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

BEFORE SHRI N. K. SAINI, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 3036/Del/2015 (A.Y 2001-02)
ITA No. 3037/Del/2015 (A.Y 2005-06)
ITA No. 3038/Del/2015 (A.Y 2006-07)
ITA No. 3039/Del/2015 (A.Y 2007-08)

Jagat Singh C/o. DB Jain & Co. 1-Ansari Road, Daryaganj Delhi ALDPS0734K **(APPELLANT)**	Vs	ACIT Central Circle-5 New Delhi **(RESPONDENT)**

Appellant by	**Sh C. S. Agrawal, Sr. Adv & Sh. D. B. Jain, FCA**
Respondent by	**Sh. Naina Soin Kapil, Sr. DR**

Date of Hearing	**25.09.2018**
Date of Pronouncement	**02.11.2018**

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the order dated 26/03/2015 passed by CIT (A)-XXIV- for Assessment Years 2001-02, 2005-06, 2006-07, 2007-08 respectively.

2. The grounds of appeal are as under:-

ITA No. 3036/Del/2015 (A.Y. 2001-02)

"1. That the learned CIT(A) has grossly erred both in law and on

facts in upholding the initiation of the reassessment proceedings under section 147 of the Income Tax Act, 1961.

1.1. That the learned CIT(A) has failed to appreciate that, in the absence of surfacing of any tangible material, the learned A.O. could not have proceeded to invoke the provisions of section 147 of the Income Tax Act and as such learned CIT(A) ought to have held that the initiation of proceedings u/s 148 of the Income Tax Act was without jurisdiction.

1.2. That the learned CIT(A) has failed to comprehend that, the learned ACIT had no "tangible material" at the time of initiation of proceedings and the alleged "information" which was stated to have been allegedly received from the Addl. CIT, too was without any supporting material and was not available with him, as such, reassessment proceedings initiated without any tangible material and upheld by the learned CIT(A) is unsustainable in law.

1.3. That, the finding of the learned CIT(A) that the A.O. has received 'authentic' information from another Statutory Authority about recovery of Pen Drive from Sh. Chetan Gupta during raid conducted by Punjab Vigilance Bureau, Ludhiana, was insufficient to enable the learned A.O. to form his reason to believe, as the learned A.O. was obliged in law to have the "material" and not a mere report before forming his reason to believe that the income of the assessee had escaped assessment.

1.4. That the learned CIT(A) has failed to appreciate the distinction between mere allegation, information and the material. He has failed to appreciate that the information by itself, which is not in the nature of tangible material could not form the basis of the reopening of the assessment as such, the learned CIT(A) has erred in holding that the learned A.O. was justified both on facts and in law in having initiated the reassessment proceedings.

1.5. That the learned CIT(A) has failed to comprehend that, the alleged information was not available with the A.O. and had it been so available and was allegedly received before initiating the proceeding, the same would have found from his record, which was never found to be existing on the record of A.O. and infact, despite assessee's repeated request, no such material was either supplied to him or was even confronted.

2. That without prejudice to the aforesaid and otherwise too, the learned CIT(A) has failed to appreciate that, the addition made of Rs. 11,53,200/- was unsustainable. The assumption of the learned CIT(A) that the assessee had a clear business link and association between Sh. Chetan Gupta is fallacious, untenable and in any case any such link or association could not be held to be any ground at all to hold that, the assessee had made an investment with Shri Chetan Gupta, even if for the sake of an argument it is accepted that there was a credit in the Pen Drive maintained by Shri Chetan Gupta.

2.1. The learned CIT(A) has failed to appreciate the distinction between unexplained credits falling u/s 68 and unexplained investment u/s 69 of the Income Tax Act. He has failed to appreciate that the learned A.O. made 11,53,200/- u/s 69 of the Act, which had absolutely no application and thus the addition made of Rs. 11,53,200/- was totally unsustainable.

2.2. That the learned CIT(A) has failed to appreciate that, the burden was on the learned AO to establish that the assessee had made an investment and that there were credits in the books of the assessee, and without discharging such a burden, no addition was sustainable u/s 69 of the Income Tax Act.

2.3. That the learned CIT(A) has further failed to appreciate that, despite the assessee's repeated request to produce Shri Chetan

Gupta for the assessee's cross examination to rebut the allegation that, there was credits in the books of Shri Chetan Gupta, having not been provided, no addition was sustainable in the hands of the assessee.

2.4. That in any case and without prejudice, no reliance could have been placed on the statement of Shri Chetan Gupta since the said statement was allegedly made before Police authorities and had further never been confronted to the assessee and that even otherwise in the absence of any statement made by Shri Chetan Gupta that, the alleged credits appearing in his Pen Drive in any manner belongs to the assessee, there was no justification either on facts or in law to have sustained any such addition.

2.5. That the learned CIT(A) has failed to appreciate that, the burden which was on the revenue has not been discharged and there was not any material to establish that, what was credited in the account of Shri Chetan Gupta was the investment made by the assessee. The mere fact, there were certain credits in some abbreviated form does not lead to a conclusion that the assessee had made any such investment.

3. That the findings recorded by the CIT(A) in his order in para 5.4.7 that, he does not consider the case laws relied upon by the AR have any relevance to the facts of the case, are wholly misconceived and in disregard of the fact that, in identical facts and in identical circumstances, it has consistently been held that, there were no credits made in the Pen Drive of Shri Chetan Gupta by the assessee's father, his mother and Shri Amrinder Singh, assessee's uncle and that of Shri Raninder Singh. Thus there was heavy burden on the CIT(A) to bring on record the facts which can distinguish the judgments relied by the assessee.

It is therefore prayed that, it be held that the initiation of

proceeding u/s 147 of the Income Tax Act and that the additions sustained of Rs. 11,53,200/- be deleted and it be further held that, no interest accrued to the assessee as there was no contractual obligation in respect thereof."

ITA No. 3037/Del/2015(A.Y. 2005-06)

1. That the learned CIT(A) has grossly erred both in law and on facts in upholding the initiation of the reassessment proceedings under section 147 of the Income Tax Act, 1961.

1.1. That the learned CIT(A) has failed to appreciate that, in the absence of surfacing of any tangible material the learned A.O. could not have proceeded to invoke the provisions of section 147 of the Income Tax Act and as such learned CIT(A) ought to have held that the initiation of proceedings u/s 148 of the Income Tax Act was without jurisdiction.

1.2. That the learned CIT(A) has failed to comprehend that, the learned ACIT had no "tangible material" at the time of initiation of proceedings and the alleged "information" which was stated to have been allegedly received from the Addl. CIT, too was without any supporting material and was not available with him, as such, reassessment proceedings initiated without any tangible material and upheld by the learned CIT(A) is unsustainable in law.

1.3. That, the finding of the learned CIT(A) that the A.O. has received 'authentic' information from another Statutory Authority about recovery of Pen Drive from Sh. Chetan Gupta during raid conducted by Punjab Vigilance Bureau, Ludhiana, was insufficient to enable the learned A.O. to form his reason to believe, as the learned A.O. was obliged in law to have the "material" and not a mere report before forming his reason to believe that the income of the assessee had escaped assessment.

1.4. That the learned CIT(A) has failed to appreciate the distinction between mere allegation, information and the material. He has failed to appreciate that the information by itself, which is not in the nature of tangible material could not form the basis of the reopening of the assessment as such, the learned CIT(A) has erred in holding that the learned A.O. was justified both on facts and in law in having initiated the reassessment proceedings.

1.5. That the learned CIT(A) has failed to comprehend that, the alleged information was not available with the A.O. and had it been so available and was allegedly received before initiating the proceeding, the same would have found from his record, which was never found to be existing on the record of A.O. and in-fact, despite assessee's repeated request, no such material was either supplied to him or was even confronted.

