

**आयकर अपीलीय अधिकरण मुंबई न्यायपीठ, 'एच', मुंबई**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCHES 'H' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री नरेन्द्र कुमार बिल्लैय्या, लेखा सदस्य के समक्ष  
**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND**  
**SHRI N.K.BILLAIYA, ACCOUNTANT MEMBER**

आयकर अपील सं. / **ITA No.3544/MUM/2011**

**निर्धारण वर्ष** /Assessment Year: 2002-03

Shri Mohan Manoj Dhupelia, 12-13, Esplanade, 3 <sup>rd</sup> Floor, Amrit Keshav Nayak Marg, Mumbai-400001	Vs.	Dy. Commissioner of Income-tax Central Circle-1 Mumbai
(Assessee)		(Revenue)
P.A. NUMBER : AAIPD4113F		

आयकर अपील सं. / **ITA No.3545/MUM/2011**

**निर्धारण वर्ष** /Assessment Year: 2002-03

Shri Ambrish Manoj Dhupelia, 12-13, Esplanade, 3 <sup>rd</sup> Floor, Amrit Keshav Nayak Marg, Mumbai-400001	Vs.	Dy. Commissioner of Income-tax Central Circle-1 Mumbai
(Assessee)		(Revenue)
P.A. NUMBER : AAIPD2710L		

आयकर अपील सं. / **ITA No.3546/MUM/2011**

**निर्धारण वर्ष** /Assessment Year: 2002-03

Ms. Bhavya Manoj Dhupelia (now Mrs. Bhavya S. Shanbhag) 12-13, Esplanade, 3 <sup>rd</sup> Floor, Amrit Keshav Nayak Marg, Mumbai-400001	Vs.	Dy. Commissioner of Income-tax Central Circle-1 Mumbai
(Assessee)		(Revenue)
P.A. NUMBER : AAHPD2422N		

Assessee by	:	Dr. K.Shivaram, & Shri S.R.Parikh
Revenue by	:	Shri Girish Dave-Spl. Counsel

Date of hearing	:	08/10/2014
Date of Pronouncement	:	31/10/2014

## **ORDER**

### **PER JOGINDER SINGH: JM**

These three appeals are by different assessee, who are relatives, challenging the impugned order all dated 25/02/2011, passed by the Id. First Appellate Authority, raising identical revised grounds of appeals which are summarized as under:-

**1. Reopening of assessment is bad in law (Original Ground no. 1 to 3)**

*The Id. Commissioner of Income Tax (Appeals), erred in confirming the reopening of the Assessment which was completed by the Assessing officer without following the due process of the laws hence the order of reassessment is bad in law, as the principal of the natural justice is violated, sanction was given by the Additional Commissioner without application of mind, objection of the reopening was not deal with, the purported reasons recorde3d were served beyond limitation period, hence the notice is bad etc.*

**2. Addition on account of alleged undisclosed income- Rs.2,34,64,398/- (original Ground no.4)**

*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 Appellant's name, hence addition cannot be made in the hands of the Appellant.*

**3. Not adjudicating the alternative ground regarding taxability of income only (Original Ground no.4).**

*Without prejudice to the above, the learned CIT(A) erred on facts and in law in not adjudicating the alternative grounds regarding the taxability of income only of US \$ 13,500/- earned by the alleged trust and not the amount outstanding of US \$24,06,604.90/- as at 31<sup>st</sup> December, 2001.*

**4. Original Ground no.5**

*The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.*

2. At the time of hearing, we have heard Dr. K.Shivaram alongwith Shri S.R.Parikh Id. Counsel for the assessee and Shri Girish Dave Id. Special Counsel for the Revenue. Dr. Shivaram, through ground no.1, challenged confirmation of reopening of assessment by asserting that due process of law was not followed by the Department, therefore, the reassessment proceedings are bad in law, being, violation of principle of natural justice, without application of mind, the objections raised by the assessee for reopening were not dealt with and further the purported reasons, recorded by the Revenue, were served beyond the limitation period. It was pointed out that the assessee received the notice issued u/s 148 on 30<sup>th</sup> March 2009 and the assessee requested the AO to furnish the reasons for reopening the assessment. Again vide letter dated 17<sup>th</sup> April 2009 the AO was informed that the assessee has filed the return on 31<sup>st</sup> July 2002. The AO vide letter dated 13<sup>th</sup> May 2009 furnished the reasons for reopening of assessment. It was contended that the assessee vide letter dt. 14<sup>th</sup> October 2009 denied the allegations and the details sought from the assessee vide letter of the AO dated 23/09/2009. Our attention was also invited to pages 22 and 24 of Paper book informing the AO that no benefit from the trust were received by the assessee. It was asserted by the Id. Counsel that the name of the assessee did not appear in the list of

beneficiary of the trust thus no amount could be taxed of the income lying in the name of the trust. The crux of the argument is that neither the name of the assessee is appearing in the list of beneficiary of the trust nor any benefit was received.

2.1. On the other hand, the Id. Special Counsel Shri Girish Dave defended the reopening of the assessment by submitting that objections can be raised only after filing of return, notice u/s 148 of the Act was issued on 26/03/2009 and the AO on 13<sup>th</sup> May 2009, provided the reasons for reopening of assessment. Our attention was invited to page 7 (Tax Haven Bank Secrecy tricks) and other pages showing the transactions. It was empathetically contended that even the English translation of the document was provided to the assessee. The Id. Special Counsel filed certain documents which will be discussed in the later part of this order. It was contended that the assessee was made aware about the names of the beneficiaries, bank account. Our attention was invited to section 106 of the Evidence Act (burden of proving fact) by contending that the department got these authenticated documents which were provided to the assessee also, therefore, reopening is valid. It was pointed out that the assessee was summoned by the Revenue authorities but she/they did not appear before the AO and even sought adjournment during remand proceedings which was granted, convenient date was fixed and even on that date the assessee did not appear. It was submitted that money was arranged by the beneficiaries to the local jurisdiction because distribution of assets was not liable for further taxation at that place (where account of the trust was opened ) but liable for taxation in India.

2.2. We have considered the rival submissions and perused the material available on record. Since identical facts/issues are involved and all the assesseees are relatives, therefore, these appeals are being disposed of by this common and consolidated order. In the case of Shri Mohan Manoj Dhupelia the facts in brief are that the assessee filed return of income u/s 139(1) of the Act on 1<sup>st</sup> August 2002 showing total income of Rs.1,97,650/-.

