IN THE INCOME TAX APPELLATE TRIBUNAL "I", BENCH MUMBAI

BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA Nos.138/Mum/2019 to 142/Mum/2019
(**Assessment Years: 2003-04 to 2007-08**)

Mr. Kamal Galani 801, Gym View 16th Road, Khar West Mumbai-400 052	Vs.	ACIT-23(3) Room No.104,1st Floor, Matru Mandir, J.D.Road Tardeo Mumbai -400 007
PAN/GIRNo.AFZPG4292G		
(Appellant)	..	**(Respondent)**

&

ITA Nos.266 & 267/Mum/2019
(**Assessment Years: 2006-07 & 2007-08**)

ACIT-23(3) Room No.104,1st Floor, Matru Mandir, J.D.Road Tardeo Mumbai -400 007	Vs.	Mr. Kamal Galani 801, Gym View 16th Road, Khar West Mumbai-400 052
		PAN/GIRNo.AFZPG4292G
(Appellant)	..	**(Respondent)**

&

ITA Nos.286/Mum/2019 to 289/Mum/2019
(**Assessment Years: 1999-2000 to 2002-03**)

ACIT-23(3) Room No.104,1st Floor, Matru Mandir, J.D.Road Tardeo Mumbai -400 007	Vs.	Mr. Kamal Galani 801, Gym View 16th Road, Khar West Mumbai-400 052
		PAN/GIRNo.AFZPG4292G
(Appellant)	..	**(Respondent)**

&

Cross Objection Nos.273/Mum/2019 to 276/Mum/2019
(Arising out of ITA Nos.286/Mum/2019 to 289/Mum/2019)
(**Assessment Years: 1999-2000 to 2002-03**)

Mr. Kamal Galani 801, Gym View 16th Road, Khar West Mumbai-400 052	Vs.	ACIT-23(3) Room No.104,1st Floor, Matru Mandir, J.D.Road Tardeo Mumbai -400 007
PAN/GIRNo.AFZPG4292G		
(Appellant)	..	**(Respondent)**

Assessee by	Shri. Madhur Agarwal, AR
Revenue by	Shri. Avaneesh Tiwari, JCIT-Sr. DR
Date of Hearing	**04/08/2020**
Date of Pronouncement	**10/09/2020**

आदेश / O R D E R

PER BENCH:

This bunch of cross appeals filed by the assessee, as well as the revenue and cross objections filed by the assessee for the Asst.Years 1999-2000 to 2002-2003 are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)–34, Mumbai, dated 25/10/2018 and pertains to Assessment Years 1999-2000 to 2007-08. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are being disposed-off by this consolidated order.

2. The assessee has more or less filed common grounds of appeal for all Asst.Years. Therefore, for the sake of brevity, grounds of appeals filed for Asst.Year 2004-05 in ITA No.139/Mum/2009 are reproduced as under:-

1) On the facts and circumstances of the case and in law, the assessment order date 25/03/2015, passed under section 147 read with section 144of the Act is invalid and bad in law as the following jurisdictional conditions required to assume jurisdiction under section 147 were not fulfilled by the AO:

Existence of reason to believe;
Sanction of appropriate authority; and
Notice issued beyond the expiry of period of limitation.

2) On the facts and circumstances of the case, the order passed by the AO and as confirmed by CIT(A), is bad in law and contrary to the principals of natural justice, as adequate opportunity of being heard was not provided to the Appellant. The AO further erred in invoking the provisions of section 144 of the Act.

3) On the facts and circumstances of the case, the learned AO as well as the Commissioner of Income Tax (Appeals) has erred in Confirming the following factual assumptions:

a)The AO has incorrectly assumed that the Appellant is the owner of the bank account;
b) The AO has erred in assuming that an investment of USD 3 million was made in order to open the account;
c) The alleged investment of USD 3 million was made out of income which originated from income chargeable to tax, but not disclosed in India; and
d)That the bank had paid interest of 17 per cent per annum.
The Appellant submits that additions of Rs. 2,34,35,316/- made based on such incorrect factual assumptions must be deleted.

4) The AO as well as CIT(A) has erred in relying on the base notes, without bring any cogent material on record to establish the authenticity or the veracity of the base notes. The AO has further erred in placing reliance on incomplete information extracted from the HSBC Private Bank website to justify the authenticity of the base note.

5) Without prejudice to the above, the AO as well as the CIT(A) erred in confirming the additions contrary to the transactions referred to in the base note, which reflects that transactions had been entered into only between November 2005 and February 2007.

3. The revenue, has more or less filed common grounds of appeal for all Asst.Years. Therefore, for the sake of brevity grounds of appeals filed for Asst.Year 1999-2000 in ITA No.286/Mum/2009 is reproduced as under:-

> *1) "On the facts and in the circumstances of the case and in law, the ld. CIT(A) has erred in deleting the addition made by the AO of the unaccounted income, on the ground that the assessee is an Non - resident Indian during the relevant, previous year without appreciating the fact that income accruing or arising or deemed to accrue or arise to him in India during the relevant previous year is assessable in India as per provisions of section 5(2)(b) of the income tax Act."*
> *2) "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."*
> *3) "The appellant craves leave to add, delete, alter, amend and modify any or all grounds of appeal."*

4. The brief facts of the case extracted from ITA No.139/Mum/2018 for Asst.Year 2004-05 are that the assessee is a Indian Citizen and was resident of United Arab Emirates (UAE) from the year 1979-1991 and thereafter working at Vienna, Australia. The assessee was a non resident in India up to Asst.Year 1999-2000 under the provisions of the I.T.Act, 1961. In the year 2001, the assessee came back to India for settling in India. Since, then the assessee has been filing his return of income in India from Asst.Year 2002-03 onwards. The assessment has been reopened u/s 147 of the I.T.Act, 1961 by issue of notice u/s 148 of the Act, dated 30/04/2013 for the reasons recorded, as per which information received from the Government of France under the convention of avoidance of

double taxation and the prevention of Fiscal Evasion with respect to taxes on Income and on capital dated 28/09/1992. The said information received was regarding bank accounts in HSBC Private Bank (Suisse), SA, Geneva, Switzerland held by certain persons in India. The information received from the French Government in the form of summary sheets (hereinafter referred to as the Base Document) reveals that the assessee is opened a bank account in HSBC Bank, Geneva. The information further revealed that the assesse was a beneficiary of an account opened under code BUP 5090171854 with HSBC Bank. The account had been opened under client name "Dipak Varandmal Galani and/or Kamal Varandmal Galani bearing Account Number 509-4077262. The said account was opened on 17/04/1998 and was active. As per the Base Document, the account had a maximum credit balance of USD 9,40,191/- in November 2015, a balance of USD 4,97,198 as on December, 2005 and USD 3,17,080 in September, 2006. Based on said information, the Ld. AO has recorded reasons for reopening of the assessment, on the ground that income chargeable to tax had been escaped assessment within the meaning of section 147 of the I.T.Act, 1961 due to non disclosure of existence of bank account in HSBC bank, Geneva. Accordingly, issued notice u/s 148 and called upon the assessee to file return of income. In

response, the assesse vide letter dated 20/01/2014 stated that the return of income filed on 01/11/2004 may be treated as return filed in response to notice u/s 148 of the I.T.Act, 1961. Simultaneously, the assessee has requested for reasons for reopening of the assessment and the same was supplied to the assessee. The assessee has filed its objections for reopening of the assessment and the same has been disposed-off by the Ld. AO.

5. The case has been selected for scrutiny and during the course of assessment proceedings the Ld. AO has examined the assessee personally in the statement recorded u/s 131 on 22/06/2013. During the course of assessment proceedings, the assessee was specifically asked to produce complete statement of bank accounts with HSBC bank and was also asked to explain as to why, the amount invested of USD 3 Million for opening the bank accounts and income from the invested amount should not treated as undisclosed income and taxed accordingly in the relevant assessment years. Further, the assesee was provided with a copy of the Base Document/information sheets received from the French Government and snapshots of the relevant web pages of the HSBC bank. The assessee was once again issued final notice u/s 142(1), dated 12/02/2015 and asked to furnish

complete statement of accounts duly certified by the HSBC Pvt.Bank, Geneva and other relevant details for opening account. In response to the above notice, the assessee furnished copy of his passport and that of his brother, Mr. Dipak Galani and a copy of letter, dated 09/03/2015 of Dipak V. Galani addressed to the Ld. AO and submitted that bank account was opened by his brother Mr.Dipak V. Galani with the British Bank of the Middle East in the year 1998, which was subsequently taken over by HSBC Pvt. Bank (Suisse). The assessee, further stated that bank account was opened by his brother and all rights, interest in the said bank account is completely belongs to his brother and his name was included as a second account holder as a respect to his elder brother. The assessee further stated that his brother Mr.Dipak V.Galani has owned up the account and stated that account is opened by him in the year 1998 and his brother name was included as a mark of respect and further, his brother do not have any right in bank account.