2. That without prejudice to the aforesaid and otherwise too, the learned CIT(A) has failed to appreciate that, the addition made of Rs. 1,84,39,002/- was unsustainable. The assumption of the learned CIT(A) that the assessee had a clear business link and association between Sh. Chetan Gupta is fallacious, untenable and in any case any such link or association could not be held to be any ground at all to hold that, the assessee had made an investment with Shri Chetan Gupta, even if for the sake of an argument it is accepted that there was a credit in the Pen Drive maintained by Shri Chetan Gupta.

2.1. The learned CIT(A) has failed to appreciate the distinction between unexplained credits falling u/s 68 and unexplained investment u/s 69 of the Income Tax Act. He has failed to appreciate that the learned A.O. made Rs. 1,84,39,002/- u/s 69 of the Act, which had absolutely no application and thus the addition made of Rs.1,84,39,002/-was totally unsustainable.

2.2. That the learned CIT(A) has failed to appreciate that, the burden was on the learned AO to establish that the assessee had made an investment and that there were credits in the books of the assessee, and without discharging such a burden, no addition was sustainable u/s 69 of the Income Tax Act.

2.3. That the learned CIT(A) has further failed to appreciate that, despite the assessee's repeated request to produce Shri Chetan Gupta for the assessee's cross examination to rebut the allegation that, there was credits in the books of Shri Chetan Gupta, having not been provided, no addition was sustainable in the hands of the assessee.

2.4. That in any case and without prejudice, no reliance could have been placed on the statement of Shri Chetan Gupta since the said statement was allegedly made before Police authorities and had further never been confronted to the assessee and that even otherwise in the absence of any statement made by Shri Chetan Gupta that, the alleged credits appearing in his Pen Drive in any manner belongs to the assessee, there was no justification either on facts or in law to have sustained any such addition.

2.5. That the learned CIT(A) has failed to appreciate that, the burden which was on the revenue has not been discharged and there was not any material to establish that, what was credited in the account of Shri Chetan Gupta was the investment made by the assessee. The mere fact, there were certain credits in some abbreviated form does not lead to a conclusion that the assessee had made any such investment.

3. That the learned CIT(A) ought to have deleted the addition made by the learned AO in respect of the alleged low withdrawals. He ought to have held that the findings of the learned Assessing Officer that the appellant's withdrawals were

insufficient and low warranting an addition to be made under section 69C of the Act were erroneous both on fact and in law and were based on no material. He thus ought to have held that the addition was made on the basis of suspicion and without any material and hence such an addition was liable to have been deleted by holding that addition made without any material was unsustainable in law.

4. That the findings recorded by the CIT(A) in his order in para 4.6.7 that, he does not consider the case laws relied upon by the AR have any relevance to the facts of the case, are wholly misconceived and in disregard of the fact that, in identical facts and in identical circumstances, it has consistently been held that, there were no credits made in the Pen Drive of Shri Chetan Gupta by the assessee's father, his mother and Shri Amrinder Singh, assessee's uncle and that of Shri Raninder Singh. Thus there was heavy burden on the CIT(A) to bring on record the facts which can distinguish the judgments relied by the assessee.

5. That the learned CIT(A) has grossly erred in sustaining the disallowance made by the learned AO of Rs. 30,000/- being the deduction allowable to the assessee on income from salary under the provisions of section 16(1) of the Income Tax Act, 1961.

It is therefore prayed that, it be held that the initiation of proceeding u/s 147 of the Income Tax Act and that the additions sustained of Rs. 1,84,69,002/- be deleted and it be further held that, no interest accrued to the assessee as there was no contractual obligation in respect thereof."

ITA No. 3038/Del/2015 (A.Y. 2006-07)

1. That the learned CIT(A) has grossly erred both in law and on facts in upholding the addition made by the learned ACIT of Rs.

1,73,61,108/- under section 68 of the Income Tax Act, 1961.

2. That while sustaining the aforesaid addition, learned CIT(A) has grossly erred in placing reliance on the order of the CIT(A) for the assessment year 2001- 02 and 2005-06.

3.That without prejudice to the aforesaid and otherwise too, the learned CIT(A) has failed to appreciate that, the addition made of Rs. 1,73,61,108/- was unsustainable. The assumption of the learned CIT(A) that the assessee had a clear business link and association between Sh. Chetan Gupta is fallacious, untenable and in any case any such link or association could not be held to be any ground at all to hold hat, the assessee had made an investment with Shri ChetanGupta, even if for the sake of an argument it is accepted that there was a credit in the Pen Drive maintained by Shri Chetan Gupta.

2.1 The learned CIT(A) has failed to appreciate the distinction between unexplained credits falling u/s 68 and unexplained investment u/s 69 of the Income Tax Act. He has failed to appreciate that the learned A.O. made Rs.1,73,61,108/- u/s 69 of the Act, which had absolutely no application and thus the addition made of Rs.1,73,61,108/ was totally unsustainable.

2.2.That the learned CIT(A) has failed to appreciate that, the burden was on the learned AO to establish that the assessee had made an investment and that there were credits in the books of the assessee, and without discharging such a burden, no addition was sustainable u/s 69 of the Income Tax Act.

2.3. That the learned CIT(A) has further failed to appreciate that, despite the assessee's repeated request to produce Shri Chetan Gupta for the assessee's cross examination to rebut the allegation

that, there was credits in the books of Shri Chetan Gupta, having not been provided, no addition was sustainable in the hands of the assessee.

2.4. That in any case and without prejudice, no reliance could have been Placed on the statement of Shri Chetan Gupta since the said statement was allegedly made before Police authorities and had further never been confronted to the assessee and that even otherwise in the absence any statement made by Shri Chetan Gupta that, the alleged credits appearing in his Pen Drive in any manner belongs to the assessee, there was no justification either on facts or in law to have sustained any such addition

2.5. That the learned CIT(A) has failed to appreciate that, the burden which was on the revenue has not been discharged and there was not any material to establish that, what was credited in the account of Shri Chetan Gupta was the investment made by the assessee. The mere fact there were certain credits in some abbreviated form does not lead to a conclusion that the assessee had made any such investment.

3. That the learned CIT(A) ought to have deleted the addition made by the learned AO in respect of the alleged low withdrawals. He ought to have held that the findings of the learned AO that the appellant's withdrawals were insufficient and low warranting an addition to be made under section 69C of the Act were erroneous both on fact and in law and were based on no material. He thus ought to have held that the addition was made on the basis of suspicion and without any material and hence such an addition was liable to have been deleted by holding that addition made without any material was unsustainable in law.

4. That the findings recorded by the CIT(A) that the case laws relied upon by the AR have any relevance to the facts of the case,

are wholly misconceived and in disregard of the fact that, in identical facts and in identical circumstances, it has consistently been held that, there were no credits made in the Pen Drive of Shri Chetan Gupta by the assessee's father, his mother and Shri Amrinder Singh, assessee's uncle and that of Shri Raninder Singh. Thus there was heavy burden on the CIT(A) to bring on record the facts which can distinguish the judgments relied by the assessee.

It is therefore prayed that, it be held that the addition sustained of Rs. 1,73,61,108/- be deleted and it be further held that, no interest accrued to the assessee as there was no contractual obligation in respect thereof.

ITA No. 3039/Del/2015 (A.Y. 2007-08)

1. *That the learned CIT(A) has grossly erred both in law and on facts in sustaining the additions of Rs 11,66,032/- made by the learned ACIT in the order of assessment passed under section 143(3) of the Act.*

2. *That while susta ning the aforesaid addition, learned CIT(A) has grossly erred in placing reliance on the order of the CIT(A) for the assessment year 2001- 02.*

3. *That without prejudice to the aforesaid and otherwise too, the learned CIT(A) has failed to appreciate that, the addition made of Rs. 10,46,032/- was unsustainable. The assumption of the learned CIT(A) that the assessee had a clear business link and association between Sh. Chetan Gupta is fallacious, untenable and in any case any such link or association could not be held to be any ground at all to hold that, the assessee had made an investment with Shri Chetan Gupta, even if for the sake of an argument it is accepted that there was a credit in the Pen Drive*

maintained by Shri Chetan Gupta.

