3 and 4 of Bundle # 7 of Annexure A dated 05.1.2007 to Panchnama dated 06.1.2007). The same was added on account of the payment being undisclosed, with the material found in search having established close business relationship between the assessee and PA.

104. We have heard the party before us, and perused the material on record.

We firstly observe that the invoice for USD 1,600,000 (page 4 of Bundle 7/Ann. A supra), which is toward services rendered to HAK by PA from 04/01 to

08/06 (as well as the accompanying documents), stands also discussed at paras 20-22 of this order in relation to Gd. 4 for A.Y. 2002-03, *qua* an addition for a sum of USD 500,000, forming part of the impugned sum of USD 1,600,000. The assessee's case is that the TI is not a conclusive proof of payment, i.e., does not by itself evidence payment and, accordingly, no addition on its basis could be made (refer para E of WS-7). The question, to our mind, is not whether the payment in pursuance to TI was in fact made or not, but whether the TI is actually issued or not. This is as the issue of TI itself signifies the balance in account at least to that extent. Reference in this context may also be made *inter alia* to paras 11-12 of this order, delineating our reasons for considering the issue of TI as a valid ground for confirming the addition. At the same time, however, no TI has been issued for USD 16 lac. We have, vide para 22(b) of this order, found that no payment for USD 16 lac can be said to have been made; rather, the facts borne out by the record indicating to the contrary. The mention of the beneficiary account details and the reason/s for the expenditure/investment/s notwithstanding, we find nothing on record to justify either the inference of TI being issued or payment for USD 16 lac, or of balance to that extent; the same representing only a claim on the assessee. The addition, consistent with our findings at para to 22(b) supra, is deleted, being in fact made doubly to the extent of USD 5 lac. We decide accordingly.

105. Ground 24 is in respect of an addition on account of unexplained balance in bank account with UBS AG, Zurich, at Rs. 37,154.10 crores (USD 8 Billion). Search material (numbered as Bundle 1 of Annexure A dated 06/01/2007 to Panchnama dated 06/01/2007), is a set of 6 pages (annexed as Ann.11 to the assessment order). These are again print-outs of the scanned documents, found on the laptop of PA. Page 6 is a 'confirmation' dated 08/12/2006 (on a sheet of paper bearing the logo of UBS), signed by one, 'M.Rohnar' and another, 'M. Wilthrich'

of UBS AG, Zurich (Wealth Management Department), which states that HAK, on the basis of telephonic discussion with the office of the Chairman (of UBS Ltd.), is permitted to withdraw a part of his assets (USD 6 Billion) deposited with UBS Ltd., i.e., out of the total deposit of USD 8,000,453,000 (8 Billion), and invest it in any manner he chooses to. The balance USD 2 Billion shall remain bound with UBS Ltd. till 15/01/2007, after which HAK can pursue any mode of investment or deposit, wherever and whenever he chooses to. Pages 1 and 5 of the said set are the statement of accounts, again, on the letter head of the UBS, in the name of Hassan Ali Khan, issued under the signature of M. Wilthrich, for and on behalf of UBS Ltd., stating the balance on two value dates, as under:

Date: 31.08.2006 Amount: USD 6,620,575,431.00
Date: 02.11.2006 Amount: USD 7,780,330,548.00

The amount of USD 8 Billion came to be added in, and confirmed for, assessment - the assessee denying any knowledge of the same, or of any bank account with UBS AG, much less, balance therein; rather, suggesting of documents being planted at his residence, with some malicious intent.

106. We have heard the party before us, and perused the material on record.

The assessee's denial of any account or association with UBS Ltd., or of the documents found being planted, remain, at best, allegations, without basis, unmindful and oblivious of the fact that these were found in search, and from his own residence. Further, PA, in his sworn statement u/s. 132(4) dated 06/01/2007, on being asked about the original documents, stated that these documents were found from the very same premises (i.e., the assessee's Pune residence), and that he left them there after scanning the papers. The additional evidence produced by the Revenue and admitted by us, however, includes a letter dated 18/12/2013 issued to CBDT by its Swiss counterpart under Article 26 of DTA IN-CH dated

02/11/1994 (at pages 5,6). It, stated to be in response to a request by the Ministry of Finance, GOI dated 19/12/2011 regarding Hassan Ali Khan, clearly states that of the 404 pages provided (by GOI), 403 are true, i.e., except the letter dated 08/12/2006, enclosing a copy thereof as Annexure 'F' thereto, and which is the very same letter as page 6 (of Bundle 1/Annexure A), i.e., the Confirmation dated 8/12/2006 supra. It states, on the basis of precisions issued by UBS AG, that there was, at no time, a phone conversation between HAK and its' Chairman's office; that the said letter was never written or signed by any employee of UBS AG; that at no time the amount of USD 6 billion transferred to any account in the name of HAK.