6. The Ld. AO after considering relevant submissions of the assessee and also by taken note of base documents observed that although, the assessee claims that account is belongs to his brother, but failed to file any evidences to prove that he was not the owner of funds/assets held in bank account. The Ld. AO,

further noted that instead of furnishing complete details of bank accounts, the assessee merely filed a letter from his brother to support his claim. Therefore, he opined that in absence of any corroborative evidences to prove his claim that account is belongs to his brother, an adverse inference could be drawn against the assessee, if he had suppressed the documents and evidence, which was exclusively within his knowledge. Therefore by taking note of various facts and also, by taking support from certain judicial precedents held that by virtue of a second holder in the bank account, the assessee is vested with rights/obligations connected with the accounts and therefore, it is incorrect on the part of the assessee to claim that he is not owner of the bank account. Accordingly, he was of the opinion that the assessee is beneficial owner of the bank account opened a HSBC Bank account, Geneva. The Ld. AO, further noted that by taking note of requirement of opening a bank account and minimum deposits needs to be kept, which is as per the Ld. AO is at USD 3 Million, he has made additions of USD 3 Million for Asst.Year 1999-2000 and thereafter, estimated return of investments @ 17% P.A, year on year for subsequent Asst.Years and added to the total income. The relevant findings of the Ld. AO are as under:-

15. In sum, the information received contained address/nationality, country of domicile as that of the assessee as mentioned in his Indian Passport. The assessee was duty provided with the copy of the document received containing the above information. As per the information contained in the said document the assessee was the account holder of the numbered account with HSBC Private (Suise) Bank, Geneva. In the return of income the assessee had neither offered any income with reference to the bank account nor disclosed any details to the effect that the he was a beneficiary of the said account. Under the General Conditions of the Bank when two or more persons are holders of an account, each of the account holders is vested with the totality of the rights and obligations connected with the account; that each of the account holders is authorized to accomplish alone or jointly in accordance with relevant power of signature all transactions without any limitation whatsoever; that the other account holder is jointly and severally bound thereby and designated attorney legally binds all the account holders; and that if the Account several accounts at one or more branches of the Bank these accounts are deemed to constitute one entity and whatever the currency and the heading of the accounts may be the Bank may combine the balances in these accounts individually or set them off wholly or in part after effecting the necessary conversions into the currency of its choice

15.2 Thus in terms of the above condition of the Bank as the account holder the assessee is vested with the totality of the rights and obligations connected with the Numbered account number 509-4077262; is authorized to accomplish alone or jointly in accordance with relevant power of signature all transactions through the a;,-;^mentioned numbered account without any limitation whatsoever; and all the current accounts connected with that account are deemed to constitute one entity and whatever the currency and the name or the heading of the accounts might be the Bank combined the balances in these accounts individually or set them off wholly or in part after effecting the necessary conversions into the currency of its choice and so reflected as maximum balance between November 2005 to February 2007 in the Base Document.*

15.3 I am, therefore, constrained to observe that despite the rights and obligations cast on him as the owner of the Numbered Client Account 4077262 the assessee has not co-operated and remained evasive so far. The assessee has chosen to defy the request to produce statements of accounts to buttress his case. His claim of having no connection with the above account carries no weight without corroborative materials. The assessee has been consistently defiant in complying with the legal requirement, The assessee has failed to comply with full terms of the notices issued u/s 142(1) from time to time. I am left with no option but to exercise powers u/s 144 income tax Act of resorting to best judgment and complete the assessment based on the materials available on record.

QUNTIFICATION OF INCOME

16. In view of the discussions made above, I hold that that the assessee could open the bank account with HSBC Bank on 17-04-1998 only after making deposit of not less than USD 3 Million. It is seen that the Base

Document shows balance in the "bank account from 2005-06 to 2006-07 relevant to A.Yrs.2006-07 to 2007-08. Therefore, I hold that the assessee has maintained the initial deposit of USD 3 million throughout 1998-99 to 2004-05 relevant to A.Yrs 1999-00 to 2005-06. I observe that the there has been accretion to value of investments made in various classes of assets as revealed from the details of such investments found in the Annexure to the Base Document scanned supra. The funds were deployed in various assets like loans & advances, bonds and fiduciary deposits. They show the return on investment in 5 months is almost 7.1%. If the same is annualized the annual return comes to 17%. In the absence of any details forthcoming in this regard in me assessment year under consideration, a return is estimated @ 17% annually on investment made by the assessee on USD 3 Million. This works out to USD Rs. 45.31per USD] for 2003-04 relevant to assessment year under consideration. Therefore, Rs.2,31,08,100/- is added in the income of the assesee for the year under consideration being income earned on his investment of USD 3 Million with the HSBC Bank Geneva.

(Addition:Rs.2,31,08,100)

7. Being aggrieved by the assessment order, the assesee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assesee has challenged reopening of assessment on various grounds, including validity of reasons recorded for reopening of assessment. The assessee has also, challenged additions made by the Ld. AO towards bank account in the name of assessee and is brother and estimation of annual returns on said investments @17%. During the course of appellate proceedings, the assessee has filed various additional evidences to justify his stands that account is not belongs to him, nor does he have any interest in the bank account. During the course of appellate proceedings, the Ld.CIT (A) has called for remand report from the Ld. AO on various averments made by the assessee. In response, the Ld. AO vide remand report, dated 13/03/2018 and

17/08/2018 has commented upon various averments made by the assessee on ownership of bank account, as well as return on investments estimated @17% on total initial deposits stated to be made by the assessee. The Ld.CIT(A) after considering relevant submissions of the assessee and also taken note of remand report of the Ld. AO rejected legal grounds taken by the assessee challenging validity of reassessment proceedings, on the ground that the Ld. AO has initiated and completed reassessment proceedings as per law. The relevant findings of the Ld.CIT(A) are as under:-

v. Conclusion on the grounds related to re-opening of assessment:

i I have considered the submission of the Appellant and do not find merit in the same. The appellant has stated that the reasons to form the belief about income escaping assessment had not been recorded by the AO, who had issued notice u/s 148, but instead the reasons were furnished to the Appellant under the seal and signature of the new incumbent. On perusal of all the facts available on record, it appears that this issue is without basis, and the reasons have been duly recorded by the concerned assessing officer, and there appears to be no flaw in the same. Further the objection of Appellant that the copy of snapshot of web page, which is part of reasons have not been furnished to him, is also incorrect as the same has been furnished and forms part of the assessment orders for AY 2004-05 to 2006-07. There is no merit in the appellant's submissions and the same are therefore rejected.

ii The appellant's challenge to the authenticity of the Base Note is baseless since the same has been received from the Government of France under the convention for Avoidance of Double Taxation and Prevention of Fiscal Evasion dated' 28th September, 1992. The authenticity and veracity stand established. In any case the appellant has himself admitted to holding the account with his brother, which establishes the credibility of the information available with the AO. Further the argument of the appellant that data in summary sheets are for the period November 2005 to February 2007 and therefore reasons recorded for income escaping assessment for years other than the period November 2005 to February 2007 is also not acceptable. The Base Note clearly mentions the date of opening account with HSBC Bank as 17-04-1998 and the appellant also admits the same. Consequently all the years beginning 17/04/1998 fall within the purview of jurisdiction for the purpose of forming reason to believe for income escaping assessment.

iii. The appellant has further urged that the reliance placed by the assessing officer[1] on .the information contained in the web site of HSBC Private Bank, regarding minimum opening balance of USD 3 Million, is incorrect. However, this information has been used only to form a belief that income beyond the thresh hold level has escaped assessment. Similarly the rate of return at 17% is also an estimate to ascertain the likely quantum of income escaping escapement above the threshold and not the determination of actual income, which is the subject matter of the assessment proceedings to be undertaken subsequently.

iv. The arguments of the appellant regarding incorrect residential status being mentioned for AYrs. 1999-2000, 2000-01, 2001-02, 2002-03 and non obtaining of sanction from the appropriate authority i.e. the Principal CIT, are also delving upon mere technicalities to take the attention off, the main issue on hand. The same are liable to be rejected. The contention that notice u/s 148 is issued beyond period of limitation also fails. The provisions of section 149 clearly states that no notice under section 148 of the act shall be issued for an assessment year if:

a) four years have elapsed from the end of the assessment year; or

b) if four years but not more than six years have elapsed from the end of

the relevant assessment year unless the income chargeable to .tax which has escaped assessment amounts to or is likely to amount to Rs. 1 lakh or more for that year; or

c) if four years, but not more than 16 years, have elapsed from the end of relevant assessment your unless the income in relation to any asset (including financial interest in any entity) located outside India, chargeable to tax, has escaped assessment."

v) In the instant case the appellant is found to be owner of a Bank account / asset outside India and hence the extended time limit of 16 years would apply. The notice u/s 148 are clearly within the time limit of 16 years. Further, it is also to be kept in mind that the AO is not required to make a foolproof case for reopening of the assessment. Once, there are prima-facie reasons to believe that the income has escaped assessment, it is sufficient to invoke the provisions for reopening the assessment. In the present case, all these criteria have been fulfilled.

vi. After due application of rind, jurisdictional Addl. CIT and the AO had reasons to believe that income of more than Rs, 1 lakh has escaped assessment during the year due to failure on the part of the appellant to furnish fully and truly all facts in the return of income for respective years.

vii It is pertinent to mention here that nothing could be construed from the perusal of return of Income that full disclosure of material fact has been furnished. The appellant has not disclosed the foreign Bank account nor disclosed the income earned from holding such bank account.

viii. It is worth noting that the Full Bench of Hon'ble High Court of Delhi in the case of CIT- ***VI,*** *New* ***Delhi Vs. Usha International Ltd. (2O12) 25 taxmann.com 200 ((Delhi) (FB)*** *has held that the reasons must be relevant to subjective opinion and not conclusive findings. The relevant extract is reproduced hereunder :*