2.1 The learned CIT(A) has failed to appreciate the distinction between unexplained credits falling u/s 68 and unexplained investment u/s 69 of the Income Tax Act. He has failed to appreciate that the learned A.O. made Rs. 10,46,032/- u/s 69 of the Act, which had absolutely no application and thus the addition made of Rs. 10,46,032/- was totally unsustainable.

2.2. That the learned CIT(A) has failed to appreciate that, the burden was on the learned AO to establish that the assessee had made an investment and that there were credits in the books of the assessee, and without discharging such a burden, no addition was sustainable u/s 69 of the Income Tax Act.

3. The main appeal in this matter is for A.Y. 2001-02, therefore, we are taking the facts of the said year. In this case, notice u/s 148 of the Income Tax Act, 1961 was issued on 25/3/2008 with prior approval of CIT (C), New Delhi, after recording reasons to the satisfaction of the Assessing Officer. Information was received from the Investigation Wing that a search and seizure operation was conducted by Punjab vigilance Bureau at Ludhiana pertaining to the Ludhiana City Centre Scam. During this operation, the pen drive was recovered from Shri Chetan Gupta. The Assessing Officer observed that the study of the data in the said computer showed that Sh. Chetan Gupta was maintaining computerized accounts of about 148 odd people whose money and wealth he was administering. One of the names contained in this was that of assessee, as per the observation of the Assessing Officer. The Assessing Officer made an addition of Rs.11,53,200/- on account of unexplained investments .

4. Being aggrieved by the assessment order, the assessee filed appeal

before the CIT(A). The CIT (A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the assessee is an individual. The assessment years under consideration are AYs. 2001-2002, 2005-2006, 2006-2007 and 2007-2008. In so far as the AYs. 2001-2002, 2005-2006 and 2006-2007 are concerned, the proceedings have been initiated u/s 148 of the Income Tax Act, whereas for the AY 2007-2008, the assessment has been made on the basis of return of income filed u/s 139(1) of the Income Tax Act. In the appeals filed the assessee challenged both the initiation of the reassessment proceedings u/s 148 of the Act which are contended to have been initiated without there being the existence of any material for forming a reasons to believe that the income of the assessee has escaped assessment and as well as on the merits of the additions made. The Ld. AR submitted that soon the proceedings had been initiated by invok ng the provisions of Section 147 of the Act, the assessee had be n seeking such material as were stated by the Assessing Officer in the 'reasons to believe' to be his basis for initiating the proceedings. The Ld. AR submitted that the said alleged material had never been supplied to the assessee even till the framing of the order of assessment. The Ld. AR pointed out these facts are emerging from the Assessment Order and the order of the CIT(A) for which written submissions were made during the course of hearing. The Ld. AR submitted that despite the aforesaid requests made by the assessee, the Assessing Officer never supplied any such alleged material, and on the contrary, the Assessing Officer merely stated that his reasons to believe are based on the basis of the information received from the ADIT (inv.). Thus, the Ld. AR submitted that these facts are apparent from the remand report dated 29.10.2013 for assessment year 2001-2002 and 2007-2008 and 25.11.2014 for assessment year 2005-2006 furnished by the Assessing Officer before the CIT (A). For which

the Ld. AR pointed out page 81-82 of the paper book for 2001 - 2002 and 53-55 for assessment year 2005-2006 paper book - I. The Ld. AR submitted that, the remand report stated that information had been received from the ACIT, CC-2, New Delhi that a search and seizure operation was conducted by the Punjab Vigilance Bureau pertaining to Ludhiana City Centre Scam. The Ld. AR further submitted that this observation of the Assessing Officer is not supported by any documents. Thus the submission is that proceedings had been initiated not on the basis of any material but on the basis of mere alleged information. The Ld. AR submits that under section 147 of the Act, s nce the reasons to believe are to be of the Assessing Officer and not of any other person other than him, no valid proceedings could have been initiated by him without there being in existence of any sum tangible material for a formation of Assessing Officer's reason to believe that the income of the assessee has escaped assessment. The Ld. AR further submitted that even the addition has been made by the Assessing Officer not on the basis of any material but merely on the basis of the alleged information. The Ld. AR further reiterated that even till the assessment had been completed no such alleged material has seen the light of the day.

6. The Ld. AR submitted that it is thus apparent that the Assessing Officer had no material or evidence whatsoever in his possession or on his record but had proceeded to initiate the proceedings u/s 148 of the Act without satisfying the preconditions of the section 147 of the Act. In fact, it was for this reason alone while permitting the assessee to withdraw its writ petition, the Hon'ble High Court permitted the petitioner even to raise all objections including the validity of the initiation of the reassessment proceeding. The Ld. AR submitted the copy of the order of the Hon'ble High Court dated 11.11.2008 for assessment year 2001-2002 and dated 17.04.2012 during the hearing.

The Ld. AR further added that similarly in the case of the father of the assessee, 'Shri. K. Natwar Singh', and mother of the assessee 'Smt. Heminder Kumari', proceedings were initiated u/s 148 of the Act and additions had similarly been made. The CIT (A) while disposing off the appeals of the said assessees had however deleted the additions since he found that there was no valid material available on record, but had upheld the validity of the initiation of the reassessment proceedings. In fact it was noted by him that Shri. Chetan Gupta who was allegedly found in possession of a pen drive had even denied that he was found in possession with any such pen drive. The revenue being aggrieved from the aforesaid orders had filed appeals before the Tribunal and the Tribunal by its order upheld the deletion of the addition made by the CIT (A), by holding that no addition was warranted, as there existed no valid material for assuming that any investment as alleged had been made and so allegedly reflected in the pen drive, more particularly when even Shri. Chetan Gupta denied the recovery of any such pen drive. The Ld. AR thus submitted that since the facts and circumstances of the case are absolutely identical to the aforesaid cases and there being no evidence or material to support the addition made by the Assessing Officer, the addition made, does not deserve to be upheld and consequently it is the submission of the Ld. AR that even the initiation of the reassessment proceedings u/s 148 of the Act for the AYs 2001-2002, 2005-2006 & 2006-2007 deserves to be held as having not validly initiated. The Ld. AR supported his submissions from the following judicial pronouncements wherein it has been held that in the absence of any tangible material, no valid proceedings could be held sustainable in law:

i. ITO vs. Lakhmani Mewal Das (1976) *103 ITR 437* (SC) at 448

ii. Ganga Saran and Sons P. Ltd. Vs. ITO [1981] 130 ITR 1(SC)

iii. Ashok Kumar Sen Vs ITO 132 ITR 707 (Del.)

7. The Ld. AR further submitted that it is well settled rule of law that existence of the tangible material with the Assessing Officer for the formation of the reasons to believe is pre-condition. In the instant case, in fact till March, 2015 when the Tribunal had disposed off the assessee's father's appeal, no material was found available other than the mere alleged information unsupported by any document or supportive evidence. The Hon'ble High Court of Delhi in the case of CIT vs. Supreme Polypropolene Pvt. Ltd. (ITA 266/2011 dated 30.10.2012) had struck down the notice issued to the assessee u/s 148 of the Income Tax Act on the ground that, there was no material on record with the Assessing Officer when he initiated the proceedings u/s 147 of the Act. In the judgment, it has been observed as under:

> *"This court notices from the extract of the "reasons to believe" reproduced in the earlier part of the order that the A.O. adverted to a list, on the basis of which he was of the opinion that, there was no full and true disclosure of all sources of income by the assessee. There are no details of that list. Even the list is not part of the assessment record which this court had the benefit of considering. More shockingly, the assessment file did not even contain the forwarding letter, much less mention of the date of that list or the date of that letter which allegedly forwarded that list. The complete absence of these facts and any whisper as to even a single detail of that list coupled with the vague mention of a list, which mentions some other material adverted to in other assessment proceedings, in the opinion of this court certainly cannot be said to constitute sufficient "reasons to believe" to warrant a notice u/s 148 during the extended period within the meaning contemplated by law."*