Subsequently, information was received that the assessee is a beneficiary of Ambrunova Trust, having an account in Liechtenstein Bank. The said information contained summary of bank statement as on 31/12/2001 of the said trust in which there was a balance of US \$ 24,06,604.90/-. This information was not disclosed by the assessee in the original return thus notice u/s 148 of the Act was issued on 26/03/2009. The assessee requested the revenue to treat the return already filed as having being filed in response to the notice issued and served u/s 148 of the Act. The assessee was also supplied with a copy of reasons recorded for reopening of assessment including English translation of the documents. The assessee also denied of any knowledge of trust by further claiming that he/she has not received any money. The AO found that the address/nationality, country of domicile was the same as of the assessee as mentioned in India in the return. However, the assessee did not provide any document in support of his statement that he is not connected with this trust. The AO added Rs.2,34,64,398 being 25% of his share out of Rs.11,73,31,988/-(i.e. US \$ 24,06,604.90/- converted at 48.75%). We note that the assessment was reopened by the AO on the information received from LGT Bank regarding Ambrunova Trust in which the name of the assessee was appearing as a beneficiary. Before the Id. AO, it was contended by the assessee that the documents so received by the Department regarding the Trust (LGT Bank) are unauthenticated and unverified and thus reopening is incorrect. We have perused the documents. A permanent sub-committee on investigation (committee on homeland security and government affairs) was constituted by the United States Senate of which Mr. Carol Levin was the Chairman (Source: [WWW.Frank-cs.org/cms/pdfs/USA/Servile/Senate\\_Tax\\_Haven\\_Bank\\_Exhibits\\_17.7.08.pdf](http://WWW.Frank-cs.org/cms/pdfs/USA/Servile/Senate_Tax_Haven_Bank_Exhibits_17.7.08.pdf)). We have also perused the documents provided by the Id Senior special Counsel (Tax Haven Bank Secrecy Tricks). As per Article 14 of the Banking Act (Liechtenstein Secrecy laws) the members of the organ of the Bank and their employees as well as other persons, acting on behalf of such banks, shall be obliged to maintain secrecy of facts that they have been interested too or have been made available to them pursuant to their business relations with

clients. The obligation to maintain secrecy shall not be limited in time. These documents are available at pages from 1 to 15 of the paper book filed by the Id. Special Counsel. We are reproducing hereunder the exhibit list (Hearing) on Taxhaven Bank and US tax Compliance (July 17 and 25, 2008) for ready reference and proper conclusion.

**United States Senate**  
**PERMANENT SUB COMMITTEE ON INVESTIGATIONS**  
**Committee on Homeland Security and Governmental Affairs**

**Carl Levin, Chairman**  
**Norm Coleman,**  
**Ranking Minority**  
**Member**

**EXHIBIT LIST**

Hearing On  
TAX HAVEN BANKS  
**AND U. S. TAX COMPLIANCE**  
July 17 and **25**, 2008

1. **Marsh Foundations**, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
2. **Wu Foundation**, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
3. **Greenfield Foundation**, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
4. **Laity Foundation**, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.
5. a. Statement of former LGT Treuhand employee, formerly known as Henrich Kieber.  
b. Liechtenstein warrant for the arrest of Henrich Richer.

**DOCUMENT RELATING TO MARSH ACCOUNTS:**

6. **Letter of wishes**, Lincol Foundation, October 15, 1985.
7. LGT receipt for US \$3,310,700 cash from Lincol Fondation, dated October 15, **1985**.
8. Handwritten letter signed by Shannon N. Marsh to Mr. Alvate, **to give Kerry M. Marsh permission to review all documents and receipts pertaining to Lincol Foundation and Chateau Foundation**, dated May 23, 1992.
9. Instructions signed by Shannon Neal Marsh, empowering Marsh family members to act as principals for Lineal Foundation, dated November 17, 1993.
10. Correspondence from James A. Marsh, Jr. to Peter Meier, LGT,

dated October **4**, 1994, re:  
Lincol and Chateau.

11. Letter **of** wishes, **Lincol** Foundation and Foundation **Chateau**, October 11, 2000
12. LGT Memorandum to File about Lincol and Chateau Foundations, dated February 7, 2002.
13. Deed **of** Signature accepting appointment **as Protector of the Chateau Foundation**, signed by Kerry Michael Marsh, Shannon Neal Marsh, and James Aibright Marsh, Jr. and Deed **of Appointment of** Successors.
14. Resolution, The Foundation Board **of** Foundation **CHATEAU**, indicating the inventory **of assets and** liabilities **at 31. December** 2000 showing a **total of USD 10'015'623,50**, dated September 12, 2001
15. Letter from James A. Marsh to LGT, dated November **10**, 2004, granting LGT all administrative and management activities for Foundation Chateau.
16. Correspondence from Shannon Neal Marsh **to** Members of the Foundation Council of Chateau Foundation, dated November **4**, 2004, re: appointment of members of the Foundation Council of Chateau Foundation.
17. Excerpt from 2006 Income Tax Returns, Estate **of** James A. **Marsh**.
18. Three letters from Baker & McKenzie LLP (Marsh Family attorney) to the Internal Revenue Service, dated May 12, 2008, forwarding amended returns for foreign income and foreign bank and financial accounts for calendar years 2002-2006.

#### **DOCUMENTS RELATING TO WU ACCOUNTS:**

19. WT report on JCMA Foundation, dated June 27, 2002.
20. Declaration of Trust between Cobyne Limited and JCMA Foundation, dated October 1, 1996.
21. New York City property records, recording sale of Forest Hills, NY home of William S. Wu to TM Lung Worldwide, Ltd, dated January 21, 1997.
22. LGT Memorandum by Kim Choy regarding JCMA Foundation, dated June 26, 2002.
23. Documents regarding withdrawal of \$1 00,000 by JCMA Foundation/william Wu from LGT through HSBC Hong Kong and Shanghai Banking Corp. Hong Kong, June 2002.
24. Excerpt from Resolution, The Foundation Board of JCMA Foundation, indicating statement of assets as per 31 December 2001 in the total amount of USD 4.283,4 73 .49. dated February 7, 2002.

25. *Excerpt from Resolution, The Foundation Board of JCMA Foundation, indicating inventory of assets and liabilities at 31 December 2003 showing a total of USD 2.1 7Z145.9 7, dated March 10, 2004.*
26. *Excerpt from Resolution of the Foundation Board of JCMA Foundation, showing assets as per 31 December 2004 amount to USD 1,202,636.25, dated February 13, 2006.*
27. *Excerpt from Resolution of the Foundation Board of JCMA Foundation, showing assets as per 31 December 2005 amount to USD 1,188,957.64, dated March 30, 2006.*
28. *Excerpt from Resolution of the Foundation Board of JCMA Foundation, showing assets as per 31 December 2006 amount to USD 422,249.10, dated April 18, 2007.*
29. *WI report on Veline Foundation after a March 27, 2000, client visit.*
30. *Statement of asset as per 31.12.2000, Veline Foundation, dated February 5, 2001.*
31. *Bearer Share Certificate, Manta Company Limited, dated September 3, 1997.*
32. *Handwritten organizational chart showing Veline Foundation ownership of corporations and property, undated*

**DOCUMENTS RELATED TO LOWY ACCOUNTS:**

33. *LGT Memorandum for the Record, dated November 26, 1996, memorializing a November 21, 1996, Meeting in Sydney regarding Westfields, Adelphi, Crofton between LGT and Frank Lowy, David Lowy, David Gronski and Joshua Gelbard.*
34. *LGT Memorandum for the Record, dated November 27, 1996, regarding New Establishment Westfield/Lowy.*
35. *LGI Note for File, dated December 17, 1996, regarding telephone conversation with Frank Lowy and Joshua Gelbard regarding Westfields, Adelphi, Crofton.*
36. *LGT Memorandum for the Record, dated January 23, 1997, regarding January 20, 1997 meeting in Los Angeles between LGT and Frank Lowy, David Lowy, and Peer Lowy regarding Westfield/Lowy Family.*
37. *LGT Memorandum for the Record, dated March 4, 1997, regarding March 3, 1997, phone call with Peter Widmer regarding March 12, 1997 meeting in London with F.L. and J. Gelbert, the definitive structure as well as the asset transfer is to be*