"As recorded above, the reasons recorded or the documents available must show nexus that in fact they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income. At the same time, it is not the requirement that the Assessing Officer should have finally ascertained escapement of income by recording conclusive findings. The final ascertainment takes place when the final or reassessment order is passed. It is enough if the Assessing Officer can show tentatively or prima facie on the basis of the reasons recorded and with reference to the documents available on record that income has escaped assessment."

ix. The above decision of the Hon'ble High Court of Delhi has been authoritative in saying that there should be nexus in the material available, which should be germane and relevant to form a subjective opinion. Besides, it also clearly states, that it is enough to show tentatively or prima facie that income has escaped assessment. A plain reading of the reasons recorded by the assessing officer, shows that there was enough material before him, to form a prima facie belief that income beyond the threshold level had escaped assessment. He was not required to arrive at a conclusive finding of fact regarding escapement of income. '

x The Hon'ble Supreme Court in ***ACIT*** *V/s* ***Rajesh Jhaveri Stock Brokers Put. Ltd. (291 ITR 500 at 511)*** *while dealing with the question regarding the validity of issue of notice under section 148 of the Act has held as under:*

"The word 'reason.' in the phrase 'reason to believe' would mean cause or justification, if the A.O. has cause or justification to know or suppose that income had escaped assessment, it can be said to have reason to believe that an income had escaped assessment. The expression cannot be read to mean that the A.O. should have finally ascertained the fact by legal evidence or conclusion. The function of the A.O. is to administer the statute with, solicitude for the public exchequer with an inbuilt idea of fairness to taxpayers. As observed by the Supreme Court in Central Provinces Manganese Ore Co. Ltd. Vs. ITO [1991] 191 ITR 662 (59 Taxman 17), for initiation of action under section , 147(a) (as the provision stood at the relevant time) fulfillment of the two requisite conditions in that regard is essential. At that stage, the final outcome of the proceeding is not relevant. In other words, at the initiation stage, what is required is 'reason to believe', but not the established fact of escapement of income. At the stage of issue of notice the question is whether there was relevant material on which a reasonable person could have formed a requsiite belief whether the materials would conclusively prove the escapement is not the concern at that stage. This is so because the formation of belief by the A.O. is within the realm of subjective satisfaction (see ITO v. selected Dalurhand Coal Co. (P) Ltd. (1996) 217 ITR 597 (SC) Raymond Woollen Mills Ltd.v. ITO (1999) 236 ITR 34 (SC)"

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xi. As can be seen from the above, the settled legal position, at the stage of issue of notice under section 148 of the Act is that, what is required on the part of assessing officer is the existence of 'reasonable belief and not conclusive evidence to support escapement of income. Notwithstanding anything stated above, it is the prerogative of the AO/Revenue to reopen the assessment if the AO has found in the course of time that certain amounts which should have been brought to tax have ,

*escaped assessment. These powers have been clearly provided u/s. 149 r.w.s, 151 of the 'Act. As per these provisions, what the AO' is supposed to see is whether there is enough material to form a prima facie belief that income has escaped assessment, and whether it is within four years or beyond four years of the relevant assessment year, and further, whether the original assessment had been carried out u/s 143(1) or 143(3} so as to -of*1* take approval from the appropriate senior officer as required. Once the AO tote* fulfills these requirements he can then reopen the assessment by recording his reasons for forming a belief regarding escapement of income. The AO will be acting within the powers conferred on him, to reopen any assessment, and his action in such situation cannot be subject to challenge.*

*xii. Reliance is further placed on the decision in the case of **Mohan Manoj Dhupelia vs. Dy.CIT, Central Circle (52 tajcrnctnn.com 146)** and the decision in the case of **Ambrish Manoj Dhupelia (87 taxmaim.com 195)** wherein it is held that the **assessee** being the beneficial owner of deposits in foreign bank accounts failed to disclose interest from said deposits in its. return of income, reopening of assessment in case **of assessee** was justified.*

xiii. In view of the above, the grounds of appeal challenging the invoking of jurisdiction u/s 147, are rejected.

8. As regards, additions made by the Ld. AO towards balance in bank account and return on investments for subsequent years, the Ld.CIT(A) observed that as per the facts brought on record by the Ld. AO, the assessee was an account holder along with his brother Mr. Dipak V.Galani. Although, the assessee claims that account belongs to his brother, but evidences brought on record by the Ld. AO clearly proves that the assessee is a joint holder of bank account and he is having a beneficial interest in said account. Once, the fact of having account jointly with his brother is established, the onus clearly shifts on the assessee that he was not the actual owner. Since, the assesee has not brought on record any evidences to prove his claim, there is no error in the findings recorded by the Ld.

AO to conclude that the assessee is the beneficial owner of the bank account and accordingly, the additions made in the hands of the assessee is in accordance with law. As regards, taxability of initial deposits of 3 US Million Dollars, the Ld.CIT(A) observed that since appellant is NRI and NOR, there is no question of taxability of income, which was accrued or arisen outside India and thus additions made by the Ld. AO for the Asst.Year 1999-2000 on account of initial deposits of USD 3 Million and return on investments @17% for Asst.Year 2001-02 & 2002-03 are incorrect and hence deleted. As regards additions made for Asst.Year 2003-04 to 2007-08 towards return on investments @17% PA, the Ld.CIT(A) observed that estimating return on investments @17% PA is reasonable, because the assessee has not filed any evidences despite various opportunities are given in making the Ld. AO to ascertain the correct rate of return. Therefore, he opined that the assessee has clearly failed to discharge onus cast upon by brining on record to substantiate its claims that he had not earned 17% return of income on investments. Therefore, he opined that there is no reason to deviate from the findings of the Ld. AO and hold that the additions made on return on investments for Asst.Year 2003-04 to Asst.Year 2007-08 is in accordance with law. As regards, additions towards peak credit balance lying in bank account for

Asst.Year 2006-07 and 2007-08, the Ld.CIT(A) noted that the Ld. AO has not brought on record, which would even remotely suggest that the entire balance of USD 3 millions and interest earned there on was appropriated on a date prior to November, 2005, thus a balance of USD 9,40,191 being less than USD 3 Million cannot be separately added as peak credit in the hands of the assessee. Therefore, he opined that an addition made towards peak balance is uncalled for and un-sustainable. The relevant findings of the Ld.CIT(A) are as under;-

iv. Conclusion on the initial deposit

I have considered the submissions made by the appellant. The assessment carried out and the contentions raised by the appellant raise two issues for adjudication.

a. What was the initial amount deposited at the time of opening of account on 17.04.1998.

b. Whether such amount should be taxed in the hands of the appellant for the assessment year 1999-2000.

a. Initial amount deposited at the time of opening of account

i. The first issue is regarding the validity of the evidence available with the assessing officer to arrive at the view that the initial deposit must have been USD 3 Million. The assessing officer has relied on the information contained in the web site of HSBC Private Bank in the year 2013, to arrive at the finding about initial deposit of USD 3 Million. He has also referred to the balances maintained by two other assessees, namely Ms Janki Mukhi, and Mr Kanu Bhai Patel which exceed the figure of USD 3 Million.

ii. On the other hand the appellant has questioned the same on the grounds that the said information about USD 3 Million contained in the web site of the bank pertains to the year 2013, and that it has since been raised to USD 5 Million. The account was opened on 17.04.1998, and that it was opened with the British Bank of Middle East. The HSBC Private bank came into existence in the Year 1999, i.e subsequent to the opening of the impugned account. The appellant has also questioned the evidentiary value of the bank account details of other similar account holders, in his case.

iii. The Appellant has stated that it is not clear how the balances maintained by Ms Janki Mukhi and Mr Kanu Bhai Patel, are relevant in arriving at the finding that the appellant had made an initial deposit of USD 3 Million. The bank balances and other investments maintained by any person are a factor of his net worth, his investment profile and his personal preference. Further, the balances in the case of these two individuals also do not throw light on the fact, whether these were initial deposits or accretion over the years. In any case, the balances

maintained by the two individuals are no evidence of mandatory initial deposit amounts and the balances in these accounts cannot be the basis to affix liability on the appellant. The appellant also stated that the assessing officer has been unable to counter the valid objections raised by him regarding the gap of over 15 years between the opening of the account and the web site information relied upon, the fact that the account was opened with an entirely different bank which later merged with the HSBC Bank, and that the requirement of mandatory minimum balance has been increasing from year to year.

iv. I have perused the assessment order, the remand reports, as well as submissions made by the appellant. It is not denied that account was opened on 17-04-1998, Secondly, the base document, relied upon gives monthly balances for a period commencing from November 2005 and hence does not throw light on the initial deposit or the balance in the account up to November 2005. The Assessing Officer has been able to bring on record, evidence in the form of information contained in the HSBC website, which mentions a figure of USD 3 Million as a minimum requirement to open a bank account with the HSBC Private Bank, As has been discussed earlier, the appellant is an account holder with HSBC Bank, and the burden of proof rest upon him to counter the claim of the assessing officer, regarding the initial deposit of USD 3 Million. This contention of the Assessing officer could have been easily countered by bringing on record, the statement of the impugned bank account which would have clarified not only the initial amount deposited, but also the balance in the account up to 2005. The Appellant being the account holder, is the person of this information, and the rules of evidence clearly casts a burden upon him to lead evidence in his support. I am of the view that the appellant for reasons best known to him, has failed to discharge this liability cast upon him, and hence I am upholding the action of the assessing officer in computing the amount of initial deposit at the time of opening of account on 17-04-1998 at USD 3 Million. Further, there is nothing on record which would lead to formation of belief, that the balance in such account was less than USD 3 Million up to 33/10/2005, and hence in the absence of any evidence provided by the appellant, I am of the view that from the date of opening of account till 31-10-2005 the balance in the impugned account shall have to be considered as USD 3 Million. From November 2005 onwards, the Base document itself provides complete details of the balances maintained in this account, and hence no further presumptions are called for.

b. Whether such amount should be taxed in the hands of the appellant for the A.Y.l999-2000

The second issue is regarding taxability of this initial deposit of USD 3 Million in the assessment year 1999-2000 in the hands of the appellant. It is an undisputed fact that the appellant was a non resident in India, for tax purposes, in the assessment year 1999-2000 and the years prior to it. There is nothing on record to suggest that the balances in the impugned account reflect income which was earned in India or accrued or arose in India. In fact there is not even a whiff of such suggestion in the assessment order or any report furnished by the assessing officer. In view of the same no addition on account of initial deposit in the bank account can be made in the hands of the appellant for the assessment year 1999-2000.