The aforesaid judgment of the Hon'ble High Court was subjected to review petition (Rev. Petition No. 215/2013, in ITA No.266/2011) and the said review petition also got dismissed on 26.04.2013 (reported in [2013] 35 taxmann.com 215 (Delhi)) by holding as under:

> *"7. We are afraid that once it is conceded on behalf of the revenue*

that the list was not produced before this Court at the time of the hearing of the appeal and is only being produced along with the review petition after locating the same in other files subsequently, then there is no merit in the review petition. This Court had perused the reasons recorded but the list was not found to be part of the assessment record which was seen by this Court. This Court had also noted - "shockingly" - that the assessment record did not contain even the forwarding letter alleged to have been written by the ADIT to the assessing officer. It was open to the revenue to produce the list when the appeal was heard by this Court, though it would have been even then a matter of debate as to whether, in the absence of the list in the assessment record of the assessee, the reasons for reopening the assessment can be said to have been properly recorded by relying on a list which is not found in the assessment record. The prime requirement for the validity of a notice issued under section 148 of the Income Tax Act is that the reasons recorded should have a live link or nexus with the material on record. This Court on an examination of the assessment record did not find therein the list on the basis of which the reasons were recorded."

8. The Ld. AR further submitted that apart from the issue pertaining to the initiation of proceedings u/s 148 of the Act, the main issue involved in all the four appeals pertains to the addition made of the following sums:

Asse sment Year	**Addition made**
2001-2002	Rs. 11,53,200/-
2005-2006	Rs. 1,84,39,002/-
2006-2007	Rs. 1,73,61,108/-
2007-2008	Rs. 12,97,079/-

The aforesaid sums have been added to the income returned by the assessee by invoking the provisions of section 69 of the Act and on the ground that the assessee has made investment of the aforesaid sum as is reflected in a pen drive found from the possession of one Shri. Chetan

Gupta by Punjab Vigilance Bureau. The Ld. AR submitted that it has been alleged that said pen drive reflects that Shri. Chetan Gupta had received the aforesaid sums from the assessee. Apart from the assessee, it had been alleged that there are 147 more account holders. In other words, on the basis of a pen drive allegedly found from Shri. Chetan Gupta by SPE of Punjab Police, it had been alleged that since the name of the assessee appears as 'Jagat c/o Biba Ji' the amounts reflected therein are the deposits made by the assessee. In fact, it has not even been identified whether 'Jagat c/o Biba Ji' is the assessee in whose hands additions have been made by; assuming that the credits in the Pen Drive in the said account are sums of investment made by the assessee. The Ld. AR highlighted the fact that even the alleged owner of the alleged pen drive i.e. Shri Chetan Guptaf has never identified that it is this assessee who had made any such deposit with him as is allegedly reflected in such a pen drive. The Ld AR however submitted that the order impugned of the CIT (A) is dated 26.03.2015, when he had not the benefit of the order of the Tribunal in the cases of assessee's father Shri K. Natwar Singh and mother Smt. Heminder Kumari, wherein the Tribunal have upheld the order of the CIT (A) who had deleted the additions similarly made on the identical facts. The orders of the Tribunal are dated 05.03.2015 which orders were not available when the CIT (A) had heard the appeals in February, 2015. However, the Ld. AR further added that the order of the Tribunal in the case of Smt. Heminder Kumari is dated 29.08.2014 which had not been followed by the CIT (A). The Ld. AR submitted that the CIT (A) while disposing off the assessee's appeal, has not followed the order of his colleagues, who has deleted the addition in the case of assessee's father and mother as aforesaid. The assessee has placed in PB-3 the orders of the CIT (A) of his father K Natwar Singh and mother Smt. Hemindar Kumari along with the orders of assessment. The said orders of the CIT (A) were placed at pages 429-465 and 166-260 of PB-3 respectively in the paper book filed

by the assessee. The orders of the Tribunal in respect of the appeal filed by the revenue in the case of father and mother of the assessee were placed at pages 44-53 and 54-65 respectively in the PB-2.

9. The Ld. AR further submitted that in fact while disposing of the appeals of the assessee which had been heard by a different CIT (A) i.e. who has disposed off the aforesaid appeals, the CIT(A) has not followed the order of his colleagues namely CIT (A) - 20 and CIT (A) - 26 respectively, on very flimsy grounds as has been stated by him in the order impugned in para 5.4.7 at page 70 for the AY 2001-2002 which otherwise too is based on misreading of the said order of the CIT (A). The Ld. AR submitted that the findings recorded by the CIT (A) in the impugned order in para 5.4.7 shows that he has assumed as if the additions had been deleted by the Tribunal and Hon'ble High Court in the cases of Sh. Raninder Singh, Maharaja Amrinder Singh and Smt. Heminder Kumari etc. on the ground that as there was no business link/ nexus between Sh. Chetan Gupta and the respective assessee having been brought on record, the additions are being deleted, whereas fact of the matter is that it has been held that the additions made per se are without any basis or material and the revenue has failed to even establish that any investment was made by any of the assessee as was allegedly reflected in the said pen drive. He in view thereof i.e. on his assumptions held that there is a difference between the facts of the case of the assessee and the facts in the cases of those four assessee's in whose cases, the additions have been deleted. The Ld. AR submitted with respect that the CIT (A) has not at all appreciated the facts of the instant case which are absolutely identical to the facts of the aforesaid four cases. There are no distinguishing facts. In fact, he has completely overlooked that there is no iota of any evidence that the assessee has made any investment. The CIT (A) has also misconceived the statutory provisions of section 69 & 68 of the Act. Further, his finding that there is

a business link/nexus between the assessee and Shri Chetan Gupta is entirely misconceived. The Ld. AR submitted that there is absolutely no business link and nexus between the assessee and Shri Chetan Gupta and secondly, even if it is assumed for the sake of an argument that there is a business link/nexus (which is disputed), the CIT (A) has failed to comprehend the provisions of section 69 of the Act which postulates that before an addition can be made, it has to be established that an investment has been made by a person in whose hands an addition is made by invoking the provisions of section 69 of the Act. The Ld. AR submits that the aforesaid additions made in each of the assessment years is made only on the basis that in a pen drive which had 'allegedly' been found from the possession of Shri Chetan Gupta, and the assessee can be said to have made investment with him since there appears a name of 'Jagat c/o Biba Ji'. In fact, it is well settled rule of law that before making the addition by invoking section 69 of the Act, the burden rests on the revenue to establish that investment has been made by an assessee in whose hands additions are being made. The Hon'ble High Court of the Delhi in the case of CIT vs. Commissioner of Income-tax v. Naresh Khattar HUF repo ted in 261 ITR 664 has held that burden to establish that an investment has been made while the provision of the section 69 of the Act is on the revenue. In the following judicial pronouncements, it has been held likewise that while invoking the provisions of section 69C of the Act, the burden is on the revenue. The texture and colour of both the provisions are same:

(a) CIT vs Daya Chand Jain (Allahabad HC) reported in 98 ITR 280.

(b) CIT vs. Dr. S. Bharti 254 ITR 261 (Del)

(c) CIT vs N. Swamy (Madras High Court) reported in 241 ITR 363.