- discussed.*
38. *Correspondence from J.H. Gelbard to WI, dated March 12, 1997, regarding formation of a Foundation by the name of Luperla Foundation.*
  39. *WI Memorandum for the file, dated March 13, 1997, regarding March 12, 1997, meeting in London between LGT and Frank Lowy and Josua Gelbard.*
  40. *LGT Memorandum for the Record, dated March 16, 1997, regarding March 12, 1997 meeting in London with F.L. regarding Luperla Foundation,*
  41. *Regulations, Luperla Foundation, Vaduz, dated April 30, 1997.*
  42. *LGT Memorandum for the Record, dated May 2, 1997, regarding April 30, 1997, meeting in the Hotel Savoy, Zurich between LGT and Frank Lowy and J.H. Gelbard.*
  43. *LGT Memorandum for the File, dated May 14, 1997, regarding Luperla Foundation, Valuz.*
  44. *LGT Memorandum for the File, dated October 23, 1997, regarding Luperla Foundation/Swell Service Ltd. B.V.I.*
  45. *LGT Memorandum for the file, dated January 29, 1998, regarding January 28, 1998, meeting in Bendern with Peter Widmer regarding Luperla Foundation, Vaduz (“Luperla”).*
  46. *Memorandum for the File, dated June 26, 2001, regarding Luperla Foundation.*
  47. *Memorandum for the File, dated July 16, 2001, regarding Luperla Foundation, Valuz.*
  48. *Memorandum for the File, dated December 17, 2001, regarding Luperla Foundation, Valuz.*
  49. *Memorandum for the File, dated December 18, 2001, regarding Luperla Foundation, Valuz.*
  50. *Memorandum for the File, dated December 20, 2001, regarding Luperla Foundation, Valuz.*
  51. *Documents regarding Beverly Park Corporation.*
  52. *IRS Information Document Requests (IDR) regarding Beverly Park Corporation.*
  53. *State of Delaware, Division of Corporations, Entity Details for Beverly Park Corp., listing Incorporation Dates of December 17, 1991, and January 3, 1997.*

**DOCUMENTS RELATING TO GREENFIELD ACCOUNTS:**

54. *LGT Memorandum for the Record, dated March 27, 2001, memorializing a March 23, 2001 meeting regarding Maverick Foundation between LGT and Harvey and Steven David Greenfield.*
55. *WI Summary of Maverick Foundation as of December 31, 2001, dated January 1, 2002.,*

56. *LGT report on Maverick Foundation, undated.*
57. *LGT report on TSF Company Limited, undated.*
58. *LGT report on Chiu Fu (Far East) Limited, undated.*
59. *LGT Background Information/Profile for Maverick Foundation, dated October 12,2001.*
60. *LGT Background Information/Profile for TSF Company Ltd., BVI, dated December 20, 2001.*

**DOCUMENTS RELATING TO GONZALEZ ACCOUNTS:**

61. *Foundation Tragique flow chart, undated.*
62. *LGT report for Tragunda Foundation, dated December 3,2001.*
63. *LGT Background Information/Profile for Auto and Moteren [Motors] Corp. dated October 3, 2001.*
64. *LGT report on Asmeral Investment Anstalt.*
65. *LGT Memorandum for the File, dated September 11,2001, regarding Foundation Tragique.*
66. *Stiftung flow chart, undated.*
67. *LGT Background Information/Profile for Foundation Tragique, Vaduz, dated December 18, 2001.*
68. *LGT Background Information/Profile for FIWA AG, Vaduz, dated December 10, 2001.*

**DOCUMENTS RELATING TO CHONG ACCOUNTS:**

69. *LGT Background Information/Profile on Yue Shing Tong Foundation.*
70. *Documents related to Apex.*
71. *Communication between Chong and Chalet [Silvan Golanti at LGT], February - March 2008, regarding disclosure of LGT accounts.*

**DOCUMENTS RELATING TO MISKIN ACCOUNTS:**

72. *Declarations of Michael Miskin, dated 2003.*
73. *Declarations and court pleadings of Stephanie Miskin, dated 2003.*
74. *LGT Memorandum for the Record, dated, June 30,1 998~ regarding New Establishment Michel Miskin.*
75. *Michael Miskin Letter of Wishes with respect to the assets of Micronesia Foundation, dated July 28, 2000.*
76. *LGT report on Micronesia Foundation.*
77. *LGT/Michael Miskin receipt for wire transfer of GBP 3,650,314.00, dated October 21,1998.*

78. *Fax from Thoams Lungkofler/LGT to Michael Miskin, dated February 27,2002, regarding tax situation in the US-area.*

**ADDITIONAL DOCUMENTS RELATING TO LGT:**

79. *Documents related to Sera Financial Corporation.*  
 80. *Documents related to Jaffra Development Inc.*  
 81. *Documents related to Sewell.*  
 82. *Excerpt from presentation related to LGT and the Qualified Intermediary (QI) Program.*  
 83. *Documents related to LRAB Foundation.*

**DOCUMENTS RELATED TO UBS:**

84. *Wealth Management and Business Banking, Client Advisor's Guidelines For Implementation and Management Of Discretionary Asset Management Relationship With U.S. Clients (2002).*  
 85. *Cross-Border Banking Activities into the United States (version November2004)*  
 86. *Restrictions on Cross-Border Banking and Financial Services Activities. Country Paper USA (Effective Date June 1, 2007), prepared by UBS.*  
 87. *Excerpt of Key Clients in NAM, Business Case 2003-2005.*  
 88. *Correspondence of UBS to Clients dated November 4,2002, We are writing to reassure you that your fear is unjustified and wish to outline only some of the reason why the protection of client data cannot possibly be compromised .... UBS's entire compliance with its QI obligations does not create the risk that his/her identity be shared with U.S. authorities.*  
 89. *Martin Liechti (Head of UBS Wealth Management Americas) email, January2007, regarding net new money goal and Year of the Pig.*  
 90. *Referral Campaign BU Americas, June 2002 (Swiss watch await!).*  
 91. *Overview Figures North America, prepared by UBS.*  
 92. *Case Studies Cross-Border Workshop NAM.*  
 93. *UBS Memorandum, dated November 15, 2007, re: Changes in business model for U.S. private clients.*  
 94. *Talking Points for Informing U.S. Private Clients With Securities Holdings About The Realignment Of Our Business Model Plus Q&A.*

**DOCUMENTS RELATED TO OLENICOFF:**

95. *Statement of Facts, United States of America vs. Bradley Birkenfeld dated 2008.*  
 96. *Plea Agreement For Defendant Igor hi Olenicoff, dated 2007.*  
 97. *Emails between Birkenfeld/Olenicoff, dated July2001, re: Meeting in California.*

98. *Correspondence of Igor Olenicoff, dated October 2001, re: Guardian Guarantee Co. Ltd.*
99. *Email between Staggl/Olenicoff, dated January 2002, re: Structure.*
100. *UBS documents related to opening of account for Guardian Guarantee Company, Ltd.*
101. *Emails related to Liechtenstein trust and a Danish Corporation.*
102. *Fax from Olenicoff to Birkenfeld, dated December 2001, re: Structure.*
103. *Emails dated April 2002, re: transferring U.S. securities to a Liechtenstein account.*