III. Determination of return on investment @ 17% per annum, year on year.

i. The appellant has contested the additions made in all the Assessment Years i.e from A.Yrs. 1999-2000 to 2007-2008, based on an

estimated return of 17% per annum on the balance in the account. For this purpose, the balance has been assumed at USD 3 Million as discussed earlier. The appellant has argued that the rate of return @ 17% annually in bank account with HSBC Bank is arbitrary and based on assumption without any basis or evidence against the appellant.

ii. The appellant has contended that in the assessment year 1999-2000, his residential status was that of a NRI. Consequently, the Scope of income chargeable to tax for Non-Resident is governed by section 5(2) of the Income Tax Act and income of a Non resident is only that income which is received or is deemed to be received in India or accrues or arises or is deemed to accrue or arise in India. The alleged initial deposit of USD 3 Million and interest earned at 17% on same in AY 1999-2000 therefore clearly is outside the purview of charging section for a Non resident assessee.

ii. Similarly the Appellant is a Resident but not Ordinarily Resident for the AY 2000-01, 2001-02 and 2002-03. The scope of income chargeable to tax for a resident but not ordinary resident (NOR) is governed by proviso to section 5(1) of the Income Tax Act which reads as under :

"Provided that, in. the case of a person not ordinarily resident in India within the meaning of subsection (6) of section 6, the income which accrues or arises to him outside India shall not be so included unless it is derived from a business controlled in or profession set up in India"

The Appellant therefore submits that the interest income as assessed at 17% for the AYrs. 2000-01, 2001-02 and 2002-03 are also income which have accrued or have arisen to him outside India. Hence there cannot be any assessment of income from bank account held in HSBC for these years as well.

As regards the residential status of the appellant for the A.Yrs.2003-04 to 2007-08, the AO has enclosed a factual report in his remand report dated 13.08.2018 regarding the stay of appellant in India on the basis of passport and immigration details. It is evident from the chart enclosed that the appellant is Ordinary Resident from the A.Yrs.2003-04 to 2007-08.

iv.. Further, with respect to the years in which the appellant is ordinary resident, it has been contended as follows:

"the assumed rate of return is applied on assumed amount of Investment of USD
3 Million,. There is no evidence brought on record by AO. Further, in western developed economies the yield / return of 17% is unheard of in the past 15-20 years and is an impossibility. We enclose herewith the copy of Yield chart of US dollar denominated bonds and Swiss Government Bond Yields. The same are in range of 3 to 4 %. In fact in Switzerland the yields are negative. We therefore plead that assumed addition of 17% return on USD 3 Million amounting to USD 5,10,000/- in each of the years may be deleted'.*
v. A remand report was called for from the A.O. vide letter No. CIT(A)-34/Remand report/2018-19 dated 12/07/2018 regarding the above submissions of the appellant. The AO in his remand report has stated as follows :

I further hold that the deposit resulted in accretion by way of interest income chargeable to tax in all the years. In this regard the details of deployment of fund by HSBC Bank out of the funds invested by Ms. Janki N Mukhi show that the funds were deployed in various assets such as fiduciary deposits, shares, liquid assets, mutual funds, stock, structured products etc on month to month basis. As illustration I scan below the Table giving details of investment in her individual active account which is annexed to her Base Document:

The above document is enough evidence to rate the growth of the funds of the assessee being deployed in various assets like loans & advances, bonds and fiduciary deposits. From the chart mentioned above it is clear that the amount of $ 10,92,629.39 In the month of November 2005 increases to $11,70,268.31 by the month of March 2006. Thus, there is a growth of $ 77568,92 in the period of 5 months. This growth comes to 7. 1 % for 5 Months, and when annualized this rate . . comes to effectively 17% annualized returns. Thus, in the absence of any details forthcoming in this regard In the assessment year under consideration, a return was correctly estimated @ 77% annually on investment made by the assessee on USD 3 Million. In view of the facts and circumstances as enumerated above by the AO In his assessment order for the A.Y.2004-05 to 2007-08, you ere requested to uphold the action of the AO".

vi The appellant was furnished with the copy of Remand Report of the AO in response to which the A.R. of the appellant submitted as under:
"Return on Investment computed @17% :-
Your Honour, again the A. 0. has annexed / scanned the Investment details of some other account holder 'Ms. Janki Mukhi' to calculate that return of 17% p.a. is earned uniformly on investment made on USD 3 Million. Your Honour, we reiterate that such statement lacks evidentiary value for reasons stated in aforesaid paragraph. Further, this assumption also suffers from a lot of Infirmities as stated below;-
***a)** The asset of so called Janki Mukhi comprises of various classes such es Fiduciary Deposits, shares, Liquid Assets, Mutual Funds, Stocks and Structured products, etc. which cannot have uniform returns for obvious reasons due to difference in the asset class per-se,*
b) The asset class alleged to have been owned by Appellant are different than that of Ms. Janki Mukhi.
c) The accretion to assets need cannot be solely attributed to any interest income but also can be due to new investments or withdrawals also, which is totally ignored. Any increase need not be only due to income.
d) The Risk profile of persons are different and cannot be same.
e) The Return cannot be uniform 17% for a period of a years altogether(9 years to be specific).
We, therefore, submit that reliance of A. 0. to estimate return @17% for purpose of reopening the assessment U/s. 147 is absolutely on incorrect basis and same needs to be quashed.
vii. <u>Conclusion on determination of return on investment @ 17% per annum</u>
I have considered the submission of the Appellant, and the report submitted by the assessing officer. The issues that arise for adjudication are as follows;
***a)** what is the amount of balance investment in the account of the appellant, for the period covered by A.Yrs 1999-2000 to 2007-08, on which income has been earned by the appellant*

b) whether such income is taxable for all the assessment years under appeal.

c) *what is the rate of return on the investments / balances held by the appellant, which shall form income of the year*

d) *whether the entire amount of return should be taxed in the hands of the appellant*

a. *The first issue, has been decided in preceding para wherein it has been held that on the basis of evidence brought on record, the only view sustainable is that the initial deposit on 17-04-1998 was USD 3 Million.*
b.
c. *The second issue is with regard to taxability of such return on investment in each assessment year between 1999-2000 to 2007-08. As has been discussed and decide in preceding para, the residential status of the appellant was Non Resident in the assessment year 1999-2000. This fact is undisputed. Hence, in view of the provisions of section 5(2) of the Act, such income is outside the scope of the Indian Taxing Statute. Similarly, the residential status of the appellant for the AYrs 2000-01, 2001-02 and 2002-03, is Resident but Not Ordinarily Resident (NOR). The return on balances in the account cannot be subjected to tax in the hands of the appellant for these assessment years in view of the provisions of section 5(1) of the Act.*

c. The third issue is rate of return on the investments / balances reflected in the impugned account. The assessing officer has adopted a rate of 17% per annum based on data contained in the base document received in the case of Ms Janki Mukhi, where the facts of the case are reasonably similar. As far as the argument of similarity with the case of Janki Mukhi is concerned, the appeal has not been decided on this issue. Rather, the appeal has been decided on the basis of residential status being NRI/NOR. I am willing to agree to the view that the return on investment in any case shall depend on the nature of investments made, which itself shall depend on the bouquet of investments made by any person. However, the onus of furnishing evidence regarding return received and income earned from the impugned account rests on the appellant. He is the account holder and hence the responsibility lies on him to lead evidence which shall help in the exact determination of income from such account. He has provided no assistance in making such evidence available, and hence he cannot be given the benefit of such stone walling. On the other hand the assessing officer has been able to bring on record evidence which gives rise to a reasonable belief that returns on investments held in and managed by HSBC Bank during the relevant period, were yielding high returns in the region of 17%. I am hence of the view that estimating return on investment / balance @ 17% per annum is reasonable keeping in view the facts of the case. Thus, the addition of Rs.2,31,08,100/- for the A.Y.2004-05, Rs.2,24,91,000/- for the A.Y.2005-06, Rs.2,31,03,000/- for the A.Y.2006-07 and Rs.2,10,83,400/- for the A.Y.2007-08 are confirmed.

d. Finally, the issue to be considered is whether the entire amount of return on investments / balances reflected in the impugned account should be taxed in the hands of the appellant. It is an undisputed that the account is jointly held by the appellant and his brother Deepak Galani. The onus was on the appellant to explain the beneficial ownership, actual depositor and ultimately the share of the appellant in the joint account. Had the appellant submitted complete set of bank statement, probably many of the dispute would have been settled. The appellant

has chosen not to respond and submit relevant specific evidences. The appellant has, therefore, clearly failed to discharge the onus cast upon him. The AO has elaborated and analysed as to how the appellant had enjoyed the right being a joint account holder. Hence, I do not find any .reason to deviate from the findings of the AO and hold that the addition of Rs.2,31,08,100/- for the A.Y.2004-05, Rs.2,24,91,000/- for the A.Y.2005-06, Rs.2,31,03,000/- for the A.Y.2006-07 and Rs.2,10,83,400/- for the A.Y.2007-08 made by the AO on account of return of 17% per annum on investment are confirmed.