(d) Rajpal Singh Ram Avtar vs. ITO 39 TTJ544

(e) Ghanshyam Dass HasaNand 28 Taxman 219 (Mag) (Mum)

(f) Ashok Kumar Rastogi vs. CIT 100 CTR 204 (All)

(g) Neena Syal vs. ITO 70 ITD 62 (Chd)

(h) ACIT vs. Lakshmi Printing Co. 46 TTJ 177 (Chd)

(i) Jai Sharda Rice Mills vs. ITO 36 ITD 254 (Asr)

G) ITO vs. Har Preet Industries 59 ITD 346 (Chd)

(k) Ramnik Lai & Bros vs. ITO 81 Taxman 26 (All) (Mag)

10. The Ld. AR further submitted that it has likewise been held by the Hon'ble Orissa High Court in the case of Aurobindo Sanitary vs. CIT, 276 ITR 549, that for applying section 69 of the Act, the Assessing Officer must first come to a finding that the assessee made investments which were not recorded in the books of account and thereafter call for an explanation from the assessee about the nature and source of the investments. It is thus implicit that the Assessing Officer has to firstly bring evidence on record to establish that an investment has been made by the assessee. It is only upon having established that investment having been made by the assessee, the question arises to calling upon the assessee to explain the nature and source of such investment. The Ld. AR submitted that in the instant case, no such material has been brought on record to establish that the assessee has made an investment which is sought to be added. Further, the Hon'ble Gujarat High Court in its judgment in the case of Ushakant N. Patel vs. CIT 282 ITR 553, have held that section 69 opens with the words *'where in the financial year immediately preceding the assessment year, the assessee has made investment '*. Thus, in the first instance it is incumbent upon

the authority to establish that there were investments made by the assessee; that such investments were not recorded in the books of account maintained by the assessee; and that, such investments had been made in the financial year immediately preceding the assessment year in question. In the instant case, as stated above, no evidence has been brought on record to support that assessee has made any such investment. It is thus evident that the burden is upon the revenue first to establish that the investment has been made which are not recorded in the books. In the instant case, very foundation of establishing that an investment has been made by the assessee in the financial year is itself lacking. Further the Hon'ble Bombay High Court in its judgment in the case of Babulal C. Borana vs. ITO 282 ITR 251 held that under section 69 of the Act an additions on account of unexplained investments can be made as deemed income, if it established that assessee has made investment which are not recorded in the books maintained by the assessee. It is well settled that the burden is on the person who makes allegation and to discharge his burden it is he who has to lead positive evidence and the mere fact there are certain entries in the books of accounts of third party is insufficient to make addition on the ground that assessee had made investment. The Ld. AR submitted that this finding of the CIT (A) deleting the addition made on the aforesaid basis has been upheld by the Tribunal as is evident from its order when it has extracted para 24 of the CIT (A)'s order. In the instant case there is no iota of evidence that it is the assessee who has made investment. Even the assessee has not been identified nor is there any allegation by Shri Chetan Gupta that in the pen drive alleged to be his, there are deposits received by him from the assessee. It is really surprising that on what basis the Assessing Officer proceeded to assume from the expression Jagat C/o BIBA Ji to be the name of the assessee or the accounts pertain to the assessee or that he has made such investment. At this stage it is necessary to submit that if there are

credits in the books of the assessee then it is for that assessee to explain the nature and source of the credit as is provided u/s 68 of the Act. In such circumstances, the Ld. AR submitted that the CIT (A) went into an error in sustaining the addition which is a complete misdirection in law. The Ld. AR further submits that the CIT (A) has misconstrued the provisions of sections 68 and 69 of the Income tax Act. The findings recorded therein are result of complete misdirection in law. His finding that there are certain entries reflected in the alleged account of the assessee shows that he i.e. assessee had made investment. However, he ignores that there is no material to establish that it was this assessee who had made such an alleged investment. Thus statutorily the law enjoins by deeming provision and not to be taxed in the hands where appears to be credit and not a deemed income of the person in whose name credits are shown or reflected. Thus the fact, it has been alleged, there are credits in the accounts of the assessee as per the pen drive, but the same does not establish that it was this assessee who has made such investment. The finding of the CIT (A) that addition u/s 68 of the Act is made always because of the concerned assessee having failed to substantiate the credits. It shows the legislative intend to treat the credit of the person where there are credits and are so reflected in his books of accounts. His further finding that the same does not show his ownership, is completely misconceived. In any case the fact of the matter will remain that ownership of the amount of the person other than a person in whose books the credits are, to be established by leading evidence. In this case, what is the evidence which establishes the ownership of the assessee is not known and thus the further findings of the CIT (A) that since the person in whose books the credits are, fails to explain the same, there become a credit in the account of that assessee namely the creditor, is evidently a complete misunderstanding of statutory provisions contained in section 68 of the Act. The Ld. AR thus submits that there is a complete

misconstruction of the provisions of sections 68 and 69 of the Act and the findings had been recorded not only without any authority of law but in an arbitrary manner. There can be no presumption of an investment having been made unless the same is established by cogent, positive and impeachable evidence. In the instant case, there is not even any assertion by Shri Chetan Gupta that the assessee has made investment with him. On the contrary all what has happened is that as a result of a pen drive found from Shri. Chetan Gupta which pen drive was stated to have been available to SPE i.e. Special Police Establishment by an anti corruption squad, certain sums were shown to have been reflected as receipt which were allegedly received by him from 148 persons. The fact of the matter remains is that even there is a denial of such evidence available with Special Police Establishment. This fact is borne out from the statement of Shri Chetan Gupta recorded by Assessing Officer. In view of these facts, the Ld. AR submitted that the CIT (A) while confirming the addition has not only attempted to sustain the addition but was further wrong when he held that there is a difference between the case of the assessee and four others in whose cases, the additions has been deleted which additions have been made in identical manner and for similar reasons. The status of the additions made and deleted are tabulated below:

Status of additions made in the cases of							
K. Natwar Singh		**Heminder Kumari**		**Amrinder Singh**		**Ranender Singh**	
A.Y	**Page of PB III**	**A.Y**	**Page of PB III**	**AY**	**Page**	**AY**	**Page**
2003-04 Rs. 30,50,000/-	273- 279	2002-03 Rs.34,83,206	1-7	2001- 2002 Rs. 8,12,000	-	2001-02 Rs. 76,45,000	-
2004-05 Rs.	280- 283	2003-2004 Rs.23,06,00	8- 15	NA	-	NA	-

1,02,66,159/-		0/-					
2005-06 Rs.2,10,01,194 /-	284-290	2004-05 Rs. 44,56,000	16-21	NA	-		-
		2005-06 Rs. 2,33,86,194	22-29				

11. The Ld. AR further submitted that the CIT (A) in his order has incorrectly stated that there exists a clear link both social and business/financial between Sh. Chetan Gupta and assessee. The Ld. AR submitted that there is absolutely no link much less close link either socially or financially. The CIT (A) erred in observing in para 5.4.8 that the assessee is having a regular business relationship with Sh. Chetan Gupta, since the assessee was in control and had utilized the Mercedes and Pajero vehicles of Chetan Gupta's concerns. The Ld. AR further submitted that the assessee had taken on lease the two vehicles from M/s Trans Air and M/s Nikunj Agro and not from Shri. Chetan Gupta wherein Sh Chetan Gupta was either a shareholder or a partner. The mere fact that the assessee had taken on lease the aforesaid two cars from the company or the firm in which Shri Chetan Gupta had interest, it is submitted it does not establish any close association or business connection with each other. In any case it is submitted that the same is wholly an irrelevant consideration in deciding the issue of amount alleged to have been invested by the assessee and is allegedly stated to be reflected in the pen drive. On the contrary, it is an admitted fact that in the alleged pen drive found from the possession of Shri Chetan Gupta, there were 148 accounts holders from where it had been alleged that he has received funds from 148 persons. However even the allegation of having received any such sum from any person has not

been ever established by the revenue and thus the allegation that SPE found a pen drive from the possession of Sh. Chetan Gupta has not even been established, which has been denied by Shri. Chetan Gupta, as is evident from his statement which was placed at page 1 & 2 of the PB-2. The Ld. AR thus submits that the CIT (A) has erred both in law and on facts in sustaining the addition in the hands of the assessee of the sums alleged to have been found, and reflected in the alleged pen drive and allegedly found from Sh. Chetan Gupta. To support the aforesaid submission, the orders of the Tribunal, all of which have been placed at the PB-2, which has not even been appealed against by the revenue, if are closely perused, it would be seen that the Tribunal in para 14 page 51 of the PB-2 as referred to the statement of Shri Chetan Gupta wherein he had denied of having any transaction. Thus the facts remained identical with the facts of the aforesaid cases. In view thereof, the Ld. AR submitted that the facts being identical with that of assessee's father Shri K. Natwar Singh, and his mother Smt. Heminder Kumari, the addition sustained are entirely unsustainable and deserves to be deleted. In fact in the cases of Shri K Natwar Singh, the amount is reflected under the name NS, whereas in the case Heminder Kumari it is reflected in the ledger account as per pen drive under the name of Kiran/BIBA and allegedly for the assessee in the name of 'Jagat c/o Biba Ji'. In fact this itself shows that there are no credit entry at all in the name of assessee Shri Jagat Singh. The Ld. AR submits that the Assessing Officer seriously believes Jagat and Kiran are the names of business concerns which were run by Shri Chetan Gupta and his family. This is evident from the order of the Tribunal dated 21.06.2013 in the case of Shri. Chetan Gupta [2013] 144 ITD 344 (Delhi - Trib.). The Ld. AR submitted that before any addition could have been made at least it had to be identified that Jagat c/o Biba Ji is the assessee. The assumptions & presumptions have no role to play for making any addition which is well known to be an arbitrary and vindictive act. Thus

even the allegation that there were credits in the alleged pen drive of Shri Chetan Gupta does not establishes that there was any credit from the assessee i.e. Shri Jagat Singh who is a sitting member legislative assembly of Rajasthan.

12. The Ld. AR further submitted that wherever there are credit appearing in the books of an assessee, the onus is on him to establish whether the credit are genuine by establishing the identity and creditworthiness of the creditor as is envisaged u/s 68 of the Act. In fact it is for Shri. Chetan Gupta in whose books of accounts there were alleged credits, to have established by cogent evidence that the credits appearing in his books of accounts are genuine both by establishing the source of credits and the genuineness of the transaction so well the identity of the creditor. In the instant case, it has in fact not even been asserted by Sh. Chetan Gupta that he has received any such credit from the assessee. Be that as it may however, under section 69 of the Act which reads as under; clearly provides that where an assessee has made investment which are not recorded in the books of account, the value of the investments may be deemed to be the income of the assessee of such financial year. Extracts of Section 69 are as follows:

> *''Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."*

13. The Ld. AR submitted that it has been held in the judicial pronouncements cited above that such burden to establish that investment has been made is on the revenue. In the instant case, there is absolutely no

evidence much less even an allegation by Shri. Chetan Gupta that the assessee had made an investment. The revenue has also not brought on record any statement wherein it was alleged by Sh. Chetan Gupta that assessee had made investment nor any evidence has been brought on record by revenue in respect thereof. In such circumstances, statutorily by no stretch of imagination, the Assessing Officer could not have made any such addition and the CIT (A) has thus erred when he had not deleted the addition as his predecessor had done but grossly erred in sustaining the addition on flimsy grounds i.e. the assessee has since both social and business/financial relationship. Even assuming that it was so, then how does the same can be made any basis to assume, conclude and even suspect that it was the assessee who had made investment. The Ld. AR submitted that not only it is arbitrary but is hilarious. Thus, the Ld. AR prays that in view of the orders of the Tribunal in the cases of Sh. Raninder Singh, Maharaja Amrinder Singh, Smt. Heminder Kumari and Shri K. Natwar Singh, the addition sustained by the CIT (A) is evidently is a result of perversity. The CIT (A) has failed to comprehend that burden rests on the Assessing Officer and not on the assessee to establish that the assessee had made an investment. The burden shifts on the assessee only when it has been established by him with positive evidence that assessee has made investment to explain the nature and sources thereof. The Ld. AR submitted that in the instant case, had the assessee made any such investment as is alleged, obviously there would have been disinvestment too, for which no evidence has been brought on record which shows that assessee had received any sum on making such disinvestment. Thus, the Ld. AR submitted that the burden lay upon the revenue to establish that the amount reflected in the pen drive of Shri Chetan Gupta was the investment made by the assessee. The Ld. AR submitted that such a burden has not been discharged and the addition has been sustained in an arbitrary manner with no logic.

14. The Ld. AR submitted that the CIT (A) has further failed to appreciate that section 68 of the Act is applicable only where there are credits in the books of the assessee and not elsewhere. In fact the Hon'ble Bombay High Court in the case of CIT vs. Bhaichand H. Gandhi reported in 141 ITR 67 have held that even the bank account of the assessee is not the books of the assessee and had thus deleted the addition by holding that section 68 of the Act is inapplicable. Further the High Court of Punjab and Haryana in the case of Smt. Shanta Devi vs CIT reported in 171 ITR 532 have held that even the balance sheet is not the books of the assessee. In such circumstances, the CIT (A) has grossly erred in holding that section 68 of the Act could be made applicable. It is again well settled rule of law as has been applied by the Hon'ble Tribunal in the cases referred to above that no addition can be made on the basis of the entries in the third parties books of account which are unsupported by any material. In this context, reference is invited to the following judicial pronouncements:

i. Prakash Chand Nahta v CIT 301 ITR 134
ii. CIT v. Salek Chand 300 ITR 426 (All)
iii. SMC Share Broker Ltd. 288 ITR345 (Del)
iv. JMD Computers 20 DTR 317

15. Before concluding the Ld. AR submitted that the Hon'ble Delhi High Court in the case of CIT vs. Pradeep Kumar Gupta 303 ITR 95, wherein at page 98 has held as under:

"This is where the failure of the Revenue to produce Shri Anand Prakash for cross-examination by the assessee, assumes fatal consequences. Reassessment proceedings have been initiated after several years of the acceptance of the return under section 143(1) of the Income-tax Act. The assessee have themselves relied on the banking transactions between themselves and Shri Anand Prakash; secondly, on bills issued by them to Shri Anand Prakash, and on the unassailed payment of rent to Shri Mool

Chand. It is true that the assessees' failure to produce Shri Kishan Chand had the consequence of not proving that the said person was tilling the land on their behalf. This failure cannot inexorably lead to the conclusion that no agricultural income had been generated by the assessee. Such an inference can only be drawn from the statement of Shri Anand Prakash to the effect that the transactions between him and the assessees were bogus. Therefore, it was mandatory for the Revenue to produce Shri Anand Prakash for cross-examination by the assessee on their specific demand in this regard. The facts on which the decision to invoke section 147/148 is predicated may in some cases be sufficient both for decision to carry out a reassessment as well to justify or sustain the fresh assessment. However, there may well be instances where the former said reopening may pass muster in the light of some facts, but those facts by themselves may turn out to be insufficient to preserve the assessment itself. Once sections 147 and 148 are resorted to, the Assessing Officer must first discharge the burden of showing that income has escaped assessment. It is only thereafter that the assessee has to provide all the answers. We find no reason why the initial burden of proof should not rest on the Assessing Officer even where the assessment has gone through under section 143(3) of the Act. The Tribunal has, therefore, arrived at the correct conclusion. (Emphasis supplied)

16. The Ld. AR submitted that in the instant case revenue has never brought any adverse statement against the assessee of Shri Chetan Gupta much less having produced him for assessee's examination so that assessee could have established in rebuttal the allegation of the revenue that such investment has been made by the assessee which has been the sum added in the hands of the assessee. The Ld. AR submitted that CIT (A) has further erred in failing to comprehend that the alleged statement of Shri. Chetan Gupta which has been referred by the Assessing Officer is of no assistance and is absolutely inadmissible as such statement was recorded under section 161 of the Cr. P.C. and hence Assessing Officer and CIT (A) both have erred in law in relying a statement which is inadmissible in law. Further such statement was never confronted to the assessee and has not seen the light of

the day as such, even otherwise, such evidence cannot be relied. The Ld. AR relied upon the following judgments:

i. AndamanTimber Industries v. CCE [2015] 127 DTR 241 (SC)

ii. Kishinchand Chellaram v. CIT. [1980] 125 ITR 713 (SC).