**OTHER DOCUMENTS:**

104. *Tax Haven Bank Secrecy Tricks, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.*
105. *Liechtenstein Secrecy Laws, chart prepared by the U. S. Senate Permanent Sub-committee on Investigations.*
106. *Letter from Baker & McKenzie LLP (Marsh Family attorney) to the Permanent Subcommittee on Investigations, dated July 15, 2008, with clarification.*
107. *Statement for the Record of the Australian Taxation Office.*

**ADDITIONAL DOCUMENTS RELATED TO LOWY ACCOUNTS:**

108. *LGT report on Luperla Foundation.*
109. *LGT Background Information/Profile for Luperla Foundation, dated December 7, 2002.*
110. *LGT Statement of Account for Luperla Foundation, dated December 29, 2001.*
111. *LGT Memorandum for the Record, dated April 10, 2002, regarding retroactive dissolution of Luperla Foundation.*
112. *Letter to Peter Lowy from Leon C. Janks, dated December 13, 2001, enclosing four original documents related to Beverly Park Corporation.*
113. *a. Contract For The Purchase And Sale of Real Estate, sale by West Park Avenue Corporation to Beverly Park Corporation, March 1997.*  
*b. Beverly Park Corporation Guest Log, Beverly Hills House and New York Condo, July 1999-May 2000.*
114. *Hidden Money Trail, chart prepared by the U. S. Senate Permanent Subcommittee on Investigations.*

**Tax Haven Bank Secrecy Tricks**

- *Code Names for Clients*
- *Pay Phones, not Business Phones*
- *. Foreign Area Codes*
- *Undeclared Accounts*

- *Encrypted Computers*
- *Transfer Companies to Cover Tracks*
- *Foreign Shell Companies*
- *Fake Charitable Trusts*
- *Straw Man Settlers*
- *Captive Trustees*
- *Anonymous Wire Transfers*
- *Disguised Business Trips*
- *Counter-Surveillance Training*
- *Foreign Credit Cards*
- *Hold Mail*
- *Shred Files*

### **Liechtenstein Secrecy Laws**

**Article 14 of the Banking Act:** *“The members of the organs of banks and their employees as well as other persons acting on behalf of such banks shall be obliged to maintain the secrecy of facts that they have been entrusted to or have been made available to them pursuant to their business relationships with clients. The obligation to maintain secrecy shall not be limited in time.”*

**Article 11 of the Trustee Act** *“Trustees are obliged to secrecy on the matters entrusted to them and on the facts which they have learned in the course of their professional capacity and whose confidentiality is in the best interest of their client. They shall have the right to such secrecy subject to the applicable rules of procedure in court proceedings and other proceedings before Government authorities.”*

**Article 10- Data Confidentiality:** *‘Whoever processes data or has data processed must keep data from applications entrusted to him or made accessible to him based on his professional activities secret, notwithstanding other legal confidentiality obligations, unless lawful grounds exist for the transmission of the data entrusted or made accessible to him,*

**Processing of Personal Data - § 1173., Art. The AB~ (General CMI Code):** *“The employer may not process data relating to the employee unless such data concern his or her qualification for the employment or are indispensable for the performance of the employment contract. In addition, the provisions of the Data Protection Act shall apply.”*

**Article 8-Transborder Data Flows:** “No personal data may be transferred abroad If the personal privacy of the persons affected could be seriously endangered, in particular where there is a failure to provide protection equivalent to that provided under Liechtenstein law. This shall not apply to states which are party to the EM Agreement.; whoever wishes to transmit data abroad must notify the Data Protection Commissioner beforehand in cases where: a) there Is no legal obligation-to disclose the data and b) the persons affected have no knowledge of the transmission.”

**Prohibited Acts of a Foreign State** –Art. 2 of the Liechtenstein State Security Law: “prohibited Acts for a Foreign State: Whoever, without being authorized, performs acts for a foreign state on Liechtenstein territory that are reserved to an authority or -an official, whoever aids and abets such acts, shall be punished by the Liechtenstein court (Landgericht) with imprisonment up to three years.”

**Prohibited Acts for a Foreign State** — Art. 271 of the Swiss Penal Code: “Whoever, without being authorized, performs acts for a foreign state on Swiss territory that are reserved to an authority or an official, whoever performs such acts for a foreign party or another foreign organization, whoever aids and abets such acts, shall be punished with Imprisonment up to three years or a fine, in serious cases with imprisonment of no less than one year.”

**Economic Intelligence Service (Art. 273 SPC):** ‘Whoever seeks out a manufacturing or business secret in order to make it accessible to a foreign official agency, a foreign organization, a private enterprise, or their agents, whoever makes a manufacturing or business secret accessible to a foreign official agency, a foreign organization, a private enterprise, or their agents, shall be punished with imprisonment upto three years or a fine, in serious cases with imprisonment of no less than one year. Imprisonment and fine can be combined.’

## **6. The scope and impact of the LGT tax Investigation and any lessons learned**

### **Tax Office Strategy**

The ATO is investigating the use of Liechtenstein entities and bank accounts in collaboration with other revenue agencies. In Australia, we are conducting 20 tax audits which are likely to raise tax liabilities In excess of \$100 million. Anecdotal information suggests

*that relatively few Australians are involved in Liechtenstein arrangements relative to citizens from other countries.*

*Liechtenstein -The ATO is currently reviewing the taxation affairs of Australian taxpayers who appear to have concealed income in offshore entities located in banking secrecy jurisdictions and tax havens. ~M have a particular focus on taxpayers who have used the services of the LGT Group and its trustee entity, LGT Treuhand Aktiengesellschaft in Vaduz, Liechtenstein (LGT.)*

- *LGT Treuhand A.O. operates a fiduciary or trustee service and establishes and administers legal entities such as anstalts, stiftungs (foundations) and trusts for its clients. –*
- *LGT Bank in Liechtenstein A.G. Is the banking division of the LGT Group. It has responsibility for banking services related to the investment functions of the LGT Group.*

*The services provided by LGT include administration and investment of offshore assets which appear to be beneficially owned by the client. LGT acts on instructions from a client to establish or create a Liechtenstein entity and subsidiary entities in other tax haven jurisdictions. In the Australian examples, the parent entity is usually a foundation or trust. In some instances, LGT appears to have been retained as an agent of the client, and has established and administered a Liechtenstein entity acting in that capacity.*

*The beneficial owners of the Liechtenstein entity are commonly a natural person and their family members, however their identity and control appear to be concealed on public and bank records by the interposition of a foundation board comprising LGT officials, who exercise control of that entity on behalf of the beneficial owners. - Documents relating to a private family foundation are not recorded on the Liechtenstein public registry. The foundation is a separate legal entity and the board members have discretion to nominate beneficiaries, so that secrecy is maintained.*

*The ATO understands that in practice the foundation board members act on the wishes or instructions of the settlor or beneficial owners of the entity. In other cases the client has used a foreign attorney to give instructions to the foundation board members or has replaced the by-*

*laws or regulations of the foundation to appoint new beneficiaries.*

*LGT allegedly designs client structures so that the client or beneficial owner, is unable to be connected to the Liechtenstein entity, whether that entity be a foundation, trust or anstalt. The services provided by LGT — on the banking and secrecy laws operating in Liechtenstein to prevent disclosure of the client's identity or information.*

*LGT will also arrange to open and operate a bank account for the foundation or trust It has established for its client The bank accounts are typically held in the name of the entity, to avoid any connection with the instructing client, and to meet the bank's anti-money laundering obligations.*

*Assets administered by LGT may be invested in a diverse range of managed funds and currencies. Further, safety deposit facilities can be arranged for clients to secure other valuable items such as art and jewellery which may also form part of the Investment portfolio.*

*Funds owned by entities that are established by LGT for its clients are commonly invested with its own bank or funds management entities:*

- **LGT Bank in** Liechtenstein;
- **LGT Capital** Invest Limited **Grand** Cayman; **and**
- **LGT** Portfolio Management (Cayman) Limited.