IV) Challenging the Assessment of Peak credit in the AY 2006-07 (USD 9,40,191 and USD 3,17,080 for AY 2007-08

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I. The appellant has argued that the addition on account of peak balance in A.Y. 2006-07 (USD 9,40,191) and in A.Y.2007-08 (USD 3,17,080) is contradictory in as itself is USD 3 Million. Hence there cannot be a peak figure lesser than the higher figure of initial deposit. Further, the appellant has also contended that the assessing officer has added substantial amounts as income from year to year on account of interest allegedly received, and such income in aggregate exceeds the so called peak available in November 2005. Hence, in all manner the addition on account of peak deposit is without any basis in fact and in logic and amounts to double taxation.

ii. This issue is consequential to the decisions taken by me, in respect of initial deposit and income earned on balances lying in the account. As discussed earlier, the initial deposit has been held to be a figure of USD 3 Million. Further, to such initial deposit, a return of 17% per annum has been estimated from year to year which has been held as taxable in the hands of the appellant for the years when he was Resident in India. Further, nothing is on record which would even remotely suggest that the entire balance of USD 3 Million, and interest earned thereon was dissipated on a date prior to November 2005. Thus, a balance of USD 940,191/- being less than USD 3 Million cannot be separately added as peak credit in the hands of the Appellant. In light of the above facts, further addition on account of peak balance in November 2005, and less than peak balance in September 2006 is uncalled for and unsustainable. Thus, the addition on account of peak credit for A.Yrs. 2006-07 and 2007-08 is unsustainable.

9. The Ld. AR for the assessee submitted that the Ld.CIT(A) was erred in confirming additions made by the Ld. AO towards return on investments on purported initial deposits made by the assessee to open account at HSBC bank, Geneva, even though, the assesee has clearly established with fact that account is neither belongs to him, nor he is having any interest in money lying with bank account. The Ld. AR, further submitted that the

assessee has right from the day one made it very clear that account was opened by his brother in the year 1998 with the British Bank of the Middle East, UAE and said bank has been subsequently taken over by HSBC bank, Geneva and account opened in British Bank of the Middle East by his brother is solely owned by him, for which brother has filed letter before the Ld. AO along with affidavit and owned up account. But, the Ld. AO has discarded all evidences filed by the assessee and made additions in the hands of the assessee only on the ground the base note received from French Government contains name and address of the assessee. He, further submitted that the assessee never disputed fact that bank account is not opened by his brother with joint name, however he made it very clear that the bank account was completely operated by his brother Mr. Dipak. V. Galani and whatever money lying in bank account is belong to him. The Ld. AR for the assessee, further referring to various documents submitted that unless, the Ld. AO brought on record necessary evidences to prove ownership of bank account in the name of assessee, he cannot make additions only on the basis of base note, when the assessee has categorically denied of having any link to bank account. Further, the Ld. AO has disregarded all the evidences filed by the assessee and made additions, only on the basis of base note on pure assumptions

that since, the assessee is second holder of bank account and he is vested with rights and obligations connected with the account and a signatory, either jointly / allow without any limitations and has designated by all the account holders. Therefore, he finally concluded that the assessee is a beneficial owner of the account, despite fact that assessee has denied all allegations. In this regard, he relied upon certain judicial precedents, including the decision of Hon'ble Delhi High court, in the case of CIT vs Shivaprakash Aggarwal (2008) 306 ITR 324.

10. The Ld. DR, on the other hand submitted that the Ld. AO, as well as the Ld.CIT(A) has brought out clear facts to the effect that the assessee is a beneficial owner of bank account held in joint name with his brother Mr. Dipak.v.Galani in HSBC Bank account, Geneva and also brought various evidences to prove that the assessee has earned 17% rate of return on investments along with certain comparables cases. Therefore, there is no merit in the arguments of the assessee that the account is belongs to his brother and he is not having right or interest in said bank account. The Ld. DR has filed detailed written submissions on the issue, which has been reproduced as under:-

I. <u>Issue of Jurisdiction:</u>

Your honours in these cases common issue raised by the appellant are issue of jurisdiction whereby validity of Re-assessment proceedings are challenged. The appellant challenged the jurisdiction primarily on the grounds that there was non-recording of reason to believe; there is absence of reasons to believe about income escaping assessment; there is absence of valid sanction u/s 151 of the Income Tax Act, 1961 (hereinafter, the Act) for issuance of notice u/s 148 of the Act and the notice for reopening u/s 148 of the Act are issued beyond the period of limitation.

Your honours may appreciate that as far as issue of non-recording of reason to believe is concerned it is abundantly ***clear from the Assessment Orders which clearly states that reasons for reopening was recorded and were supplied to the appellant. Further the Ld. CIT (A) has disposed off the same in the order and held that reasons were duly recorded.*** *Further your honours on perusal of the case records and the paper book of appellant,* ***it is seen that for the AY 2004-05 to AY 2007-08 the AO has recorded reasons and sought approval from the JCIT which was granted by the JCIT after recording satisfaction, subsequently, the AO issued the notice u/s 148 of the Act on 30/04/2013. Likewise for AY 1999-00 AY 2003-04 the AO recorded the reason and sought approval from the JCIT and after receiving the approval issued the notices on 30/3/2015.*** *Furthermore, important aspect requiring kind attention of your good selves is that* ***during the AYs 1999-2000 to 2003-04 the appellant has also filed the objections*** *to the reasons recorded and these were disposed off by speaking order. Therefore your honour in my humble opinion it is not correct to argue that no reasons were recorded when the appellant objected to the reasons recorded during the assessment proceedings and which were duly disposed by the AO.*

Overall it may be kindly appreciated your honours that considering the various facts discussed previously it appears to have ***no infirmity in the reopening proceedings so far as reasons were recorded by the AO and approval was granted by the JCIT after recording satisfaction and this was prior to the issuance of the notice u/s 148 of the Act.***

The kind attention of your honours is invited to the landmark judgement of Hon'ble Supreme Court in GKN Driveshafts (India) Ltd vs ITO (2003) 259 ITR 19 Hon'ble Court has held that-

however, we clarify that when a notice under Section 148 of the Income tax Act is issued, the proper course of action for the notice is to file return and if he so desires, to seek reasons for issuing notices (emphasis supplied). The assessing officer is bound to furnish reasons within a reasonable time. On receipt of reasons, the notice is entitled to file objections to issuance of notice and the assessing officer is bound to dispose of the same by passing a speaking order. In the instant case, as the reasons have been disclosed in these proceedings, the assessing officer has to dispose of the objections, ***if filed,*** *(emphasis supplied) by passing a speaking Order before proceeding with the assessment.*

Therefore your honours may appreciate that from the ratio laid down in the Judgement supra it follows that AO is required to dispose of the objections if such objection is raised by the assessee. The AO can not presuppose that the assessee is having any objections. Hence your honours may consider the fact that in the instant cases as discussed the AO disposed of the objections during AYs 1999-2000 to 2003-04 ***whereas for AY 2004-05 to AY 2007-08 it emerges that no such objection is raised by the appellant this fact is also mentioned in the remand report dated 12/3/2018 which forms part of the order of Ld. CIT (A). Your honours are humbly requested to consider these facts.***

On issue of valid sanction u/s!51 of the Act the kind attention of your honours is invited to the order of the Ld C1T(A) in AYs it is held by Ld. CIT (A) in his order of Ays 1999-2000 to 2002-03 held that- After due application of mind; the jurisdictional Addl. CIT and the AO had reasons to believe that income of more than Rs 1 lakh has escaped assessment during the year due to failure on the part of appellant to furnish fully and truly all facts in the return of income for respective years. The facts are clearly mentioned in the remand report dated 12/03/2018 the provision u/s 151 of the Act as applicable is reproduced for the ready reference;

Sanction for issue of notice.

151. (1) In a case where an assessment under sub-section (3) of section 143 or section 147has been made for the relevant assessment year, no notice shall be issued under section 148 [by an Assessing Officer, who is below the rank of Assistant Commissioner [or Deputy Commissioner], unless the [Joint] Commissioner is satisfied on the reasons recorded by such Assessing Officer that it is a fit case for the issue of such notice] :

Provided *that, after the expiry of four years from the end of the relevant assessment year, no such notice shall he issued unless the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner is satisfied, on the reasons recorded by the Assessing Officer aforesaid, that it is a fit case for the issue of such notice.*

(2) In a case other than a case falling under sub-section (l), no notice shall be issued under section 148 by an Assessing Officer, who is below the rank of [Joint] Commissioner, after the expiry of four years from the end of the relevant assessment year, unless the /Joint/ Commissioner is satisfied, on the reasons recorded by such Assessing Officer, that it is a fit case for the issue of such notice.]