The Ld. AR further submitted that in respect of initiation of the reassessment proceedings, assessee has made its detailed submissions before the CIT (A) who has extracted such submissions at page 6 to 18 (in the order of the CIT (A) for the AY 2005- 2006), and for the sake of brevity, such submissions are not repeated here and is prayed that in respect of the reopening of the assessment, the contention made by the assessee before the CIT (A) may kindly taken as submissions in respect of the grounds challenging the reopening of the assessment.

17. Apart from the submissions of the Ld. AR in respect of other grounds of appeal raised in the memo of appeal for the respective assessment years are as under:

ITA No. 3037/Del/2015 AY 2005-2006

18. As regards to Ground No. 5, the Ld. AR submitted that during the year under consideration, appellant has received salary from Rajasthan Vidhan Sabha for member of the house at Rs. 2.60,262/- and such income was declared as salary, wherein a standard deduction of Rs. 30,000/- was claimed. Such claim was disallowed by holding that there is no employer employee relationship and hence salary from Rajasthan Vidhan Sabha for member of the house of Rs. 2,60,262/- was treated as income from other sources. The Ld. AR submitted that such disallowance is wholly misplaced as salary received from Rajasthan Vidhan Sabha is taxable under the head salary. The Ld. AR submitted that if the theory of CIT (A) is accepted, then the salary received by the judges of the Hon'ble High Court and Hon'ble Supreme Court would also be not entitled for the claim of deduction u/s 16/17 of the Act. The Ld. AR therefore submitted that disallowance of standard deduction by holding that

the salary received from Rajasthan Vidhan Sabha is taxable as income from other sources is unsustainable in law.

ITA No. 3039/Del/2015 AY 2007-2008

19. As regards to Ground No. 6, the Ld. AR submitted that assessee owned two properties, first property is a farm house situated at Dera Mandi, New Delhi and second property is Gobind Mension, Bharatpur. It is submitted that farm house situated at Dera Mandi, New Delhi is self occupied property, and second property at Bharatpur is in dilapidated condition, and not liavable as such. ALV of such property is NIL. The Ld. AR submitted Assessing Officer treated the Bharatpur property as self acquired property and computed the ALV of the Delhi property and brought to tax a sum of Rs. 7,44,055/-. However, the Ld. AR submitted that CIT (A) negated the approach of the Assessing Officer to the extent of treatment by the Assessing Officer of Bharatpur property as self acquired property, by holding that Assessing Officer cannot impose the Bharatpur property as self acquired property, and upheld the contention of the assessee that Delhi property is self acquired property. However, in respect of the Bharatpur property, it was held that merely because the property requires repairs, it cannot be held that ALV of such property is NIL and hence estimated the ALV at Rs. 1,20,000/-. The Ld. AR submitted that CIT (A) has completely failed to comprehend that such property is dilapidated condition and is not habitable and unless extensive repairs are done, such property is not lettable. It is submitted that no evidence or material has been brought on record to rebut the submissions of the assessee. The Ld. AR submitted that the Assessing Officer is adjudicator as well as investigator and before reaching any conclusion, it is incumbent upon him to make necessary enquiry. The Ld. AR further submitted that in the case of Shree Nirmal Commercial Ltd. Vs. CIT 193 ITR 694, it has been held that to bring an income under section 22, the property should be inherently capable of being let out, and since in the instant case, the property at Bharatpur is in

dilapidated condition, as such, same is incapable for let out and hence the ALV of such property cannot be brought to tax. It is therefore submitted that income computed by CIT (A) under income from house property is unsustainable in law. In the final analysis, the Ld. AR submitted that initiation of the reassessment proceedings is bad in law. Further, addition made by the Assessing Officer and sustained by CIT (A) by invoking the provisions of section 69/68 of the Act on the ground that the assessee has made investment of the aforesaid sum in a pen drive allegedly found from the possession of one Shri. Chetan Gupta without there being any corroborative material, and without establishing that the assessee has made any such alleged investment is unsustainable in law.

20. The Ld. DR submitted that the entire case of the assessee rests on the decision of the Hon'ble Delhi High Court in the case of S. Ravinder Singh dated 28.02.2011. The same decision has been followed in the case of Smt. Heminder Kumari vide order dated 29.08.2014 of the Tribunal, Delhi Benches as stated in para 16 of the order *"The ld DR in the course of hearing before us has not pointed out or shown any fact or material, so as to enable us, to come to a different opinion. In view of the above and the order of the coordinate bench and the order of the High Court, we are not inclined to interfere with the reasoned order of ld CIT(A)."* The said decision of Smt. Heminder Kumari has in turn followed in the order dated 05.03.2015 in the case of Shri K. Natwar Singh. Therefore, the basis for relief in all the decisions is the finding of Hon'ble High Court which is on the presumption of certain facts as correct as stated by Shri Chetan Gupta in his statement dated 26.03.2009 before the Assessing Officer wherein he declined any association with the Pendrive and also denied the fact that he was managing the funds of 148 odd people. The said statement is on page 1 & 2 of the paper book. It was primarily for this reason that the Hon'ble High Court granted relief. The following observation of Hon'ble High Court are reproduced (page 14 of the paper book) *"..Neither the report of S.P. Ludiana is available to the Assessing Officer much less to be*

assessee nor any statement was recorded by ADIT (Investigation) from Shri Chetan Gupta to corroborate that any cash was paid by the assessee to Shri Chetan Gupta. On the contrary, Shri Chetan Gupta on his deposition clearly denied having received any cash. Shri Chetan Gupta also denied having given any statement admitting receipt of cash. Therefore, in absence of any evidence of record, be addition was not sustainable....." This presumption of fact by the Hon'ble High Court no longer holds to in view of developments subsequent to the order of Hon'ble High Court and hence order of the Hon'ble High Court is sub-silentio on these developments. In this case of Chetan Gupta v. ACIT (2013) 144 ITD 344 (Del. Tri.), not only Chetan Gupta admits that he had been managing funds of others but also requested for benefit of Peak theory and telescoping. And the Tribunal gave a finding of fact that the assessee was managing the funds of others and confirmed the deemed addition u/s 68 of the Income Tax Act by giving the benefit of Peak theory as the source of corresponding funds was not explained. In view of the above, if the Tribunal comes to conclusion that the pendrive did not belong to Shri Chetan Gupta and he had no association in the matter then finding of fact by the coordinate bench should be referred to special bench of the Tribunal. The next issue which pertains to manag ng the funds of other, whether Shri Jagat Singh was one of "the other" considering the personal association already admitted and economic association of the assessee established by usage of car (Mercedes and Pajero) by Shri Jagat Singh, there is sufficient evidence that the contents of the Pen drive be held as true. However if Tribunal feels that further investigation is required the matter may be restored to the Assessing Officer. The Ld. DR relied upon the Assessment Order as well as the order of the CIT(A) for all the assessment years under appeal.

21. We have heard both the parties and perused all the relevant material available on record. As regards AYs. 2001-2002, 2005-2006 and 2006-2007 are concerned, the proceedings were initiated u/s 148 of the Income Tax Act, whereas for the AY 2007-2008, the assessment was

made on the basis of return of income filed u/s 139(1) of the Income Tax Act. In the present appeals filed by the assessee, the assessee is challenging the initiation of the reassessment proceedings u/s 148 of the Act as the same is initiated without any material for forming a reasons to believe that the income of the assessee has escaped assessment as well as on the merits of the additions made. The proceedings were initiated by invoking the provisions of Section 147 of the Act. The contentions of the Ld. AR that the material found by the Revenue was never supplied to the assessee till the framing of the order of assessment was never refuted by the Revenue/Ld. DR at any point of time. From the perusal of the record it can be seen that the Assessing Officer merely stated that his reasons to believe are based on the basis of the information received from the ADIT (inv.). These facts are apparent from the remand report dated 29 10.2013 for assessment year 2001-2002 and 2007-2008 and 25 11.2014 for assessment year 2005-2006 furnished by the Assessing Officer before the CIT (A). The remand report stated that information had been received from the ACIT, CC-2, New Delhi that a search and seizure operation was conducted by the Punjab Vigilance Bureau pertaining to Ludhiana City Centre Scam. This observation of the Assessing Officer is not supported by any documents. Thus the proceedings had been initiated not on the basis of any material but on the basis of mere alleged information. As per Section 147 of the Act, the Assessing Officer should have reasons to believe for initiating the proceedings in support of material found as regard to the escapement of the income. But in the present case addition was made by the Assessing Officer on the basis of the information only and no further inquiry was made or documents verified by the Assessing Officer at the time of the Assessment Proceedings. Thus, the Assessing Officer had no material or evidence whatsoever in his possession or on his record but proceeded to initiate the proceedings u/s 148 of the Act without satisfying the preconditions of the section 147 of the Act.