Our first observation in the matter is that both the assessee and PA have issued evasive replies, which are mutually inconsistent, if not contradictory, so that either of them, or perhaps even both of them, are not speaking the truth, or wholly or the whole truth. While the assessee denies any knowledge of the same, PA states that the original documents, which were scanned by him, were found from the assessee's Pune residence, where he was admittedly staying at the time of search. *The scanned copies have not come out of nowhere.* The PA's statement could thus as well be true. *And how is it that the assessee is not aware of the said documents (stated to be found from his residence*), whose statement thus lacks any credibility. *Then, where did the original documents disappear*? Further, PA would have scanned the documents only finding the same important and relevant. PA was representing the assessee to the outside world, engaged for promoting his business interests internationally. This could only be on the basis of investible resources with HAK, toward which are all the three documents (scanned copies) found from the PA's laptop. Reference here may be made to the assessee's notarized statement dated 30/06/2003, stating of visiting Zurich in Feb., 2001, after his acquittal in a case in India, and also in April, 2001, whereat he expressed his desire to invest in

hotel projects in Switzerland, which PA promised to search; the two entering into a consulting agreement (dated April 5, 2001). Reference is also made to bill dated 08/2006 for USD 16 lac, by PA on HAK, as well as letter dated 16/9/2002 issued toward commission for USD 68.5 M, for which amount TI was also found, which find discussion at paras 22, 30 and 104 of this order.

Now, coming to the communication dated 18/12/2013 by Swiss authorities to CBDT, stating that the letter dated 08/12/2006 was not written by any of the employees of UBS AG. We find it odd that UBS AG issues such a disclaimer without, at the same time, stating that the signatures of 'Marcel Rohnar/M.Rohnar' and 'M. Wilthrich', both of whom ostensibly signed the confirmation dated 08/12/2006, are not their signatures, or that their signatures are forged. Or that these two persons were not in employment of UBS Ltd. at the relevant time, or even that they were not competent, or authorized, to issue such a confirmation. It does not even state that the assessee had no account with UBS AG/UBS Ltd., i.e., as on 08/12/2006 (or 02/11/2006 or 31.8.2006). The disclaimer is clearly not complete, but open ended. We leave it at that.

Two documents, purportedly signed by 'M. Wilthrich', for and on behalf of UBS Ltd., being statements of account (of HAK) as on 31/8/2006 and 2/11/2006, also form part of the scanned documents, three in number. It is notable that PA came to India in October, 2006, and was admittedly residing at the assessee's Pune residence since. Surely, and in any case presumably, they were discussing not just the assessee's dues to PA, but further plans as well. The two dates are for the same period, and perilously close to the date of the confirmation (08/12/2006). *Then, again, are these two statements among the 403 documents given by CBDT to its Swiss counterpart under DTAA for verification, all of which have been found true (& genuine)*. It is not clear. Assuming that these were not so given, the million dollar question is: Why not? Two, the account particulars being withheld, by UBS

Ltd. in each of these three documents, it is not clear if the two pertain, as it appears to be, the same account. Only the assessee (or UBS AG) could tell as to which account/s the same pertain to. *Why, where not so, was the identification of the account/s not sought,* as appears to be the case, as the Revenue would have most certainly highlighted this aspect otherwise. This is very surprising, considering the criticality or the extreme significance of the said information, both in context of the assessment under the Act as well as the ongoing investigation by ED. From the tax point of view though, the balance in the assessee's account/s with UBS AG, even if its' number/s is not specified, is sufficient to attract the deeming fiction of assessment as income where not satisfactorily explained as to its nature and source.

We have already found the assessee's case as *sans* any explanation, being confined to a total denial. The same is not only at cross with that of his close associate (PA), camping at his residence, but also completely out of sync with the obtaining facts and circumstances of the case, including his own statement dated 30/06/2003 supra; his conduct, including travel to and camping at, among others, London, Dubai, Zurich, etc.; opening of bank accounts with UBS AG, and locker with Barclays Bank PLC, dealing with Credit Lyonnais, Bank Sarasin. et. al. over the past few years (since 2001) – all of which is abundantly documented and evidenced on the basis of materials found in search. What for, for instance, PA was staying at his residence, and what was he doing there? *A multitude of such questions arise, all of which get stonewalled by his being in denial mode - clearly a deliberate strategy*.

We, under the circumstances, only consider it fit and appropriate to restore the matter back to the file of the AO, to allow the assessee another opportunity to satisfactorily explain the said documents, lest the inference, as admissible in law, shall follow. Even ignoring the confirmation dated 8/12/2006 in view of the disclaimer by UBS AG - which though does not fully address the issues arising, the

statements of account/s need to be explained, lest the adverse inference in law follows. As indicated earlier, the assessee, either by himself or through the agency of UBS AG, can surely lead and furnish the necessary evidence and the required information. The Revenue has also much to explain, i.e., given the incriminating material found in search, and to which the statutory presumption of s. 292C therefore, applies. It shall be at liberty to seek verification or adduce any material in support or in furtherance of its' case; rather, of the truth of the matter, even as we may clarify that the onus, in view of the documents found, coupled with the provisions of sections 132(4), 132(4A) & 292-C of the Act, is squarely on the assessee. Further, the addition, we may add, is not on account of any transfer - to a HAK account - which is categorically denied (by UBS AG), or to any other, but on account of unexplained balance in the bank account/s, which, again, may relate to one or even two separate account/s with UBS AG/UBS Ltd. We decide accordingly.

107. Ground 25: Transfer Instruction (TI) dated 22.11.2006 favouring S.K. Financial Services, i.e., as the beneficiary, in its' account with Barclays Bank, PLC, New York, for USD 700,000 was found. Inquiries in its respect were made through the FT Division of CBDT, and the assessee show caused in the matter, as also *qua* another TI dated 18.4.2006 for USD 99,965 in favour of the said concern. The two amounts, converted at the relevant rates, were added at the impugned sum of Rs.3,59,47,418/-, which is contested before us; the ld. CIT(A) confirming the assessment in the absence of any improvement in his case – which is in effect blank, by the assessee before him. The assessee's written submissions for the year (WS-7) also do not throw any light in the matter. The Revenue, on the other hand, places reliance on the results of the enquiry moved through its' FT Division, as afore-referred, documents in respect have since been admitted by us as additional

evidence (AE). The letter dated 29.3.2010 is a response by the US Department of Justice in part execution of the request by Ministry of Home Affairs, GOI, made pursuant to Article 7 of the Treaty of Mutual Legal Assistance in criminal matters (pg. 10 of Additional Evidence). Then there is a response dated 22.3.2010 (by Barclays Bank) and letter dated 24.3.2008 by the Department of Treasury, Internal Revenue Service, Washington (pgs. 12 and 23 of Additional Evidence), each with accompanying documents. The information provided is definite, gathered in some cases by issuing subpoena on S. K. Financial Services. These would, however, require being correlated with the TIs found and/or information *qua* which is with the Revenue, and addition for which has been made. The ld. DR would concede during hearing that no such reconciliation has been made, being able to correlate only one transaction for USD 7 lac dated 22.11.2006 (pg. 15 of the AE, from among that validated). Our decision *qua* TIs continues to remain the same (refer, *inter alia*, paras 11-12, 15, 25, 30, 49 & 65 of his order). The assessee shall, in addition, be required to meet the Revenue's case, further fortified, on the basis of the input received, since admitted in evidence by us. We, accordingly, with like directions as for the preceding years, restore the matter back to the file of the A.O. to decide afresh in accordance with the law, issuing definite findings of fact after allowing the assessee an opportunity of being heard. This also decides Ground 26 of this appeal, being *qua* TI dated 21.11.2006 in favour of Ms. Cayennes. As also Ground # 28 as, as conceded to by the ld. DR during hearing, the same is in respect of the same TI, even as there can be no double addition. We note that the ld. CIT(A) himself observes the same (refer paras 58 to 60 of his order), but ascribes it to a mistake by the assessee in filing two grounds of appeal (i.e., for the same addition). The mistake in fact has occurred at the end of the AO, making two additions, the relevant part/s of whose order we have read – the addition being referable only to para 16(ix) of his order and not para 16(vii), so that addition

toward the latter (at sr. no. 25/pg. 33 of the assessment order) is superfluous. The same is accordingly directed for deletion. We decide accordingly.

108. Ground 26: Refer para 107 above.

109. Ground # 27 is, again, in respect of an amount (USD 108,000) transferred to a Swiss Bank official, Remo Maurer (value date: 28/11/2006), converted at the relevant date. The same came to be added in the absence of any specific comment by the assessee. We have also perused the assessee's written submissions in the matter. The same (para K of WS-7), which are common for Grounds 26 to 28, are general, stating that no addition could be made only on the basis of a TI. Remo Maurer, also referred to at para 25 of this order, is confirmed to be, and admittedly, an officer of Bank Credit Suisse, Switzerland. He, as confirmed by the ld. CIT(A) on the basis of internet search, had worked as a Director with Credit Suisse Private Banking (Zurich), and his responsibilities included handling the Indian subcontinent, having in fact lived and worked at Mumbai from 1996 to 1999 (refer page 39 of his order for AY 2003-04). We, therefore, for the reasons stated *qua* different grounds toward additions in respect of TIs at paras 11-12, 15, 25, 49 & 65 of this order, decide likewise for this Ground as well.

110. Ground # 28 refer para 107 of this order.

111. Ground # 29 is toward non-allowance of set off of loss of Rs. 2,77,960/-, claimed by the assessee per his return of income, on account of its non-substantiation. The position continues to be the same before us, with the assessee's written submissions being silent in the matter, even as the ld. CIT(A) confirmed the disallowance stating that the assessee himself claims to have not

incurred any loss. Clearly, therefore, the assessee's claim is unsupported by any evidence, and is accordingly dismissed. We decide accordingly.

112. Ground # 30 is toward unexplained investment on horses, at Rs. 13 lacs, i.e., as found purchased by him during the year, valuing the same at Rs. 1 lac each, i.e., on the basis of field enquiries, as for the earlier years (para 18 of the assessment order). No affective rebuttal being furnished by the assessee, the same came to be confirmed by the ld. CIT(A), finding the price reasonable with reference to the entries made in the assessee's books (for the purchase of horses as reflected therein). The assessee has not denied the purchase of the stated horses, specific information on which has been gathered by the Revenue, furnishing the date-wise detail along with the name of horses. The assessee's written submissions (para L of WS-7) are vague, not advancing his case in any manner. Accordingly, as for the earlier years, we confirm the addition. We decide accordingly.

113. Ground # 31 is toward the addition for Rs. 91,29,650/- on account of unexplained cash found in search. The same was found from the assessee's Pune (Rs. 2,36,650/-) and Mumbai (Rs. 88,93,000/-) residences; the assessee himself admitting, vide statement u/s. 131 dated 27/02/2007, the same to be unaccounted (refer para 19 of the assessment order). The assessee's claim before the ld. CIT(A) that cash had been accounted for, was found by him as unverifiable. In fact, the assessee had deposited Rs. 45 lacs as advance-tax on 05/01/2007, i.e., the very day the assessee was searched, making the cash-book, as furnished, doubtful. Aggrieved, the assessee is in second appeal.

114. We have heard the party before us, and perused the material on record, including the assessee's written submissions (para M of WS-7). The assessee continues to maintain of the cash being accounted. The assessee is not maintaining

any books of account, i.e., regular, nor were any, for any year, found during search. The same also explains the assessee's admission on oath on 27/02/2007 (supra). The books of account have been prepared only subsequently, to account for the admitted income/s and avail credit for the corresponding cash. The Revenue having seized cash at Rs. 90.29 lacs (of the total Rs. 91.30 lacs found), what, we wonder, is the source of advance-tax deposited on the very same day. There is no reference to the cash-book, considered doubtful by the ld. CIT(A), by the AO, before whom, it appears, the same had not been produced. Our only concern is that the addition for the admitted cash is made, and that there is no double addition, thereby addressing the concerns of both the sides. The AO shall verify the assessee's claims in the matter, on the basis of verifiable cash flows. As afore-stated, the inflows and outflows for the income/s & expenditure, stated on an annualized basis (viz. horse racing income, household expenditure, etc.), be reckoned uniformly (proportionately) over the year, at each month-end, and confirm the addition on that basis, i.e., for the shortfall/s during the year, retaining the cash as admitted as on 31/3/2007, the year-end. We may here also add that cash to the extent of Rs. 5 lacs has been confirmed for addition for A.Y. 2000-01 vide our order for that year (in ITA No. 3726/Mum/2009 dtd. 09/12/2015). We decide accordingly.

115. Ground # 32 is toward unexplained investment in branded, luxury watches, at Rs. 19.97 lacs, being in fact admitted by the assessee per his statement u/s. 131 dated 27/02/2007 (refer para 20 of assessment order). The assessee before the ld. CIT(A) produced a reconciliation, re-produced at para 69 of the impugned order. Per the same, the assessee challenges the valuation of carterier watches, claiming a difference at Rs. 2.90 lacs between his valuation and that by the Revenue. The balance Rs. 17.07 lacs is stated to be in agreement with the balance in the relevant

account (Watches) as on 31.03.2007 as per his books of account. The assessee's claim being found unsupported by evidence, the addition was confirmed, so that he is in second appeal.

116. We have heard the party before us, and perused the material on record. Firstly, it is the balance in account as on 05/01/2007, and not on 31/03/2007, that is relevant. Two, the assessee's claim/s *qua* valuation is unsupported by any material on record, even as the reflection in accounts only implies an admission. Watches, to the extent of Rs. 11 lacs have however already been brought to tax for A.Y. 2000-01, and confirmed by us (refer para 8 in ITA No. 3726/Mum/2009 dated 09/12/2015). We observe no valuation difference *qua* those watches, stated separately in the reconciliation statement. We, accordingly, confirm the addition for the balance Rs. 8.97 lacs (19.97-11.00), and the assessee gets part relief.

117. Ground # 33 is in respect of an addition toward gift of Rs. 14 lac by the assessee to his son, Syed Mohammed Sameer Uddin Ali Khan, at Hyderabad, who deposed u/s.131 on 08/1/2007 of his father, the assessee, having transferred the said amount to his savings bank account (# 561067) with ABN Amro Bank on 21/12/2006 for purchase of a car (Honda Civic). The assessee, vide his sworn statements dated 26/4/2007 and 01/5/2007, confirmed the same, stating to have telex transferred the sum to his son out of his horse race winnings. Contesting the addition so made in first appeal, the assessee claimed the amount to have been duly reflected in his books of account, which was found unsubstantiated by the ld. CIT(A), so that the assessee is in second appeal.

118. We have heard the party before us, and perused the material on record. The transfer of the impugned sum by the assessee to his son in Dec., 2006 is admitted.

The only question is if the same is already accounted for by the assessee from his returned income for the year, as claimed, or not. We have already restored the matter in respect of such claim *qua* admitted incomes to the file of the AO, before whom the cash-book was not produced, for verification of the assessee's claims and a decision consistent with his findings (refer para 114 of this order). We decide accordingly.

119. Ground # 34 is in respect of a Mercedez Car (Regd. No. MH 12BP 7860). The same was purchased by the assessee in Feb., 2003 for Rs. 26.84 lacs, and stated to have been given to his wife, RHAK, in mehr; the nikah-nama of their marriage in Dec, 2000 stating the mehr amount at Rs. 21 lacs. The addition *qua* purchase of this car stands discussed and decided vide paras 37-38 of this order. The assessee claims to have sold this car after a couple of years for Rs. 14 lacs, repurchasing it again Nov.-Dec., 2006 for Rs. 10 lacs, which claims were not accepted on account of being un-evidenced, resulting in an addition for Rs. 14 lacs being confirmed in first appeal.

120. We have heard the party before us, and perused the material on record. As we understand, the assessee has claimed credit (by way of cash credit) on account of sale of the subject car for Rs. 14 lacs, and which has been denied by the Revenue. *When was the car sold; to whom; and for what amount*? Then, on what basis the same is claimed to have been repurchased in Nov.-Dec., 2006? The assessee's claims are wholly unsubstantiated, if not also fanciful. How does it, however, result in an addition for Rs. 14 lacs is the question. If cash has been introduced in books, as it appears, during the current year (at Rs. 14 lacs) on account of the said sale, addition u/s. 68 would arise, which shall also fructify on working the cash flow by excluding the cash flows ascribed to the sale and

repurchase of this car. This would in fact also cover the assessee's Ground # 35, which is for Rs. 4 lacs, being on account of purchase of an old Mercedez car, introducing another twist in the story. Once, however, the Revenue rejects the assessee's claim of the sale of the car as unsubstantiated, it cannot, at the same time, add the stated repurchase cost (Rs. 4 lacs). The registration number of this (old) car, stated to be purchased on 31/12/2006, is conspicuous by its absence. The assessee's claim of purchase and sale of these cars is wholly unproved. The AO shall restrict the addition, made at a total of Rs. 18 lacs for both the grounds, to that consistent with his findings, working the cash flow as delineated supra (refer para 114). We decide accordingly.

121. Ground # 35: Refer para 120 above.

122. Ground # 36 is toward unexplained cash credit for Rs. 1 crore. The assessee claims loans for Rs. 1.00 cr., raised by him and his wife, furnishing the list of lenders. The same came to be added and confirmed in view of the same being unproved on the anvil of sec. 68 of the Act, i.e., on the parameters of identity, capacity & genuineness, so that the assessee is in second appeal.

123. We have heard the party before us, and perused the material on record. The assessee's claims are wholly unproved. Even as much as the confirmation from the so called creditors, which are without addresses; PAN, etc., as emphasized by the ld. CIT(A), is not provided. The assessee per his written submissions (para C of WS-7) states of the addition as having been made without any definitive, concrete evidence with the Revenue. The burden of proof; the credit being admitted in assessee's accounts, reflected as sundry loans at Rs. 129 lacs (ref. para 78 of the impugned order), is on the assessee, which has not been at all met. Case law on

s.68 is legion, even as some case law in this respect stands also cited (refer para 65), all of which would apply. We confirm the addition.

124. Ground # 37 relates to an addition for Rs. 12 lacs toward the cost of air travel by the assessee during the year to different foreign locations, information on which was found from his Passport (No. 9884318 dtd. 10/7/2003, valid up to 23/11/2010) (refer para 25 of the assessment order). In appeal, the assessee submitted that the cost of travel to Canada was at one-half of that taken by the AO (at Rs. 1,65,000). The ld. CIT(A) observed the assessee's claim before him, confined to travel to Canada only, as un-evidenced. Aggrieved, the assessee is in second appeal.

125. We have heard the party before us, and perused the material on record. The total addition is for Rs. 17 lacs, the balance Rs. 5 lacs being toward the cost of the stay abroad. The travel itinerary has not been disputed, except for stating of a single visit to Canada, i.e., as against three journeys taken by the AO. The dates (24/9/2006, 03/10/2006 & 15/10/2006) are taken from the assessee's passport only. The same being proximate in time, the AO shall, nevertheless, visit this aspect of the addition again. We state so as if each date represents a one-way journey, an odd number (3) would imply that the assessee did not return back from Canada, and which is admittedly not the case. Again, we observe a different passport number (Z1069986) in the two different pages of Bundle 7/Ann. A (to Panchnama dated 06/1/2007), referred to, inter alia, at para 20, indicating either a dual citizenship or passport, or of one being issued on expiry or in lieu of the other. The assessee's claim of the travel expenditure being borne by KT, who accompanied him on every visit abroad (refer para I of WS-7), is, besides being without any material on record, of no consequence in the absence of any confirmation by KT. In fact, all

that was required in that case was for the assessee to exhibit this on the basis of the accounts of M/s. Travel Hub, which would bear the payments in respect of the assessee's travel by KT or his companies. The cost of travel, being based on information from his regular travel agent, has not been contested for most part, with that *qua* travel to Canada being, again, unsubstantiated. Subject to the AO's verification supra, we confirm the addition u/s. 69C. Further, we also agree that the addition on account of stay abroad is, on the basis of the travel dates and visa period, listed in the assessment order, is reasonable. We decide accordingly.