[Explanation.—For the removal of doubts, it is hereby declared that the Joint Commissioner, the [Principal Commissioner or/ Commissioner or the [Principal Chief Commissioner or] Chief Commissioner, as the case may be, being satisfied on the reasons recorded by the Assessing Officer about fitness of a case for the issue of notice under section 148, need not issue such notice himself.](emphasis supplied)

Your honours will appreciate that clearly the provision of subsection 2 of section 151 of the Act is applicable in the instant case where the Assessing Officer who recorded the reason to believe to reopen the case is Assistant Commissioner of Income Tax and Deputy Commissioner of Income Tax, further the case was reopened beyond four years therefore the provision is squarely applicable in the instant case.

The kind attention of your honours is also invited to the fact that the Writ Petition was filed by the appellant before Hon'ble Bombay High Court. This petition was withdrawn by the appellant. Your honours kind attention is warranted on this fact that the withdrawal of Writ Petition was without any liberty. The kind attention of your honours is invited to the order of the CIT(A) on this issue.

Your Honours without prejudice to the foregoing paragraphs Hon'ble High Court of Madras in Home Finders Housing Ltd. V ITO [2018] 303 CTR 269 has held that 'we therefore make the position clear that non compliance of the procedure indicated in the GKN Driveshafts (India) Ltd., would not make the order void or non est. Such a violation in the matter of procedure is only an irregularity which could be cured by remitting the matter to the authority. The first issue is accordingly answered against the appellant'. Hon'ble High Court in para 19 of the judgement supra has mentioned that 'the core question is as to whether non compliance of a procedural provision would ipso facto make the assessment order bad in law and non-est. The further question is whether it would be permissible to comply with the procedural requirement later and pass afresh order on merits'. This order of Hon'ble High Court of Madras was challenged before Hon'ble Supreme Court in Special Leave Petition, Hon'ble Supreme Court dismissed the SLP vide Petition(s) for Special Leave to Appeal (C) No(s). 12721/2018 on 18/05/2018.

In the light of the discussion in previous paragraph it is prayed from your good selves to consider the submission that the defect if any is a curable defect and would not make the Assessment Order bad-in-law and non est.

On the question of issuance of notice u/s 148 of the Act beyond limitation is concerned Ld. CIT (A) has mentioned in his order that the provisions of section 149 of the Act has extended the time limit for reopening of the case as the appellant was found to be owner of bank account/asset located outside India and income has escaped assessment. As has been mentioned previously that in case of bank account/asset located outside and the income has escaped assessment then the deeming provision gets attracted. Hence your honors it is humbly submitted there is no merit in the contention that the notices were issued beyond limitation.

II. <u>Issues of invoking provision under section 144, Reliance on the Base documents and Ownership of Bank Account:</u> *Your honours another common issue raised by the appellant is that the AO erred in invoking provision of section 144 of the Act. The appellant claimed that he has filed submission on numerous occasion and also stated that account was opened by the brother of appellant Deepak Galani with the British Bank of Middle East in 1998 (the bank was subsequently taken over by HSBC further that the name of appellant is named as a second account holder for the purpose of nomination and for the sake of convenience moreover all the money along with the transactions belonged to the appellants brother only. The appellant also contented your honours that in order to cooperate with the Income Tax Department the appellant also furnished the consent waiver letter as required by the department. Further that the brother of the appellant also furnished a letter claiming the beneficial ownership of the account held with the HSBC Bank Geneva. The appellant also argued to have fully discharged the onus during the assessment proceedings it self. Moreover the appellant argued that the reliance of the AO on the base document which is*

compiled out of stolen data and modified by the ex-cmployce is itself an inadmissible evidence for the purpose of of any tax proceedings in India. The appellant also argued that he is not the owner of the bank account, he claimed that he is the second holder of the bank account for the purpose of nomination only and for the sake of convenience and ownership of the account lies with his brother Dccpak Galani.

On the issues mentioned above your honours it is humbly submitted that it is evident from the case records that the AO consistently queried the appellant to furnish details relating to the bank account such as bank account statements, transactions in the bank accounts, name and address of the account holders, beneficial owners, correspondence between account holders and bank and other similar documents. Your honours will appreciate that the existence of account is not in dispute also it is not in dispute that the bank account jointly held by appellant and his brother. However, your honours despite of the fact that appellant is one of the account holder along with his brother the appellant completely failed to discharge the onus cast upon him to provide bank account statements and other details which were called from him vide various notices u/s 142(1) issued during the assessment proceedings in all the years. Only requirement your honours was to furnish the documents as required by the AO.

Your honours the appellant claimed to have signed the consent waiver form and thus he has discharged the onus. In this regard it is humbly submitted that ***it is correct that the appellant has provided the consent waiver form. However it is not appropriate to argue that onus was discharged because onus is not discharged by signing the consent waiver form rather that could have been discharged only by the production of those documents and evidences which were called for from the appellant in the notices u/s 142(1).***

Your honours will appreciate that the consent waiver form is neither a statutory requirement nor a procedural one. It was only a facilitation mechanism for the benefit of the assessee vis-a-vis HSBC Switzerland. Further, the format of consent waiver form was prescribed by HSBC Switzerland and not by Income Tax Department. In fact it raises further a doubt on the appellant that despite signing the consent waiver from the appellant has not produced the various details which were required during the assessment proceedings. This is so because in as many as three cases of the different assessees the AO received the bank account statements and other details from them after they signed consent waiver form. Your honours are requested to grant kind attention on the issues in foregoing paragraph.

Furthermore your honours kind attention is invited to the contents and features of Consent Waiver Form. Some of the important feature of the Form are as under-

a) Consent Waiver form ***is a form where the person (account holder/beneficial owner/ authorized signatory/trustee) request the HSBC Bank to provide the bank account statement and other documents.*** *It is between account holder (or other person referred before) and the Bank.*

The Consent Waiver Form is addressed to the officials of the HSBC Bank and is signed by the account holder etc. Therefore your honour is is humbly submitted that there is ***no question of discharging onus before Income Tax authorities in India under the Act.***

b) The account holder declares that he/she is cooperating with the Income Tax Department and ***is providing a copy of the waiver*** *to Income Tax Department Government of India.*

Only the copy of the form is provided it is not the case that the Income Tax Department is to procure the account statements and other details on the basis of this form your honours.

c) Account holder waives ***all protections provided under the data protection, privacy and/or bank secrecy laws of Switzerland.***

Your honours may consider the fact that the Swiss laws and banks were rather infamous for their secrecy laws this waiver from protection is important to enable the bank to provide requested details at the address of the account holder. Hence it is between bank and the account holder by no means the appellant can claim to have discharged the onus by signing the form and not providing the required details like account statements etc.

d) Account holder instructs the HSBC Private Bank (Suisse) SA to ***follow these instructions until revoked by the account holder.***

e) Further the account holder instructs the HSBC Bank that ***documentation is to be provided in both paper and electronic to the above mentioned address*** *(at the address mentioned by him) and also mentions again that he/she* ***expressly waives the protections offered by the Swiss banking secrecy and data protection rules accordingly.***

The kind attention of your honours is drawn to the fact that
from the consent waiver form it is clear that it is addressed to the HSBC Bank authorities to provide the bank account statement and other documents to the account holder waiving the secrecy laws at the address of the account holder and subject to the revocation of consent so waived. Overall consent waiver form waives the right of account holders on account of banking secrecy and privacy laws of Switzerland and gives the authority to Bank to provide the bank account statements of the account holder. Even this is also subject to the subsequent revocation.

Your honours are requested to pay attention to the very fact that the Assessing Officer vide notice u/s 142(1) of the Act dated 12/01/2015 again raised specific query that despite of the appellant filing the consent waiver no bank account statements were provided by the appellant before him. In the notice supra the AO also mentioned that the of similarly placed assessees who gave consent waiver have produced the desired bank account statements and other documents from HSBC Bank. *In response to the specific query raised the appellant has not filed the detailed response or the details which were required. Therefore your honours humble submission is that the appellant during the proceedings was largely evasive in so far as production of bank accounts and other documents are concerned.*

Another important aspect warranting attention of your good selves is that ***it is undisputed fact that the appellant is joint account holder of the HSBC Bank account. This fact is mentioned in the base note, in submission of his brother and also appellant never denied of it. Therefore there is no reason why the bank account must not have been provided to the appellant by the HSBC Bank. In such a scenario your honours would appreciate that three possibilities emerge which are that the appellant has not given the consent waiver to the HSBC Bank or the appellant received the bank accounts and other documents from the HSBC Bank but has decided to not to share them with the Income Tax authorities in India or the appellant has revoked the conditions laid down in consent waiver form dated 23/07/2013.*** *In any case your honours the appellant has not discharged the onus to produce the details relating to bank account asked from him vide statutory notices.*

As far as base note is concerned it was officially received by Government of India from government of France as a part of the Tax Information Exchange Treaty (TIET) under the DTAA between France and India so your honours there is hardly any dispute about the veracity and authenticity of the Base note. Further in the instant case the name of the appellant is found on the base note and both the appellant and his brother has accepted to be the joint holder of the bank account mentioned in the note.

Another issue raised by the appellant your honours is that the appellants brother Shri Deepak Galani is the owner/beneficial owner of funds/investments in the bank account. In this regard a letter has also been filed by Shri Deepak Galani some important aspects of the letter is that in this letter brother of appellant states that he had opened an account with HSBC Bank Geneva with client account number 4077262 in 1998 for the purpose of investments in bonds and securities out of my own funds. He also states that he had opened the account with his brother Kamal Galani as a joint second name out of convenience and also has a mark of respect for his elder brother. The brother of appellant further states that he is the sole beneficial owner of the funds and Kamal Galani (appellant) does not own any funds/investments/ asset accretion out of this account also that the appellant does not have any right title and interest in the funds etc.