*At the client's direction, funds may be invested with a third party bank, usually operated in a banking secrecy jurisdiction.*

*The ATO understands that for a trust or foundation to be established by LGT, substantial funds must be settled in the trust or foundation for it to be economically viable for LGT. LGT clients are wealthy investors who typically invest a small portion of their total wealth in a LGT structure and who do not need access to these funds to support their domestic lifestyle.*

**LGT** plays an active role **in servicing** and administering the client's Liechtenstein entity. For example the board members of a foundation will be **LGT** employees. They **are** responsible for administration **of** the entity **and** are the approved signatories.

*The use of **LGT** employees as board members or trustees and in-house or 'omnibus' entities as nominee directors of interposed entities is considered to be another means by which the beneficial owner is distanced from being connected **to** their Liechtenstein entity. This may facilitate the avoidance or evasion **of** tax on any offshore income derived by the Liechtenstein entity*



*by an Australian taxpayer, who is the beneficial owner.*

*LGT also arranges for shell entities Incorporated hi other tax haven jurisdictions (such **as BVI or Panama**) to be set up as Interposed entitles of the Liechtenstein entity for its clients. The **ATO** considers that these special purpose vehicles **are** used to layer the transactions and the flow of funds, and (may be designed to prevent regulators and tax administrators from deter mining the underlying ownership and control **of** the entity established by LGT and Its assets and Income.*

*LGT allegedly recommends **to** clients that fund transfers be conducted through interposed entities In countries outside the client's domestic jurisdiction. The Australian experience Is-that clients have adopted this recommendation and that few International fund transfers are remitted directly between Australian residents and Liechtenstein or Switzerland as detected by our FIU.*

*Communication, between the ultimate beneficial owner of the foundation and LGT appears to be limited to either face **to** face or telephone contact LGT Instructs the ultimate beneficial owner of the foundation **to** avoid written correspondence with It and clients are provided with codes and passwords **to** maintain confidentiality and secrecy.*

*Intelligence held by the **ATO** Indicates that at July 2006 there were **14** banks operating hi Liechtenstein with funds under control-of approximately **255** billion Swiss francs. Also operating **in** Liechtenstein was numerous Treuhand (Trust Service Companies). Further intelligence indicates that as **at** November 2006 approximately 127,000 entities were registered with the public company registry (the population of Liechtenstein Is approximately 35,000).*

*The ATO has employed several compliance strategies - audits, Issuing Information production notices (both domestically and off-shore), conducting formal and informal interviews, accessing premises (with or without notice) **to** copy documents, and exchanging information with our Tax Treaty partners.*

*More importantly, the sharing of intelligence between International tax agencies has provided a unique understanding of Liechtenstein financial services and entitles end will provide an opportunity to engage with Liechtenstein to achieve greater transparency and exchange of Information.*

*The ATO welcomes news that new laws In Liechtenstein will enhance regulation and transparency in relation to some legal entities. However, we are concerned to see the detailed law and Its proposed implementation in 2009 to determine whether there are practical **changes to trustee/banking practices.***

**Lessons learned**

- *Project management strategies are essential to successful audit outcomes.*
- *Sharing of information with **other** revenue agencies expedites the progress **of** cases.*
- *Our compliance activities have resulted in disclosures or settlements.*

2.3. We are reproducing hereunder the salient features of the **Host Trust reg.**

<u>Home</u>	-The trust Reg. can be structured like a company limited by shares or foundations as an instrument for commercial activities or for the administration of assets.
<u>Company overview</u>	-The trust reg. qualifying as private asset structure pays an annual tax of CHF 1,200 only
<u>Executive Sum Company norms many Liechtenstein</u>	-Distribution to the beneficiaries as well as profits earned are not subject to any further tax
<u>Trust. Reg.</u>	-The Supreme Authority is vested in the settlor and is transferable.
<u>Foundation Trust</u>	-The beneficial interests may be assigned to persons other than the settler
<u>Establishing a Company in Liechtenstein Fees and costs</u>	-The administration is taken care by the board of trustees.
<u>Conclusion</u>	-If commercial activities are perused or the articles make provision for such activities an auditor must be appointed. In this case the annual accounts approved by the auditor must be submitted to the Liechtenstein tax administration.
<u>Contact Details</u>	-In case of losses or liabilities only the

	asset of the trust reg. have to be used to cover them
<u>Disclaimer</u>	-The minimum capital to constitute a trust reg. is CHF 30,000

*HOST Trust reg.'s mission is to advise foreign investors and to establish It 11· them - based on legal expertise - companies or trusts in Liechtenstein to enhance profits.*

*The Liechtenstein jurisdiction qualifies as an offshore financial centre.*

*Foreign investors have the opportunity to establish companies or trusts ill the Principality of Liechtenstein to enjoy the advantages of our offshore financial centre due to:*

*A very modest tax regime with special advantages for private asset structures i.e. legal entities and trusts which do not pursue any economic activity;*

*A company law which offers next to the ordinary kind of companies like I he company limited by shares ( Aktiengesellschaft/AG) those specifically designed to serve the needs coming along with holding of assets, namely the foundation (Stiftung) and the establishment (Anstalt);*

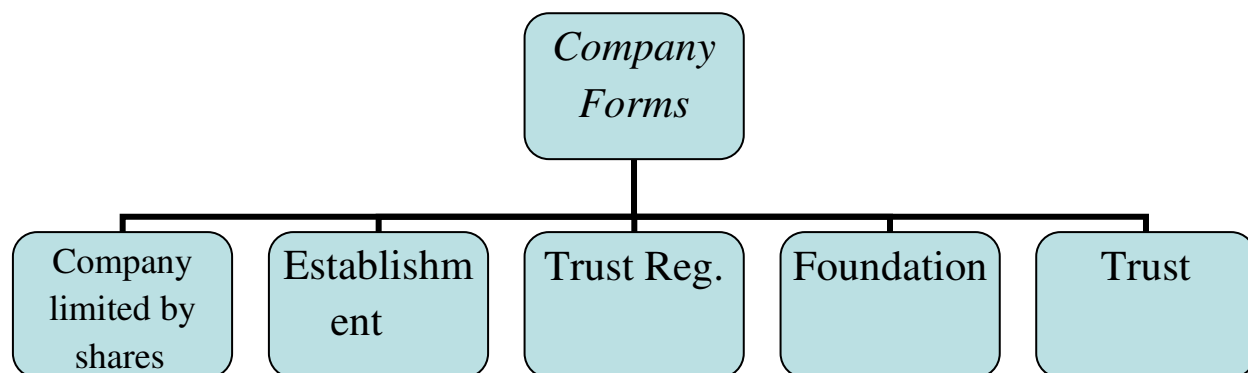
*The institute of trusts shaped according to the English law trust;*