Besides that during the Assessment Proceedings as well the Assessing Officer has not brought out on record that the material found was that of Assessee. Similarly in the case of the father of the assessee, Shri. K. Natwar Singh, mother of the assessee Smt. Heminder Kumari, proceedings were initiated u/s 148 of the Act and additions had similarly been made. The CIT (A) while disposing off the said appeals had deleted the additions since he found that there was no valid material available on record but had upheld the validity of the initiation of the reassessment proceedings. The CIT(A), therein also made observation that Shri Chetan Gupta who was allegedly in possession of a pen drive had denied that he was found in possession with any such pen drive. The revenue filed appeals before the Tribunal and the Tribunal by its order upheld the deletion of the addition made by the CIT (A). The Tribunal held that no addition was warranted, as there existed no valid material for assuming that any investment as alleged had been made and so allegedly reflected in the pen drive more particularly when even Shri Chetan Gupta denied the recovery of any such pen drive. The Revenue has contended that the decision of Smt. Heminder Kumari has in turn followed in the order dated 05.03.2015 in the case of Shri K. Natwar Singh. Therefore, the basis for relief in all the decisions is the finding of Hon'ble High Court which is on the basis of certain facts as correct as stated by Shri Chetan Gupta in his statement dated 26.03.2009 before the Assessing Officer wherein he declined any association with the Pendrive and also denied the fact that he was managing the funds of 148 odd people. It was primarily for this reason that the Hon'ble High Court granted relief. In fact, this supports the case of the assessee that the assessee's case is identical with the facts of the cases decided by the tribunal in case of Heminder Kumari and Shri K. Natwar Singh (ITA No. 4212, 4213, 4211, 4210/DEL/2013 order dated 29.08.2014 and ITA No. 3290, 3258, 4168/DEL/2013 order dated 05.03.2015). Further it can be seen that the Tribunal in case of Shri

Raninder Singh vs. ITO (ITA No. 2965/DEL/2009 A.Y. 2001-02 order dated 29.08.2009) held as under:

> *"7. As regards merits of the addition, there is no evidence in the possession of the revenue authorities to prove that the assessee ever paid cash to Shri Chetan Gupta except the so called report of ADIT (Investigation), Ludhiana, which in turn is based on the report of Superintendent of Police, Ludhiana. However, neither the report of SP, Ludhiana is available to the Assessing Officer much less to the assessee nor any statement was recorded by ADIT (Investigation) from Sh. Chetan Gupta to corroborate that any cash was paid by the assessee to Sh. Chetan Gupta. On the contrary Sh. Chetan Gupta on his deposition before the Assessing Officer clearly denied having received any cash. Shri Chetan Gupta also denied having given any statement admitting receipt of cash. Therefore, in absence of any evidence on record, the addition was not sustainable. It is strange to note that the Assessing Officer having recorded the statement of Sh. Chetan Gupta chosen to remain silent. This proves that in the statement of Shri Chetan Gupta there was no adverse factor affecting the tax liability of the assessee. Accordingly, the addition was rightly deleted by the learned CIT(A)."*

This order of the Tribunal is upheld by the Hon'ble High Court vide order dated 28.02.2011 being ITA No 1934/2014. Since the facts and circumstances of the case are absolutely identical to the aforesaid cases and there is no evidence or material to support the addition made by the Assessing Officer, the addition made does not sustain. Therefore, issue relating to addition made u/s 69 of the Act on the basis of an alleged pen drive of Shri Chetan Gupta does not survive and the order of the CIT(A) is set aside. Therefore, Ground No. 2 to 2.5 & 3 are allowed. Thus, the Ground No. 1 to 1.5 becomes academic and infructuous.

22. In result, ITA No. 3036/DEL/2015 for A.Y. 2001-02 is allowed.

23. As regards ITA No. 3037/DEL/2015, Ground No. 2 to 4 are identical to the Ground Nos. 2 to 2.5 and 3 to that of ITA No. 3036/DEL/2015 for A.Y. 2001-02, the same findings are applicable in the present appeal. Hence Ground No. 2 to 4 herein are allowed. Ground No. 1 to 1.5 becomes academic

and infructuous. In respect of Ground No. 5 in this appeal the non grant of deduction u/s 16(1), the deduction is claimed from the remuneration received being member of legislative assembly by the assessee. The same is received by the assessee as salary/remuneration of the member of the legislative assembly and not as an employee. Therefore, the same cannot be allowed as per the provisions of the Act because there is no employer employee relationship. Hence Ground No. 5 is dismissed.

24. In result, ITA No. 3037/DEL/2015 for A.Y. 2005-06 is partly allowed.

25. As regards ITA No. 3038/DEL/2015 for A.Y. 2006 07, issue relating to addition made u/s 69 of the Act on the basis of an alleged pen drive of Shri Chetan Gupta is identical to that of ITA No. 3036 DEL/2015 for A.Y. 2001-02, the same findings are applicable in the present appeal. Hence Ground No. 1to 4 herein are allowed.

26. In result, ITA No. 3038/DEL/2015 for A.Y. 2006-07 is allowed.

27. As regards to ITA No. 3039/DEL/2015 for A.Y. 2007-08, issue relating to addition made u/s 69 of the Act on the basis of an alleged pen drive of Shri Chetan Gupta is identical to that of ITA No. 3036/DEL/2015 for A.Y. 2001-02, the same findings are applicable in the present appeal. Hence Ground No. 1 to 5 herein are allowed. As regards ground No. 6 to 6.1, the issue is relating to Rs. 1,20,000/- inclusion of ALV of Bharatpur Project. The farm house situated at Dera Mandi, New Delhi is self occupied property, and second property at Bharatpur is in dilapidated condition, and not liavable as such as per the submission of the Ld. AR. ALV of such property is NIL. The Assessing Officer treated the Bharatpur property as self acquired property and computed the ALV of the Delhi property and brought to tax a sum of Rs. 7,44,055/-.The Ld. AR relied upon the decision of the Hon'ble Bombay High Court wherein to bring an income under Section 22, the property should be inherently capable of being let out, and since in the instant case, the property at Bharatpur is in

dilapidated condition, as such, same is incapable for let out and hence the ALV of such property cannot be brought to tax. But after going through the decision the ratio as appears in the decision of the Hon'ble High Court is on different issue and will not be applicable in the present case. Even the dilapidated property as its ALV and thus, the contentions of the Ld. AR does not sustain as the property always has the value. Therefore, Ground No. 6 to 6.1 are dismissed.

28. In result, ITA No. 3039/DEL/2015 for A.Y. 2007-08 is partly allowed.

Order pronounced in the Open Court on 2nd November, 2018.

Sd/- **Sd/-**

(N. K. SAINI) **(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER **JUDICIAL MEMBER**

Dated: 02/11/2018
R.N*

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	25.09.2018
Date on which the typed draft is placed before the dictating Member	25.09.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the S . PS/PS	2.11.2018
Date on which the final order is uploaded on the website of ITAT	2.11.2018
Date on which the file goes to the Bench Clerk	2.11.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of di patch of the Order	