On the issue of the ownership of funds it is to be mentioned here your honours and attention is invited to the fact that the AO vide notice u/s 142(1) dated 1/10/14 clearly stated that since the name of appellant is appearing as second owner hence clearly the appellant is also the second owner. More importantly the AO in the notice u/s 142(1) dated 12/01/2015 also gave the General Conditions of the bank which was finally named HSBC Private Bank (Suisse) SA these General conditions has various clauses which define relations between bank and the customers. On going through ***these general conditions it is clear that the customers keep on receiving bank account statements from bank from time to time*** *therefore in order to discharge the onus the appellant ought to have furnished the bank account statements and other documents.* ***Another important clause of General Conditions is clause 4 this clause is regarding the Several holders and joint account. The clause 4 of General Conditions clearly grants equal rights to the two or more joint account holders, it states that When two or more persons are holders of an account, each of (he account holders shall be vested with the totality of rights and obligations connected with the account.*** *Further that* ***Each of the***

account holders is authorized to accomplish, alone or jointly, in accordance with his relevant powers of signature, all transactions without any limitation whatsoever. *In light of these clause your honours it is amply clear in my humble submission that* ***in case of joint account holder both the account holder have equal rights and privileges hence the letter of Deepak Galani brother of appellant is of not much value. The rights and obligations of both the account holders arc same and both the account holders are jointly and severally bound. The letter by brother of appellant is not material to the case as even in this letter the brother of the appellant has not attached the bank account statements and other documents which could establish the preposition forwarded in his letter.*** *It is the appellant who is the assesee and hence the assessment was made on the available information so there is no infirmity in the order of the AO.*

Your honours humble attention is invited to the order of the AO who ***in his Assessment order the has also mentioned various details such as 'The Identification of the Beneficial Owner' this is also in the case of similarly placed facts in two different cases. In the instant case neither the appellant nor his brother has furnished the identification of beneficial owner form.***

In light of the above facts and other facts mentioned in the Assessment Order and the Order of the CIT (A) it is prayed from your honours to kindly treat the letter filed by the brother of the appellant as a self serving document.

III <u>Issue of quantification of Investment and interest/return on investment and the residential status and taxing rights:</u>

During the proceedings before your honours the appellant also raised objection on the issue of quantification of investment and the rate of interest earned, whereas revenue challenged the order of the Ld. CIT (A) on the relief granted by him in the appellate order on the ground of the residential status.

On the issue of quantification it is important to mention your goodselves that no evidence pertaining to bank account statements and other documents were provided by the appellant to the AO. The appellant and even his brother accepted that the appellant is a joint holder of the account. The appellant has failed even to submit the basic form which is 'The Identification of the Beneficial Owner' to prove that he is not the beneficial owner of the account. This despite of the fact that two different assessees have provided such form, these assessees whose names were also mentioned in the information received from the French Government and also their respective base notes were received and they also have accounts in the HSBC Bank Geneva during the period in which the appellant was having the bank account.

Your honours kind attention is also invited to the fact that on basis of enquiries conducted by the AO from the internet and also analyzing the bank accounts statements and other facts of similarly placed assessees, the AO arrived at the fact that initial investment of 3 Million USD was made. The AO raised specific query in this regard long before passing the assessment orders. Finally in Assessment order AO relied upon the contents in the website of the HSBC Pvt Bank and also on the information received by him in the cases of other assessees. Hence on the entire factual matrix AO has made the best

quantification of investment possible. Likewise the computation of interest is made on the rational basis mentioned in the assessment order. The appellant is making a claim without producing the bank account statements and other documents to prove otherwise.

Finally on the issue of the residential status during AY 1999-2000 to AY 2002-2003 and the issue of taxing right the reliance is placed upon the cases of Renu Tharani vs DCIT IT A No. 2333/Mum/2018 dated 16(h July 2020 the operative part of the decision *is reproduced as under:*

Considering the facts of this case, the decision of the Hon "ble IT AT, Mumbai in the case of Mohan Manoj Dhupelia and other in ITA no. 3544/Mum/ 2011 etc, is directly applicable to this case. In this case, the assessee is a beneficiary of Ambrunova Trust having an account in Liechtenstein Bank which is another tax jurisdiction known for its secrecy law and modest tax regime. In fact, in the order of the IT AT, it has been concluded that Liechtenstein jurisdiction qualifies as an off shore financial centre due to a very modest tax regime, high standard of secrecy laws and further foreign investors had the opportunity to establish companies or trust in the principality of Liechtenstein to the enjoy the advantages of off-shore financial centre The ground of appeal before the Hon'ble IT AT in this case was as follows: "The Id. Commissioner of Income tax (Appeals), erred in confirming the order of the Assessing Officer making an addition of Rs.2,34,64,398/- on account of alleged undisclosed income, without appreciating the fact that the alleged trust was discretionary trust as neither the amount was accrued nor credited to the Appellant's name, hence addition cannot be made in the hands of the Appellant". ITA No. 2333/Mum/2018 Assessment year: 2006-07 Page 14 of 55 The Hon'ble Mumbai ITAT dismissed this ground of appeal raised by the assesse and held that discretionary trusts are created for the benefit of particular persons and those persons need not necessarily control the affairs of the trust. The bank account of the trust represents unaccounted money of the beneficiaries even though no benefit were transferred to them. 13.1 Considering the facts of the case and the decision of the Hon'ble Mumbai IT AT as cited above it can be concluded that the bank account of the trust represents unaccounted money of the assesse. Considering the fact that the assessee is an Indian having interests and assets in India that no details were given to show the source of money deposited in the HSBC account leads to the circumstances that this unaccounted money is sourced from India. In absence of anything contrary, the only logical conclusion that can be inferred is that that the amounts deposited are unaccounted deposits sourced from India and therefore taxable in India. This presumption is as per the provisions of section 114 of The Indian Evidence Act, 1872 which reads as follows: "Section 114. Court may presume existence of certain facts. The Court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particulars case. The Court may presume- ..... (g) That evidence which could be and is not produced would, if produced be unfavrorable to the person who withhold it.... " Section 114(g) of The Indian Evidence Act, 1872, thus clearly says that the Courts can presume existence of certain facts if the person liable to produce evidence which could be and is not produced, which if produced would have been unfavorable to the person who withhold it. 13.2 Further, the provision of Section 5(2) of the Act is reproduced as under:-" Subject to the provisions of this

Act, the total income of any previous year of a person who is a non-resident included all income from whatever source derived which- (a) Is received or is deemed to be received in India in such year by or on behalf of such person, or (b) Accrues or arises or is deemed to accrue or arise to him in India during such year. " During the assessment proceedings and as can be seen from the facts of the case that the assesse has not made out a case that the deposits in the above mentioned accounts in HSBC, Geneva do not all within the ambit of this provision of law.] 3.3 As the assesse has chosen not to produce the details of his HSBC bank accounts and the source of deposits thereof, even though he could have been obtained all the details/evidences for the same, the only corollary that could be drawn is that the assesse has decided to withhold the information as if producing ITA No. 2333/Mum/2018 Assessment year: 2006-07 Page 15 of 55 it would have gone against him. Thus, as per the provisions of Section 114 of The Indian Evidence Act, 1872 also, it need to be held at this stage that the information/details not furnished were unfavorable to the assesse and that the source of the money deposited in the IISBC account is undisclosed and sourcedfrom India. Nova Promoters and Fin/ease (P) Ltd. 342 ITR 169 (Del), highlighting the legal effect of section 68 of the Act, the Division Bench has observed in para 32 that The tribunal also erred in law in holding Assessing Officer ought to have proved that the monies emanated from the coffers of the assesse company and came back as share capital. Section 68 permits the Assessing Officer to add the credit appearing in the books of account of the assesse if the latter offers and explanation regarding the nature and source of the creditor the explanation offered is not satisfactory. It placed no duty upon him to point to the source from 'which the money was received by the assessee.

In the light of the facts and judicial precedents discussed above it is requested to kindly consider the written submission uphold the order of the AO dismiss the grounds of appeals of the appellant and allow the appeals of revenue.

11. We have heard both the parties, perused the material available on record and gone through orders of the authorities below along with case laws relied upon by Ld. Counsel for the assessee. The Ld. AO has made additions towards money lying in HSBC bank account, Geneva, on the basis of base note received from French Government by Government of India in accordance with double taxation avoidance Agreement and opined that the assessee is a beneficial owner of joint account held in the name of his brother. The Ld. AO has also made

additions towards return on investments on initial deposits claimed to have made by the assesee to open bank account @17% on the basis of some comparable cases of similar nature. The Ld. AO has analyzed the facts of the case in light of base note and concluded that the assessee is the owner of bank account and whatever money lying in bank account is undisclosed income of the assessee for income tax purpose. It was contention of the assessee before the Ld. AO, as well as the Ld.CIT(A) that bank account was opened by his brother Mr. Dipak Galani in the year 1998 and his name was included in the bank account for convenience and as a mark of respect to his elder brother, but he is neither owner of the bank account, nor had any interest or right in money lying in bank account. To justify his arguments, and prove his claim filed passport and other details, including bank account details and argued that the account was opened by giving address of his brother situated at outside India and also, a letter from his brother addressed to the Ld. AO and claimed that he is the owner of the bank account lying in HSBC Bank, Geneva.