*A high standard of secrecy laws.*

### **Key Figures**

- *Foundation: 1719 AD*
- *Government: constitutional hereditary monarchy*
- *Economy (GNP): CHF 5.2 Billion (2009)*
- *Currency: Swiss Franc (CHF)*
- (Possible to invest in any currency)*
- *Size: 160 sq meters (62 sq miles)*
- *Population: 36' 150 (2010)*
- *Member of UNO, EFTA, EEA and WTO*

*The Principality of Liechtenstein is a politically, economically and socially very stable country for investors.*



### **Company**

*The company limited by shares is suitable for all economic objectives, in particular for:*

- . international commercial transactions or*
- . as a holding structure for subsidiary companies.*
- The company limited by shares qualifying as private asset structure pays an annual tax of CHF 1 '200 only.*
- The coupon tax of 4% is not any longer levied on dividends distributed from income accrued after January 1, 2011.*
- The profits earned are not subject to any further tax.*
- Bearer or registered shares are admissible. The minimum nominal value is not regulated. It is also possible to issue voting shares. The Liechtenstein law does not ask for any qualifying shares to be held by the directors.*
- The general meeting of the shareholders is the supreme authority.*
- The board of directors conducts and manages the company business.*
- The auditor has to examine the annual accounts and reports to the general meeting.*
- The annual accounts approved have to be submitted to the Liechtenstein tax administration.*
- The minimum capital to constitute a company limited by shares is CHF 50'000.*

*The organization of an individual establishment may be adopted to its specific needs: like a company limited by shares or a foundation, as an instrument for commercial objectives or for the administration of assets.*

### **Establishment**

- *The establishment qualifying as private asset structure pays an annual tax of CHF 1 '200 only.*
- *Distributions to the beneficiaries as well as profits earned are not subject to any further tax.*
- *The supreme authority is vested in the founder (holder of the founder's rights) and is transferable.*
- *The beneficial interests may be assigned to persons other than the holder (s) of the founder's rights*
- *The administration is taken care by the board of directors.*
- *If commercial activities are pursued or the articles make provision for such activities an auditor must be appointed. In this case the annual accounts approved by the auditor must be submitted to the Liechtenstein tax administration.*
- *In case of losses or liabilities only the assets of the establishment have to be used to cover them.*
  - *The minimum capital to constitute an establishment is CHF 30'000.*

### **Trust Reg (Trust Enterprise)**

*The trust-reg. can be structured like a company limited by shares or foundation as an instrument for commercial activities or for the administration of assets.*

- *The trust reg. qualifying as private asset structure pays an annual tax of CHF 1 '200 only.*
- *Distribution to the beneficiaries as well as profits earned are not subject to any further tax.*
- *The supreme authority is vested in the settlor and is transferable.*
- *The beneficial interests may be assigned to persons other than the settlor.*
- *The administration is taken care by the board of trustees.*

- If commercial activities are pursued or the articles make provision for such activities an auditor must be appointed. In this case the annual accounts approved by the auditor must be submitted to the Liechtenstein tax administration.

- **In** case of losses or liabilities only the assets of the trust reg. have to be used to cover them.

- The minimum capital to constitute a trust reg. is CHF 30'000.

### **Foundation**

The foundation may be constituted as:

. one for private use, especially as family foundation;

. charitable foundation.

- The founder endows assets for a specific purpose and regulates the beneficial interest.

- The foundation qualifying as private asset structure pays an annual tax of CHF 1 '200 only.

- Neither the endowment to the foundation nor the distributions to the beneficiaries or the profits earned are subject to any further tax,

- The supreme authority is vested in the members of board who also take care of the administration.

- The founder may designate other bodies as e.g. protectors, collators and auditors.

- An individual as founder may by creating retained founder's rights preserve for himself the authority to revoke the foundation and to amend the foundation documents.

- Only if the foundation pursues commercial activities the annual accounts approved by the auditor must be submitted to the Liechtenstein tax administration.

- The minimum capital to constitute a foundation is CHF 30'000.

The Liechtenstein trust settlement is shaped according to the English law trust.

### **Trust (Trust Settlement)**

- Trusts are used in a similar manner as the foundation.

- *However, the trust is not a legal entity itself, but a kind of contractual relationship.*
- *The settlor transfers movable or immovable assets or rights to the trustee with the obligation to hold and make use of this trust property against third parties in his own name as independent legal owner for the benefit of one or more beneficiaries.*
- *The trust comes into existence with the stipulation of the trust settlement (trust deed) between the settlor and the trustee or by means of a trust letter accepted.*
- *The trustee must keep his personal assets strictly separate from the trust property.*
- *To ensure the observance of the provisions in the trust deed an auditor, a protector, a curator or a collator can be appointed.*
- *The keeping of annual accounts is not obligatory.*
- *Trusts according to foreign law can be formed in Liechtenstein.*
- *The assets held by the trust qualifying as private asset structure are subject to an annual tax of CHF 1 '200 only.*
- *The distributions to the beneficiaries as well as the profits earned are not subject to any further tax.*

### **Reasons for establishing Liechtenstein Companies**

#### *The holding of assets*

*Assets of holding companies can be invested in any kind of property; e. g. bank accounts, publicly traded or not traded shares, participations in other companies, real estate property, art and so on.*

*The earnings stemming from the assets held by a holding company, be it interest on bank accounts, dividend payments from shares, earnings from participations in other companies, proceeds of sales or royalties qualify as income of the holding company which are in case of a private asset structure subject to an annual tax of CHF 1 '200 only.*

#### *- The pursuit of business*

*Profits stemming from business transactions of companies constituted after January 1, 2011, are subject to ordinary corporate tax with a tax rate of 12.5% on the taxable net income.*

*Companies pursuing business transactions and having been constituted prior to January 1, 2011, are until December 31, 2013 subject to a specific annual capital tax of 0.1 % of the assets held only, at least CHF 1 '200 per year.*

*It is not necessary that such an offshore company sets up an office in Liechtenstein or employs people. The management of such an offshore company can be provided on a contractual basis by the Liechtenstein trustee.*

*- Regulation of succession/avoidance of inheritance tax*

*Especially foundations are qualified for all purposes of estate planning as well as to avoid inheritance tax. The succession in the assets is regulated by the so-called by-laws. These are regulations setting forth who the first beneficiary of the assets is and who qualifies as second beneficiary once the first has died. As no formal change of ownership takes place in case of succession, no inheritance tax becomes payable.*

*- Asset protection by means of a holding company*

*If assets - earmarked for the personal benefit only - are held by a holding company (normally a foundation) not all assets are endangered in case of losses or liabilities incurred during the course of business activities pursued by the beneficiary.*

**Fees and Costs in General**

*The fees and costs involved with the constitution and administration of a Liechtenstein company or trust are approximately the following:*

- . For the constitution of a company/trust between CHF 5'000 and 6'000;*
  - The court fees (costs) coming along with the constitution depend on the kind of company, normally approx. CHF 600 - 1'300;*
  - For the local director/trustee of the company/trust an annual lump sum between CHF 5'000 and 6'000;*
  - For the legal representative in charge to accept services on behalf of the company an annual lump sum between CHF 500 and 600;*
  - Petty expenses.*
- While the fees for the director and legal representative are payable in advance and cover the acceptance of the respective position by the person or company retained, further services provided by the local director and his staff are charged by the time spent according to an hourly fee rate. The fee rate normally varies between CHF 100 for administrative work to CHF 500 for management and legal work and depends on the level of sophistication involved, the assets concerned as well as on what the parties have agreed.*



- All fees are subject to 8 % V A T and are charged against the company/trust and may be deducted from the assets held by the same.

### **Conclusions**

*The Liechtenstein jurisdiction qualifies as an offshore financial centre due to:*

- A very modest tax regime;

- A company law which offers next to the ordinary kind of companies like the company limited by shares (AG) those specifically designed to serve the needs coming along with holding of assets, namely the foundation (Stiftung), the establishment (Anstalt) and the trust reg;

-The institute of trusts;

-A high standard of secrecy laws.

*Foreign investors have the opportunity to establish companies or trusts with HOST trust reg. in the Principality of Liechtenstein to enjoy the advantages of our offshore financial centre.*

### **Contact Details**

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**Black money: Liechtenstein joins India in stash funds fight Press**

**Trust Of India: JakartalNew Delhi, Thu**

**Nov 21 2013, 19:53 hrs.**

*Liechtenstein, one of India's important partner nations in fighting overseas tax abuse and black money, on Thursday shed its secrecy cloak and joined the league of a host of other countries for automatic exchange of information and mutual assistance in tax matters.*

*The country, a landlocked jurisdiction in Central Europe, became the 62nd signatory to a worldwide convention, accepted by almost all economic superpowers and formulated by the Paris-based Organisation for Economic Cooperation and Development (OECD), an international policy-advisory body that formulates global tax standards to fight tax evasion and concealment of illicit funds.*

*Switzerland, in October, had joined the same convention.*

*"Liechtenstein and San Marino became the 62nd and 63rd signatories of the multilateral convention on mutual administrative assistance in tax matters at a ceremony marking the first day of the November 21-22 meeting of the Global Forum on Transparency and Exchange of Information for Tax Purposes," the OECD said in a statement.*

*A senior Finance Ministry official in Delhi said the step, announced by Liechtenstein last week, is a "boost to India's efforts to combat black money instances overseas."*

*Indian investigating agencies have come across a number of cases where individuals or entities from India have been detected using banking channels of Liechtenstein to hide their illegal incomes or stash funds.*

*By joining the comity of nations, the Central European nation, Liechtenstein has virtually pulled down the wall of secrecy and will allow partner nations like India to seek information about suspect individuals and entities and provide for obtaining banking information about such people.*

*The multilateral convention of the OECD provides for all forms of mutual assistance like exchange on request, spontaneous exchange, tax examinations abroad, simultaneous tax examinations and assistance in tax collection while protecting taxpayers' rights.*

*It also provides the option to undertake automatic exchange, requiring an agreement between the parties interested in adopting this form of assistance.*

2.4. So far as, the contention of the Id. Counsel for the assessee that there is violation of principal of natural justice and reasonable opportunity was not provided to the assessee by the Assessing Officer, are concerned, we are not in agreement with this assertion of the Id. Counsel because the assessee was duly provided with the reasons of reopening of assessment and English translated copy of the documents.

2.4.1 In view of the above, we find no substance in the assertion of the assessee that the reopening of assessment was bad, without following the due process of law or violation of principle of natural justice, more specifically when sanction was granted by the Additional Commissioner after considering the facts and due application of process of law. The Assessing Officer vide letter dated 13/5/2009 provided the reasons for reopening of the assessment wherein it was specified that a tax-evasion petition (TEP) has been received from CBDT. As per the information contained in the said TEP the assessee is a beneficiary of Ambrunova Trust and Merlyn Management SA. In the return of income the assessee neither offered any income with reference to the trust nor disclosed any details to the effect that the appellant was a beneficiary of the said trust. The Assessing Officer, from the, summary of the trust account in LTG Bank, found credit balance of US \$ 24,06,604 as on 31/12/2001 (Rs.11,60,99,390/- @ 48.242 per USD) interest accrued of USD 13500 (equivalent to Rs.6,51,267/-) was credited to the said account. As the same was not reflected in the return of income thus, the Assessing Officer correctly presumed that income has escaped assessment. Even vide letter dated 23/9/2009 the Assessing Officer showed details (a) information of trust, (b) details of settler of the trust, (c) purpose of creating trust, (d) copy of trust deed, (e) asset and bank accounts held by the trust in India and abroad and (f) benefit received by the appellant during the financial years relevant to Assessment Year 2002-03 to 2007-08 (page 21 ). The assessee vide letter dated 14/10/2009 denied the allegation of the Assessing Officer (page-22). The

assessee also informed that she/they had not received any benefit from the trust or for that matter in any other Assessment Years. Vide letter dated 26/10/2009 the Assessing Officer furnished the copies of documents (pages 24 to 28) which formed the basis for initiating proceedings u/s. 148/147 of the Act. The Assessing Officer vide letter dated 8/12/2009 informed that he has information that the assessee deposited USD 24,06 604.90 in the name of Ambrusova trust in LTG Bank (pg-31). The assessee was asked to explain as to why it may not be treated as investment out of undisclosed sources and added to the income (pg-34). The assessee vide letter date 18/12/2009 informed the Assessing Officer that the evidences furnished by him in no way showed that the assessee deposited the said amount in the name of the said trust during the year (pg-35 para-1). The Assessing Officer was again requested to furnish the evidence of such deposit by the assessee and the person who deposited the amount (pg-36). Vide para-13 of the said letter it was claimed that she had not received any benefit from the said trust (pg-39). Identical plea was raised before the Id. CIT(A) also regarding non-supply of material or opportunity to the assessee which has been dealt with by the Id. CIT(A) as under which is worth quoting (page-15) which reads as under :-

“The appellant has wrongly alleged that complete material was neither given nor opportunity to cross examine was given. The Assessing Officer has handed over complete set of documents received by him to the appellant during the course of assessment proceedings. Further, as a part of the remand report, the Assessing Officer had called the appellant and opportunity to cross examine the Assessing Officer himself was available to the appellant, however, the appellant chose not to appear and hence cannot raise the bogey of cross examination here. Further, the right to cross examine is available when the department has already recorded the statement and is being used against the appellant. In the instant case, no such thing was done by the department or the AO. It is pertinent to note that the information passed to the Assessing Officer had been received as a part of the tax information exchange treaty and therefore, there could not have been any cross examination.”

2.4.2 So far as the contention of the assessee that enough opportunity was not provided to the assessee is concerned we find no merit in this assertion as is evident from para-28 (pg-14) of the order of the Id. CIT(A) (ITA No.3546/M/11) wherein un-controverted finding is that the assessee chose not to use the same when it was provided . Therefore, from this angle also the assessee is having no case. The totality of the facts clearly indicates that the Assessing Officer rightly assumed jurisdiction to reopen the assessment. Thus, this ground of the assessee in the respective appeal is dismissed.

3. The next ground pertains to confirming the addition of Rs.2,34,64,398/- on account of alleged undisclosed income. The crux of argument advanced on behalf of the assessee is that the addition was made by the AO without appreciating the fact that the alleged trust was discretionary trust and neither the amount was accrued/credited nor the name of the assessee appeared as beneficiary of Ambrunova Trust. On the other hand, the Id. Special Counsel brought to our notice certain documents evidencing that the names of all the assesseees were appearing, who are beneficiaries of the said trust.

3.1 We note that (Pg-14 of the document filed by the Id. Spl. Counsel) the trust was established on 21/3/1997 and the status of the account is “active”. On 21<sup>st</sup> Nov. 2013, Liechtenstein joined India as important partner in fighting overseas tax abuse and black money and shed its secrecy cloak and joined the league of a host of other countries for automatic exchange of information and mutual assistance in tax matters. Thus, became 62<sup>nd</sup> signatory to a world-wide convention, accepted by almost by all economic super powers and formulated by Paris based Organization for Economic Co-operation and Development (OECD), an international policy advisory body which formulates global tax standard to fight tax evasion and concealment of illicit funds. Switzerland joined the same convention in October, 2013. The Id. Spl. Counsel showed the bench a confidential list containing the names of the present assessee as trustee/beneficiaries of the trust. It was requested that since the investigation is in progress, therefore, at this stage it will hamper the

investigation if the document is made public as the same list is containing the names of other beneficiaries also. On going through the bank summary in respect of Ambrunova's trust account in LTG Bank Liechtenstein, we find that there is a credit balance of USD 24,06,605 (equivalent to Rs.11,60,99,390/-).It is worth mentioning the observation/conclusion made/drawn by Hon'ble Justice Krishna Iyer, (the Hon'ble Apex Court) in the case of Chairman Board of Mining Examination & Ors. Vs Ramjee (1977 AIR 1965) (SC) order dated 3<sup>rd</sup> February 1977.

*HELD (1) Law is meant to serve the living and does not beat its abstract wings in the jural void. Its functional fulfillment as 'social engineering' depends on its scrutinized response to situation, subject-matter and the complex of realities which require ordered control. A holistic understanding is simple justice to the meaning of all legislations. Fragmentary grasp of rules can, not misfire or even backfire, as in this case. [906 H, 907 A]*

*(2) The judicial key to construction is the composite perception of the dahi and the dahi of the provision. To be literal in meaning is to see the skin and miss the soul of the Regulation. [909 A-B].*

*(3) Over-judicialisation can be subversive of the justice of the law. To invalidate the Board's order because the Regional Inspector did not suspend the certificate is fallacy. The Board's power is independent and is ignited by 905 the report, which exists in this case, of the Regional Inspector. There is an overall duty of oversight vested in the board to enforce observance of rules of safety. [909 D]*

*(4) To set aside the order on the ground that the Regional Inspector had no power to recommend but only to suspend and report that*

*his recommendation influenced the Board's order is to enthrone a processual nicety do dethrone plain justice. Suspension, on an enquiry, predicates a prior prima-facie finding of guilt and to make that known to the Board implicitly conveys a recommendation. The difference between suspension plus report and recommendatory report is little more than between Tweedledum and Tweedledee. Recommendations are not binding but are merely raw materials for consideration. Where there is no surrender of judgment by the Board to the recommending Regional Inspector, there is no contravention of the canons of natural justice.*

*(5) Natural justice is no unruly horse, no lurking landmine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation. no breach of natural justice can be complained of. Unnatural expansion of natural justice. without reference to the administrative realities and other factors of a given case, can be exasperating.*

*Courts cannot look at law in the abstract or natural justice as a mere artifact. Nor can the), fit into a rigid mould the concept of reasonable opportunity. If the totality of circumstances satisfies the Court that the party visited with gelverse order has not suffered from denial of reasonable opportunity the Court will decline to be punctilious or fanatical as if the rules of natural justice were sacred scriptures. In the instant case, the Board cannot be anath-ematised as condemning the man without being heard. The respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been*

*heard dad compliance with Regulation 26 in the circumstances is complete. [909G-H, 910A-G]*

*Tereaesai's case [1970] 1 S.C.R 251; Management of DTU[1973] 2 S.C.R. 114; Tandon's case [1974] 4 SCC 374 referred to.*

**Observations:** *Sensitive occupations demand stern juristic principles to reach at scapegraces, high and low, and not mere long drawn-out commissions whose verdicts often provedilatory 'shelter' for the men in whom Parliament his entrusted plenary management. Any sensitive jurisprudence of colliery management must make it cardinal to pt nish the Board vicariously for any major violations and dreadful disasters, on macro considerations of responsibility to the community. The Board must quit, as a legal pendry, if any dreadful deviation, deficiency, default or negligence anywhere in the mine occurs. This is a good case for new principles of liability, based on wider rules of sociological jurisprudence to tighten up the law of omission and commission at the highest levels. Responsibility and penalty must be the concomitants of highly-paid power vested in the top-brass. Any deviance on the part of these high-powered authorities must be visited with tortious or criminal liabilities. [908 F-H, 907 D-FI (The Court emphasized the need for evolving a code of strict liability calling to utmost care not only the crowd of workers and others but the few shall care or quit so that subterranean occupations necessary for the nation are made as risk-proof as technology and human vigilance permit).*

3.2 So far as the contention of the ld. Counsel for the assessee that such documents were not provided to the assessee is also incorrect as we have discussed in earlier paras of this order that not only the documents rather the



English translated copy of such documents was also provided. Therefore, this assertion of the assessee is also without any basis. Another assertion made by the assessee was that the information was unvouched and not corroborated with any evidence. We note that the said documents were received officially by the Government pursuant to an investigation made by permanent sub-committee on investigation of United States Senate. The copy of exhibit list regarding tax haven banks has already been reproduced by us in earlier part of this order. As we have reproduced in earlier part of this order (host trust reg.), the distribution to the beneficiaries as well as profits earned are not subject to any further tax and, further, the supreme authority is vested in the settler and is transferable. It can be concluded that the 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 with "HOST trust reg." in the principality of Liechtenstein to enjoy the advantages of off-shore financial centre. As per the report Indian Investigating Agencies came across a number of cases where individual or entities from India were detected using banking channels of Liechtenstein to hide their illegal income or stash funds and it was only possible when India became signatory to a world-wide convention formulated by OECD an international policy advisory body which formulated global tax standards to fight tax evasion and concealment of illicit funds. It also provided option to undertake automatic exchange of information. It is a common knowledge that discretionary trusts are created for the benefit of particular persons and those persons need not necessarily control the affairs of the trust. Still the fact remains that they are the sole beneficiaries of the trust. Thus totality of facts clearly indicate that the deposit made in the bank account of the trust represents unaccounted income of the assessee, as the same was not disclosed by the these assessees in their respective returns in India, consequently, the addition was rightly made by the Assessing Officer and confirmed by the Id. CIT(A).

4. Finally, the all the appeals of the assessee stand dismissed.

**Order was pronounced in the open court on 31/10/2014.**

**Sd/-  
( N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-  
(JOGINDER SINGH)  
JUDICIAL MEMBER**

**MUMBAI, DATED - 31/10/2014**

JV/Sr.PS

Shekhar, P.S./नि.स.

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

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

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

**हायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**

JV/SPS

नि.स./Shekhar. P.S./JV, Sr.PS