126. Ground 38 impugns the income of Rs.15 lacs, additionally offered before the Hon'ble Settlement Commission. The assessee's case, as well as that of the Revenue, being the same as far the preceding years, decided per paras 40, 53, and 72 of this order, we find no reason to deviate there-from. Needless to add, the assessee shall be allowed due credit while computing the availability of cash, distributing the additional income uniformly every year. We decide accordingly.

127. Grounds 39 and 40 correspond to Grounds 11 and 12 for A.Y. 2001-02, decided per paras 19 and 20 respectively of this order. Grounds 41 and 42 are general in nature, warranting no separate adjudication.

128. Before parting with our order, we may advert to the assessee's written submissions dated 22.2.2016 (supra), if only to demonstrate our consideration thereof. Per the same, the assessee's counsel has, in the main, reiterated his submissions of instant proceedings being bad in law in-as-much as they stand proceeded with and concluded pending the proceedings under PMLA Act, which are under trial before the sessions court. Reproducing section 71 of the said Act, as under, it is said that the same would have an overriding effect, so that the assessments made would be to no consequence in law, further relying on the decisions in the case of *Gautam Kundu vs.*

*Manoj Kumar, Asst. Director* (AIR 2016 SC 106) and *Janta Jha vs. Asst. Director* (in CRLMC No. 114 of 2011):

> '**71. Act to have overriding effect**
>
> The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.'

The Revenue's counsel, on being confronted therewith, chose to rely on his submissions already made. We find no merit in the said contention, which in fact stands already dealt with at paras 11.2 and 12 of this order. The scope and ambit of the Act and the PML Act are completely different. Income, a word of wide import, is taxable under the Act irrespective of the manner of its earning, and the Act places no premium on the legality thereof, with which it is not concerned. The Hon'ble Courts have, rather, upheld bringing an amount to tax even on the basis of unjust enrichment (refer: *Shree Digvijay Cement Co. Ltd. vs. Union of India* [2003] 259 ITR 705 (SC); *Sinclair Murray & Co. P. Ltd. vs. CIT* [1974] 97 ITR 615 (SC)). Again, where the nature and source of any deposit in the assessee's bank account is not satisfactorily explained, the law deems it as his unexplained income. This is based on the principle of common law jurisprudence, embodied in s. 110 of the Evidence Act, as noted at para 11.5 of the order. The Revenue is not obliged to locate the source of the deposit before (or after) bringing the same to tax. The overriding effect of s. 71 PMLA is undisputed, but the same is with regard to any inconsistency between the provisions of the said Act and the other law. We have already stated of the provisions of the Act and PML Act as operating in different fields. We are also completely unable to understand the relevance of the two cited decisions; the same relating to violations under Companies Act and SEBI Act (in the former case) and Indian Penal Code and Arms Act (in the latter), which are scheduled offences under PMLA. The assessee's written submissions would therefore be to no moment.

129. In the result, the assessee's appeals for all the years are partly allowed and partly allowed for statistical purposes.

*Order pronounced in the open court on February 29, 2016*

| | |
|---|---|
| Sd/- | Sd/- |
| (D. Manmohan) | (Sanjay Arora) |
| उपाध्यक्ष / Vice President | लेखा सदस्य / Accountant Member |

मुंबई Mumbai; दिनांक Dated : 29.02.2016

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/** BY ORDER,

**उप/सहायक पंजीकार** (Dy./Asstt. Registrar)

**आयकर अपीलीय अधिकरण,** मुंबई **/ ITAT, Mumbai**

**Annexure A**

**'MINUTES AND AGREEMENT**

This Agreement has been entered into on this 7th day of August 2001.

between

Mr. Hasan Ali Khan (HAK) presently staying at Ema House, Zurich

And

Mr. K Tapuriah (KT) of 27-B, Camac Street, Kolkata, India in connection with the following

Preamble

Mr. Hasan Ali Khan who owns the two companies namely, Autumn Holdings ltd. and Payson ltd. through them had a business relationship with the Indian companies named below which were and continue to be owned by Mr. K. Tapuriah, in India.

The Indian companies referred to are:

Roberts, McLean and Co. Ltd.,
R. M. Investment and Trading Company Private Ltd. and
Roberts, McLean Services Private Ltd.

On the basis of agreements entered into between the companies named above, HAK's companies and KT's companies were involved in diverse business operations (on a 50:50 basis) mainly in India and had earned substantial profits through this joint venture. The total amount of profits earned by the joint venture during the years 1983 to 1990 amounted to USD 280.54 million. As per the understanding between HAK and KT all the earnings were held in the account managed by HAK.

Now it has been agreed that HAK shall transfer the amount relating to KT's *share of profit of such offshore accounts* as may be nominated by KT.

The fact that the funds did not remain idle and did earn some returns was discussed. After due deliberations it was mutually agreed that a lump-sum of USD 200 million shall be paid to KT by HAK and the same shall be considered as the final settlement. It was agreed that no further claims in respect of interest or otherwise by KT shall be raised or considered.

The said amount of USD 200 million shall be split into 3 parts as follows:

1. USD 100 million relating to Roberts, Mclean and Co. Ltd.
2. USD 65 million relating to R. M. Investment and Trading Company Pvt. Ltd. and
3. USD 35 million relating to Roberts, McLean Services Pvt. Ltd.

HAK assured that payment in respect of this account shall be effected latest by the end of December 2001.

Signed and executed on this 7th day of August 2001, at Dubai

HASAN ALI KHAN K TAPURIAH'

**Annexure B**

'Statement of Account as at 13 March, 2001

| Matter No. | Matter Name | Invoice Number | Invoice Date | Amount | Unbilled Fees | Unbilled costs | Total |
|---|---|---|---|---|---|---|---|
| 0001860 | Payson Company Ltd. Reorganization | 6004846<br>6005359<br>6004845 | 09/10/00<br>17/12/00<br>09/10/00 | 9,076.33<br>503.33<br>4,344.00 | | | 9,076.33<br>503.33<br>4,344.00 |
| 0003690 | Nominee Arrangements | 6005188 | 21/11/00 | 30,025.90 | | | 30,025.90 |
| 0004433 | Al Haseena LLC | 6005189 | 21/11/00 | 37,548.10 | 36,993.00 | 128.40 | 74,541.00 |
| 0005184 | Autumn Holdings | 6005455 | 21/01/01 | 5,320.00 | 9,486.00 | 68.00 | 14,874.00 |
| 0005188 | Appoint Director | 6005454 | 21/01/01 | 3,346.38 | 207.00 | | 3,553.38 |
| 0005195 | Scandinavian Tech | 6005456 | 21/01/01 | 9,746.00 | 4,420.00 | 24.00 | 14,190.00 |

Total to be transferred DHS 151,107.94
Bank Details

Standard Chartered Bank
P.O. Box 999
Dubai
UAE

Account Number 02-2246910-02'

ANNEXURE - C.1

[redacted]

ssan Ali Khan

Akbar Manzil
7-152, Musheerabad
Hyderabad

Camp: London
29th June 2003

Personal & Confidential

Mr. Prabhu Guptara
Director,
Organisational Development
Wolfsberg Executive Development
Centre

8272 Ermatingen

Switzerland

Our Telephone Conversation

Dear Mr. Guptara

With respect to the matter discussed, I would appreciate it very much if you could kindly assist me in clearing up the situation. I would very much like to give you and your organisation this opportunity before I decide to take any drastic steps that could be counter-productive to both of us.

With warm regards,

Yours Truly

Hassan Ali Khan

COPY OF THE SPECIAL JUDGE

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I. VIKRAMAN
Assistant Director
Directorate of Enforcement
Government of India
Mumbai

I hereby certify the genuineness of the signature(s) of HASSAN ALI KHAN holder(s) of Indian passport no(s) Z1069986 which was/were subscribed to this document today in my presence.

London, the 30th day of June 2003

Nicholas Ronald Rathbone Smith
Notary Public of London, England

General Comments

- All Investments made by Dr. Peter Weilly were safe investments with a guarantee of no loss on account of Principal, as assured by Dr. Weilly.
- If money was lent invested by the Bank on behalf of the lender/investor (without their knowledge = client, is this later to be seen as the fault of client?
- Arguments that took place between Dr. Weilly/UBS and Mr. Khan were before the entire problems of the account being held up were made known.

Facts

HAK was recommended to open an account with the UBS in 1982 in order to be able to go about the business of conversion from stones to cash.

He contacted UBS (Reto Hartmann) in Singapore in order to be able to do so and required to have personal recommendation in order to do so.

Since HAK did not, at this stage have anyone that he knew and since Hartmann knew the size of initial payment/deposit, HAK was assured that the UBS would take care of everything at their end.

HAK made an initial payment of of USD 1'500'000.—into an account at UBS-SIN.

Reto Hartmann organized the opening of the account and his superior DR. Peter Weilly only appeared after the initial deposit was made.

The recommendation that was organized by by Dr. Peter Weilly was by Mr. Adnan Khashoggi, whose portfolio was directly handled by DR. Peter Weilly.

A further payment of USD 240'000'000.—was approved by Dr. Peter Weilly and was accepted by Reto Hartmann at the UBS-Sin.

After this transaction Dr. Weilly recommended moving the account to ZRH in 1986, where he could directly manage the portfolio of HAK. Mr. Kashinath Tapuriah who functioned as an advisor to HAK also recommende this.

A problem appeared with the payment of USD 240'000'000.-- because there was a dispute about the goods having not been delivered on time and USD 140'000'000.—of the transaction had to be reversed.

On trying to reverse the transaction the recipient of the USD 140'000'000.—expired without leaving any instructions of transaction details or heirs that would contact HAK.

Until 1992 no problems were raised by UBS and HAK had an internal problem in India where he was unnecessarily implicated in a case by the DRI under and FERA laws which thereby prevented HAK from traveling outside India. The Indian authorities also asked him to deposit his passport. This case was finally disposed of in favour of HAK and he was permitted to travel abroad after his acquital in 2000.

In 1993-1994 Dr. Weilly asked HAK to finance a project of Mr. Khashoggi. This was to the tune of USD 300'000'000.--. It is not known if this was a legitimate transaction and that it would be

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returned under the normal UBS investment conditions or if this was a private loan brokered by Dr. Weilly. HAK was informed about this while he was in India and could not do very much about it. On recommendation of Mr. Kashinath Tapuriah HAK tried to move from UBS to SBC (now defunct after fusing with UBS). This was in 1997.

At that time HAK traveled on an interim Passport issued by the Government of India. He met one of the senior executives in the Private Banking Division of SBC in SIN and opened an account with SBC after discussing the modalities of the same.

During the period HAK did not travel out of India, Dr. Weilly continued handling his portfolio in Switzerland and visited HAK a number of times in India and obtained blank transfer instructions from HAK in order to be able to perform without fear of the Indian authorities getting on to HAK.

Returns were duly booked onto HAK accounts.

During this time Dr. Weilly was required to co-ordinate with SBC-SIN concerning transfer of an amount to tje tune of USD 75'000'000.—from UBS to SBC-SIN.

Dr. Weilly telephonically confirmed to HAK the transfer of USD 75M but the SBC did not confirm receipt. By the time SBC confirmed receipt HAK had already instructed Dr. Weilly to retract the transaction and the USD 75M returned to UBS. This was also confirmed by Dr. Weilly.

During this time the balance in UBS account reached USD 560'000'000.—this figure was confirmed to SBC-SIN by Dr. Weilly in December 1997.

This balance of USD 560M included USD 300M that was paid back to HAK under the condition that HAK would finance Mr. Khashoggi with another USD 500'000'000.—This condition was imposed/conveyed by Dr. Weilly to him.
After receiving the USD 300M back without interest or clear profit, and realizing that Mr. Khashoggi was involved in a line of investment that did no interest him, HAK back peddled on the agreement to finance Mr. Khashoggi with a further USD 500M.

He did this without double-checking about the source of the USD 300M that had arrived into his account since he had no direct means to do so and he had all along relied on the advise of Dr. Weilly.

After this the "Problems" with Dr. Weilly began.

In February 2001 HAK, after his acquittal in the case in India, HAK arrived in Zurich hoping to operate his his account. On this occasion he met Dr. Weilly for the last time. Dr. Weilly informed him about some problems made by UBS and that HAK would be able to operate his account in April 2001. Before this some time in the middle of 2000 Dr. Weilly had asked HAK to finance a sum of USD 20M to one of his friends Mrs. Santosh Golecha of 1 Green Close, London. He even sent this lady to Calcutta to meet HAK, who happened to be there at the time. Dr. Weilly had even taken the trouble of preparing the transfer instructions in respect of the same but HAK was not interested. Dr. Weilly was very upset with HAK for this. This was another matter which made Dr. Weilly vindictive towards HAK.

HAK meets Mr. Philip Anandraj and expressed his desire to invest in hotel properties in Switzerland. PA promises to search and let him know.

In April 2001 HAK again arrives in Zurich and finds out that Dr. Weilly no longer is employed by UBS and that his portfolio manager is Mr. Markus Grossmann.

On demanding to operate his account HAK is informed by Mr. Grossmann that there are still some things to clear up and that this will taken care of very soon.

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Contact is made by HAK with Franz Glanzmann with intentions to purchase Chateu Gutsch in Luceme. Letters of intent are exchanged and Pre-contractual Agreements were signed. *After this a meeting was held in UBS office to discuss the modalities and finalization of the payment schedule. This meeting was held in the presence of UBS officers.*

After a few days HAK is informed that there are certain discrepancies involved with his account and that origins of USD 240'000'000.—have to be accounted for. He is assured that this will take a few days.

After a few days HAK obtains information that USD 300'000'000.—that had arrived from the Chase Manhattan Bank in New York have been tagged with a comment, "Funds from Weapon Sales". Dr. Peter Weilly is supposed to hsve registered this comment. He had earlier threatened HAK with some such suggestion.

A free-for-all begins after this date with demands being made by UBS officials that began with paltry sums of money required to clean up the records to the extent of USD 45'000'000.—being demanded by some employees on behalf of others etc.

HAK goes into deeper problems with financial pressures building up on commitments made but that cannot be kept due to lack of funds, since the account is not operational. The situation until today remains unresolved.

Hassan Ali Khan

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