12. The Ld. AO has made additions towards amount lying in HSBC bank account, on the sole ground that the assessee is owner of the bank account and he is having beneficial interest in

money lying in said bank account. Although, the Ld. AO has not specifically referred provisions of section 69/69A of the Act, but he has invoked section 69/69A to bring amount lying in HSBC bank account as unexplained money of the assessee. Therefore, in order to examine, whether money lying in HSBC bank account in the name of the assesee and his brother is a unexplained money, which can be taxed u/s 69A of the I.T.Act, 1961 needs to be examined. As per section 69A, where in any financial year the assesee is found to be the owner of any money, bullion, jewellery or other valuable articles and such money, bullion, jewellery or valuable articles is not recorded in the books of accounts, if any maintained by him for any source of income and assessee offers no explanation about the nature and source of acquisition of money, bullion, jewellery and other valuable articles or the explanation offered by him is not, in the opinion of the ld. AO, satisfactory, the money and the value of the bullion, jewellery and other valuable articles may be deemed to be the income of the assessee of such financial year. A close look at the provisions of section 69A of the I.T.Act, 1961, it is abundantly clear that in order to bring any money or other valuable articles within the ambit of said section, the Ld. AO has to prove that the money is belong to the assessee. Of course, the initial burden is on the assessee to prove that the money or

other valuable articles found in his position is not belongs to him. But, once, the assessee filed necessary evidences to prove that said unexplained money is not belongs to him, then, onus shift to the revenue to prove that unexplained money is in fact belongs to the assessee. Unless, the Ld. AO proves that unexplained money is belongs to the person, he cannot make any addition in the hands of the assessee.

13. In the light of above factual and legal background, if you see the facts of the present case, one has to see, whether the money found in HSBC bank account is belongs to the assessee or his brother. In this case, the assessee right from beginning has made it very clear that the bank account belongs to his brother and he was named only as a second holder for the purpose of nomination and for the sake of convenience. To justify his claim, the assessee has filed a letter and affidavit from his brother stating that his brother Mr.Dipak V. Galani is the owner of the bank account and he was opened a bank account in his capacity as a non resident in the year 1998. From the above, it is very clear that the bank account was opened by his brother as a first account holder and the assessee was included in the bank account as a second account holder, which is very clear from the base documents relied upon by the Ld.

AO, where the assessee name appears as a second account holder. Further, as stated above, the bank account was opened in the year 1998 and at the time of opening bank account, the assessee, as well as his brother both are NRI residing outside India. Further, the base documents itself clearly states the creation of identity of the assessee as date of 19/06/2003, and it is clearly stated therein that assessee account holder No.2. The passport detail of assessee as per base documents clearly shows him to be residing at Vienna (as place of having establishment) with place of birth as Baroda. The copy of same passport has been filed on record and considered by the Ld. AO in assessment year, clearly shows that passport is issued in Vienna and renewed through the Embassy of India since, 1993. The legal address in base documents is taken from the birth place mentioned in the passport as permanent address, otherwise the address of the assessee in Vienna is also mentioned in passport as taken is present address. From the above, it is very clear that the bank account in the name of assessee and is brother and his brother as account holder No.1 is clearly established the fact that bank account is belongs to his brother, but not to the assessee and this fact has been further strengthened by the letter of the assessee's brother, dated 09/03/2015, where he has categorically accepted the ownership

of bank account and money lying in said bank account. These facts have been disregarded by the Ld. AO without providing any basis for the same. The Ld. AO has also not disputed that Mr. Dipak Galani is account holder and the principle holder of the bank account , but went on to make additions in the hands of the assessee on pure suspicious and surmises by invoking provisions of general clause Act, and further being a second account holder, the assessee is vested with rights and obligations connected with the account and therefore, he is a beneficial owner of the bank account. However, at the same time, the Ld. AO has failed to appreciate that Mr. Dipak Galani by virtue of being a first account holder is also vested with some rights and therefore, the same principle / logic even applies to him. Therefore, we are of the considered view that the conclusion drawn by the Ld. AO that assessee is a beneficial owner and Mr.Dipak Galani is not the beneficial owner on the basis of above arguments is highly incorrect.

14. Further, it is the case of the Ld. AO that account with HSBC bank , Geneva is opened by resident Indian and black money earned by such resident Indian has been stashed abroad without paying taxes/disclosing income in India. But, fact remains that in the instant case, the account was opened in 1998, when the

assessee himself and Mr. Dipak Galani permanently resided in outside India for 30 years and had no intention to come to India at that time. Further, both of them have no source of income in India, during the course of their residence abroad. Therefore, we are of the view that entire motive as presented by the Ld. AO defines all logic of opening of a secret bank account in Geneva, by NRI to stash unaccounted income taxable in India fails. The ld. AO mechanically disregarding all explanations furnished by the assessee as to the ownership of the account along with the corroborative materials is contrary to the settled position of law, because, once assessee has provided a reasonable explanation about ownership, then the onus was on the Ld. AO to establish that account belongs to the assessee. This legal principle is fortified by the decision of Hon'ble Delhi High court in the case of CIT vs Shivaprakash Agarwal (supra), where the Hon'ble High court after observed that the assessee had time and again submitted before the revenue authorities that the documents belongs to his father and whatever additions have to be made in the hands of the father. The father of the assessee had owned up to the documents seized during the course of search and had also filed affidavit to this effect. In these circumstances, the court held that the additions could not be sustained in the hands of the assessee on the base of seized documents. This principle

is further supported by the decision of Hon'ble Calcutta High court in the case of CIT vs United Commercial and Industrial Company Limited (1991) 187 ITR 596, where it was held that where prima-facie inference on facts is that the assessee explanation is probable, the onus will shift to the revenue.

15. In this case, on perusal of details available on record, it is very clear that the assesse right from day one has disowned the bank account. Further, the brother of the assesee has filed a letter to the Ld. AO along with affidavit and claimed that the bank account is opened by him in his capacity as NRI and whatever money lying in bank account is belongs to him. Therefore, we are of the considered view that under these circumstances, the Ld. AO was erred in making additions towards amount lying in bank account as unexplained money of the assessee.

16. Insofar as, additions made towards return on investments @17% PA on year basis, once, it was established that bank account was not belongs to assessee and he was not a beneficial owner, then further additions towards estimated return of income on said unexplained money is arbitrary. As stated above, the account was opened by the Appellant's

brother with the British Bank of Middle East. Therefore, the reliance placed by the AO on the account opening information appearing on the website of HSBC Bank cannot be relied upon. Further, the account was opened by the Appellant's brother in 1998, whereas the website information sought to be relied upon by the AO pertains to accounts sought to be opened at about the time of the assessment proceedings, i.e. around 2013. Such reliance on website information is impermissible as the same is merely based on fanciful presumptions. The AO has not brought any material on record to justify the use of account opening information as at time of assessments to presume and arrive at the conclusion that the same would be applicable to an account alleged to have been opened by the Appellant 15 years earlier. It may be pertinent to point out that since the assessment was made, the account opening requirements have been revised to require an investment or borrowing to be made amounting to an equivalent of USD 5 million. This goes to show that the account opening requirement undergo changes from time to time and the presumption that the account opening requirements stated at the time of the assessment would have been the same as those prevailing when the account was opened 15 years earlier, in 1998, is fallacious and cannot be sustained. The AO failed to appreciate that account was opened in The British Bank of

Middle East, UAE. The same was subsequently merged / acquired by HSBC Private Bank. Hence assumption of USD 3 million is unjustified. Further, the AO has failed to appreciate that the appellant is nonresident in the year 1998 i.e. in the year of opening the account, residing out of India for past more than 20 years. Further, owning the bank account and the investment by Non Resident out of sources of funds available abroad is still not taxable in India. The AO has failed to point out any iota of evidence to prove that the funds of USD 3 million invested in opening bank account represent income from undisclosed sources earned/ accrued to appellant in 1998. The Appellant has no sources of income in India up to 2002 and the same has already been assessed on record in assessment proceedings earlier. The statement of Assets and liabilities and Income has been filed on record. Refer Page 66 to 66 We therefore are of the considred view that, having established that Appellant is NON-RESIDENT in AY 1999-2000 and complete absence of any source of taxable income in India, the addition u/s 69 made by AO in AY 1999-2000 on account of investment of USD 3 million in opening the bank account with HSBC and consequent estimation of return of investment @ 17% PA as Unexplained Investment is highly unjustified.

17. Considering the facts and circumstances of this case, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in not appreciating the fact in right perspective, even though the assessee has filed necessary evidences to prove that the bank account was not belongs to him. Therefore, we are of the considered view that an addition made towards bank account in the name of the assessee is incorrect. Accordingly, we direct the Ld. AO to delete additions made towards amount lying in bank account. Similarly addition made towards estimated return of investments @17% on said additions is also incorrect. Accordingly, we direct the Ld. AO to delete additions made towards estimated return of investments for all assessment years.

18. In the result appeal filed by the assesee for Asst.Years 2003-04 to 2007-08 are allowed and appeals filed by the revenue for Asst.Years 2006-07 & 2007-08 and 1999-2000 to 2002-03 are dismissed. Similarly cross objections filed by the assessee for assessment years 1999-2000 to 2002-03 are also dismissed.

Order pronounced in the open court on this: 10/09/2020

Sd/-	**Sd/-**
(MAHAVIR SINGH)	**(G. MANJUNATHA)**
VICE PRESIDENT	**ACCOUNTANT MEMBER**

Mumbai; Dated: 10/09/2020

Self Typed

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.त्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai