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

BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER)
AND
Ms. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.3177/Mum/2022
(Assessment year: 2008-09)

Priti Milan Mehta 2303, Bldg No.5, Raheja Classique New Link Road, Andheri West PIN 400 053 **PAN : AAAPH1095G**	vs	Deputy Commissioner of Income-tax, Central Circle 1(2), Mumbai Old CGO Bldg, Room No.906, Annex, 9th Floor, MK Road, Mumbai-400 020
APPELLANT		**RESPONDENT**

Present for the Assessee	Shri Hiro Rai & Ms. Ritu Punjabi
Present for the Department	Shri H.M. Bhatt, Sr.AR

Date of hearing	16/10/2023
Date of pronouncement	31/10/2023

O R D E R

Per Padmavathy S (AM):

This appeal is against the order of the Commissioner of Income-tax (Appeals)-47, Mumbai dated 21/10/2022 for A.Y. 2008-09.

2. The assessee is an individual. She is the former wife of Mr.Surendra Hiranandani, who is the co-founder and managing director of Hiranandani group. The assessee was divorced from Mr.Surendra Hiranandani on 04th September, 2009 and subsequently re-married in 28th December, 2009 to Mr. Milan Mehta in whose house she has been residing since then. The assessee filed return of income for the assessment year 2008-09 on 30/09/2008 declaring a total income of Rs.6,54,72,866/-. There was a search and

seizure action under section 132 of the Income-tax Act (in short, 'the Act') was conducted in the case of Hiranandani group on 11th March, 2014. As part of the search, the assessee was searched on 11th March, 2014 in her new residence. The Assessing Officer issued a notice under section 153A in response to which the assessee filed the return under section 153A on 24/02/2015 declaring total income of Rs.6,54,72,866/-. During the course of search at assessee's premises documents relating to foreign bank account in the name of her former husband, Shri Surendra Hiranandani was found and seized. The assessee was not able to give complete bank details pertaining to these documents. The Assessing Officer proposed to make FT & TR reference to the Appropriate Authority through proper channel. The assessment was subsequently concluded wherein the Assessing Officer vide order dated 29/12/2016, made an addition of unexplained cash credit under section 68 on protective basis in the hands of the assessee for an amount of Rs.2,09,58,000/-. On further appeal, the CIT(A) confirmed the addition made on protective basis. Aggrieved by the order of the CIT(A), the assessee is in appeal before the Tribunal.

3. The assessee raised various grounds contending the issue on merits and the assessee vide letter dated 215/06/2023 also raised an additional ground contending the impugned addition on legal ground. The additional ground raised by the assessee reads as under:-

> *"1. The assessment order is barred by time and is hence, illegal and invalid. The same is therefore, deserves to be quashed."*

4. The Ld.AR with regard to the admission of additional ground submitted that the issue contended is purely legal and does not involve verification of any new fact. The Ld.DR, on the other hand, vehemently objected to the admission of additional ground.

5. We heard the parties with regard to the admission of additional ground. The additional ground raised is purely legal issue, which does not require investigation of new

facts. Hence, placing reliance on the judgment of the Hon'ble Apex Court in the case of National Thermal Power Co. Ltd. v. CIT (1998) 229 ITR 383 (SC), we admit the additional grounds for adjudication.

6. The Ld.AR during the course of hearing submitted that if the additional ground on the legal issue is adjudicated in favour of the assessee, the various grounds raised with respect to the merits of the case becomes academic. Therefore, we will first take up the additional ground for adjudication.

7. The contention of ld AR is that the order of the assessing officer dated 29.12.2016 is barred by limitation. In this regard the Ld.AR submitted that that the search in the case of the assessee was conducted on 11/03/2014 and therefore as per the provisions of section 153B(i), the assessment should have been completed by 31/12/2015. However the assessing officer completed the assessment on 29.12.2016 which, according to the Ld.AR, is beyond the time limit. The Ld.AR in this regard drew our attention to the order of assessment where the assessing officer has recorded that due to reference to FT & TR, the time period for completion of assessment under section 153A is extended by a year as per the provisions of Explanation (ix) to section 153B of the Act. The ld AR argued that the claim of the assessing officer that extended time limit is applicable to assessee's case is not correct. The Ld.AR to support his arguments submitted that FT&TR information is sought under Article 26 of the Indo Swiss Treaty and there was an amendment which was signed on 30.08.2010 as per which the information that relates to any fiscal year beginning on or after the first day of April, 2011 only could be exchanged. The Ld.AR, therefore, submitted as per the amended protocol of the Indo Swiss Treaty, the exchange of information prior to 1st April, 2011 is not applicable and, therefore, the reference made by the revenue on 08.08.2016 asking for information pertaining to assessment year 2008-09 in assessee's case is not a valid reference. Accordingly it was submitted that the extension of time limit under Explanation (ix) to section 153B is not available to the assessing officer to complete the assessment and that the assessment

order passed under section 153A read with section 143(3) dated 29/12/2016 is barred by limitation and liable to be quashed. The Ld.AR in this regard relied on the decision of ITAT, Delhi Bench "G" in the case of Praveen Sawhney vs ACIT (2023) 224 TTJ 46 (Del).

8. The Ld.DR relied on the order of the CIT(A).

9. We heard the parties and perused the material on record. To recapitulate the facts of the case, there was a search in the case of the assessee on 11th March, 2014 and during the course of search, a Swiss Bank account statement with JP Morgan in the name of Mr.Surendra Hiranandani (the ex-husband of the assessee) was found. In the statement recorded from assessee under section 131 of the Act, on 11/01/2016, the assessee had stated that the said bank statement does not belong to her and that she does not have any joint ownership or any other beneficial interest in any manner in the said bank account. In response to notice issued by the assessing officer under section 133(6) of the Act, Mr.Surendra Hiranandani (the ex-husband of the assessee) had stated that he is in no way either directly or indirectly connected with the bank account in JP Morgan Bank, Geneva. The Assessing Officer, therefore, subsequently sent a proposal through proper channel to FT & TR Division, Government of India requesting for information under exchange of information Article of India Swiss DTAA on 08th August, 2016. In the said letter, the Assessing Officer had asked for information pertaining to the time period from 01st April, 2007 to 31st March, 2014. In response, the FT & TR information was received through proper channel on 09/11/2016, the extract of which is reproduced below

> *"We refer to the aforementioned request for administrative assistance dated 8 August 2016*
>
> *The research revealed that during the relevant time period from 1 April 2011 to 31 March 2014 no relationship between J.P.Morgan (swiss) SA and Ms.Priti Surendra HIRANANDAVI (now known as Priti Mila MEHTA) existed.*
>
> *Kindly confirm receipt of this letter*

Please do not hesitate to contact us should you have any questions"

10. The issue under consideration pertains to whether the reference made by the revenue to Swiss authorities requesting for information under Article 26 of Indo swiss treaty for provision of exchange of information pertaining to the assessee for AY 2008-09 is valid thereby providing the extension of one year to assessing officer for completing the assessment under Explanation (ix) to section 153B of the Act. The revenue mainly relies on the reference made by the assessing officer on 08.08.2016 for information through FT&TR which provides the extended time limit by one year under Explanation (ix) to section 153B of the Act to the assessing officer to complete the assessment. The relevant provisions of under Explanation (ix) to section 153B reads as under -

> *"(ix) the period commencing from the date on which a reference or first of the references for exchange of information is made by an authority competent under an agreement referred to in section 90 or section 90A and ending with the date on which the information requested is last received by the Principal Commissioner or Commissioner or a period of one year, whichever is less; or"*

11. It is submitted by the ld DR that the search was conducted on 11.03.2014 and time limit as per section 153B(1) for completing the assessment under section 153A which falls on 31/12/2015 gets extended to 31.12.2016 as per above provisions and therefore the order of the assessing officer dated 29.12.2016 is valid. The argument of the ld AR is that when the reference itself is invalid since the information prior to 1.04.2011 could not be exchanged as per the protocol of the Indo-Swiss Treaty, there is no question assessing officer getting the extended time limit under Explanation (ix) to section 153B of the Act.

12. In this regard it is relevant to look at the Indo Swiss Treaty. We notice that vide notification No.S.O. 2903(E) dated 27th December, 2011, there was a protocol amending the agreement between Republic of India and Swiss Confederation for Avoidance of Double Taxation with respect to tax (DTAA / Treaty). The said notification provides that with respect to article 26 of the Agreement, the exchange of information provided for in the said Protocol will be applicable for information that relates to any fiscal year

beginning on or after the first day of January of the year next following the date of signature of the said Protocol and that the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the 1st day of April, 2011. Therefore there is merit in the contention reference seeking information pertaining to 2008-09 could not have been made and hence not valid. The reply from the Swiss authorities which is reproduced in the earlier part of this order providing information only from 1st April 2011 strengthens this contention.

13. We notice that a similar issues came up before the Delhi Bench of the Tribunal in the case of Praveen Sawhney vs ACIT (supra) and that the Tribunal has given a detailed finding in this regard which is extracted below -

> *"12. It would be pertinent to refer to the relevant clauses of the DTAA between India and Switzerland which reads as under: SWISS CONFEDERATION Whereas the annexed Agreement between the Government of the Republic of India and the Government of the Swiss Confederation for the avoidance of double taxation with respect to taxes on income has entered into force on 29th December, 1994, after I he notification by both the Contracting States to each other of the completion of the procedures required under their laws for cringing into force of the said Agreement in accordance with paragraph 1 of Article 26 of the said Agreement; Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Agreement shall be given effect to in the Union of India. NOTIFICATION : NO.GSR 357(E), DATED 21-4-1995, AS AMENDED BY NOTIFICATION NO.GSR 74(£), DATED 7-2- 2001 AND NOTIFICATION NO. SO 2903(E), DATED 27-12-2011 AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME The Government of the Republic of India and the Swiss federal council Desiring to conclude an Agreement for the avoidance of double taxation with respect to taxes on income, have agreed to XXXX XXXX XXXX ARTICLE 26 EXCHANGE OF INFORMATION I. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the*

taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1. 2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use. 3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation: (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State; (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (order public). 4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of Paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information because it has no domestic interest in such information. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State shall, therefore, have the power to enforce the disclosure of information covered by this paragraph. notwithstanding paragraph 3 or any contrary provisions in its domestic laws." 10. Substituted by Notification No. SO 2903(E), dated 27-12- 2011. Prior to its substitution, Article 26 as amended by Notification No. GSR 74(E), dated 7-2-2001 read as under:

"ARTICLE 26 EXCHANGE OF INFORMATION

I.The competent authorities of the Contracting States shall exchange such information (being information which is at their disposal under their respective taxation laws in the normal course of administration) as is necessary for carrying out the provisions of this Agreement in relation to the taxes which are the subject of this Agreement. Any information so exchanged shall be treated as secret and shall not be disclosed to any persons other than those concerned with the assessment and collection of the taxes which are the subject of this Agreement. No information as aforesaid shall be exchanged which would disclose any trade, business, industrial or professional secret or trade process. 2. In no case shall the provisions of this Article be construed as imposing upon either of the Contracting States the obligation to carry out administrative measures at variance with the regulations and practice of either Contracting State or which would be contrary to its sovereignty, security or Public policy or to supply particulars which are not procurable under its own legislation or that of the State making application." 13. A perusal of the aforementioned relevant clauses of the DTAA shows that the same is effective from 01.04.2011. This is further clarified form the following notification: "NOTIFICATION NO. S.O. 2903(E) [NO. 62/2011 (F. NO. - SECTION 90 OF THE OME- TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AMENDMENT OF AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES - SWISS CONFEDERATION SECTION 90 OF THE INCOME·TAX ACT, 1961 - DOUBLE TAXATION AGREEMENT - AMENDMENT OF AGREEMENT FOR AVOIDANCE OF DOUBLE TAXATION AND PREVENTION OF FISCAL EVASION WITH FOREIGN COUNTRIES· SWISS CONFEDERATION NOTIFICATION NO. S.O. 2903(E) [NO. 62/2011 (F. NO. 501/01/1973- FTD-I)], DATED 27-12-2011 Whereas a Protocol amending the Agreement between the Republic of India and the Swiss Confederation for the avoidance of double taxation with respect to taxes· on income with Protocol, signed at New Delhi on the 2nd day of November, 1994, as amended by the supplementary Protocol signed at New Delhi on the 16th day of February, 2000, was signed at New Delhi on the 30th day of August, 2010; And whereas the date of entry into force of the said Protocol is the 7th day of October, 2011, being the date of later of the notifications of satisfaction of all legal requirements and procedures as required by the respective laws for entry into force of the said Protocol, in accordance with Paragraph 2 of Article 14 of the said Protocol; And whereas sub-paragraph (a) of Paragraph 2 of Article 14 of the said Protocol provides that the provisions of the said Protocol shall have effect

in India in respect of income arising in any fiscal year beginning on or after the first day of April next following the calendar year in which the Amending Protocol entered into force; And whereas Paragraph 3 of Article 14 of the said protocol provides that with respect to Article 26 of the Agreement, the exchange of information provided for in the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the first day of January of the year next following the date of signature of the said Protocol; Now, therefore, in exercise of the powers conferred by section 90 of the Income-tax Act, 1961 (43 of 1961), the Central Government hereby directs that all the provisions of the said Protocol, as set out in the Annexure hereto, shall be given effect to in the Union of India in respect of income arising in any fiscal year beginning on or after the 1 st day of April, 2012 and with respect to Article 26 of the Agreement, the exchange of information provided for in the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the 1st day of April, 2011. PROTOCOL AMENDING THE AGREEMENT BETWEEN THE REPUBLIC OF INDIA AND THE SWISS CONFEDERATION FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT TO TAXES ON INCOME WITH PROTOCOL, SIGNED AT NEW DELHI ON 2 NOVEMBER 1994, AS AMENDED BY THE SUPPLEMENTARY PROTOCOL SIGNED AT NEW DELHI ON 16 FEBRUARY 2000 ARTICLE 8 Article 26 [Exchange of information] of the Agreement shall be deleted and replaced by the following Article: Article 26 Exchange of information 1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by the Agreement insofar as the taxation there under is not contrary to the Agreement. The exchange of information is not restricted by Article 1. 2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to the taxes referred to in paragraph I, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting State may be used for other purposes when such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorizes such use. 3. In no case shall the

provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting State the obligation: (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State; (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State; (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information. 4. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person. In order to obtain such information, the tax authorities of the requested Contracting State shall, therefore, have the power to enforce the disclosure of information covered by this paragraph, notwithstanding paragraph 3 or any contrary provisions in its domestic laws." 14. The aforementioned Notification No. 2903 (E) is loud and clear and has specifically mentioned that Exchange of Information provided for in the said Protocol will be applicable for information that relates to any fiscal year beginning on or after the 1st day of April 2011 and if the said notification is read with the reference made by the department, we find that the specific periods for which the reference has been made calling for information is 01.04.1995 to 31.03.2012.

Therefore, qua the notification, information called by the Revenue by issuing the said reference was invalid for the period prior to 01.04.2011. 15. A reference to the decisions for analogous provisions can throw some light on this issue. The Hon'ble High Court of Rajasthan was considering the reference for Special Audit u/s 142(2A) of the Act in the case of Bajrang Textiles 294 ITR 561and held as under: "Direction of the AO for special audit of assessee's accounts under s. 142(2A) one day before the expiry of limitation for completing the block assessment being merely to get extension of time and AO having asked the special auditor to prepare the books of account in the form of cash book and ledger on the basis of seized

documents/papers and also trading and P&L a/c which is apparently beyond the scope of the provisions of s. 142(2A), the direction for special audit was illegal and consequently, the assessment was barred by time" 16. Similarly, the Hon'ble Allahabad High Court in the case of Sadana Electric Stores 219 Taxation 0294 held as under: "Assessment—Time limit for completion—Order passed beyond limitation period—Sustainability—Assessee was subjected to special audit by approval of CIT—Assessee was asked to obtain special audit report u/s 152(2A)—Accounts audited in report was submitted—

However limitation for completion of assessment u/s 153(1)(b) expired—Assessee contended that subsequent assessment order passed by AO was time barred—Held, in case of Sadana Electric Company vs. Commissioner of Income Tax and another ITA No.167 2008 , 152(2A), identical facts were dealt wherein Court held that section 153(1)(a) reads that no order of assessment shall be made u/s 143 or Section 144 at any time after expiry of two years from end of A.Y. in which income was first assessable—Order of assessment had been passed in violation of period prescribed in aforesaid provision, therefore, order passed by AO, CIT and ITAT was set aside—Therefore order passed by lower authorities including Tribunal could not be sustained as facts and circumstances were identical." 17. Similar view was taken by the co-ordinate bench in the case of Consulting Engineering Services India Pvt Ltd & Anr. 198 TTJ 0121 [Del]. Relevant findings read as under: "15. We have given a thoughtful consideration to the orders of the authorities below and have carefully perused the records qua the issue. It is true that noticed dated 21.11.2011 was for both the A.Ys i.e. 2008-09 and 2009-10. However, each A.Y is considered to be a separate unit and, therefore, for each A.Y, the Assessing Officer must bring out his case. A perusal of the said notice, which is exhibited at pages 67 to 70 of the paper book, clearly reveals that though the notice pertained to accounts of A.Y 2008-09, but entire financial details referred to therein pertain to A.Y 2009-10. Even the order u/s 142(2A) of the Act dated 27.12.2011 which is exhibited at pages 91 to 98 of the paper, the ACIT has specifically mentioned that "the special audit u/s 142(2A) of the Act in the case of captioned assessee for A.Y 2009-10 is ordered accordingly". This clearly proves that while making a reference u/s 142(2A) of the Act and thereafter passing the order u/s 142(2A) of the Act, the Assessing Officer did not apply his mind and mechanically adopted the figure of A.Y 2009-10 and passed the order u/s 142(2A) of the Act for A.Y 2009-10 without realizing that he is dealing with A.Y 2008-09. 16. The contention of the ld. DR that the letter to the appellant referred to both the A.Ys i.e. 2008-09 and 2009-10 and, therefore, there is no error in the same. We do not find any force in this contention of the ld. DR. As mentioned elsewhere, since each A.Y is

considered as a separate unit the Assessing Officer should have made out a case for A.Y 2008-09 only and since the order framed u/s 142(2) of the Act also refers to A.Y 2009-10, then the same cannot be used for A.Y 2008-09. 17. The quarrel before us is as to whether the assessment order framed u/s 143(3) is passed within the period of limitation period prescribed under the Act or not. In our considered opinion, for coming to such a conclusion, we can examine whether the order passed u/s 142(2A) of the Act is in accordance with law or not. It is true that the order passed u/s 142(2A) of the Act is not appealable but when an assessment order is challenged, then the different aspects, which are integral to the process and ultimate completion of the amount can be challenged in appeal and since the ground before us is challenged for assessment being barred by limitation, we are well within our rights to consider all material aspects which were considered while framing the assessment order u/s 143(3) of the Act."

18. The co-ordinate bench in one of the group cases of Late Bhushan Lal Sawhney through his L/H wife Smt. Sneh Lata Sawhney ITA Nos. 427 to 432/DEL/2017 & 434 to 439/DEL/2017 had the occasion to consider reference to Swiss authority and reply received by Swiss authority. It would be pertinent to refer to the said observation of the Co-ordinate Bench which reads as under: "Learned Counsel for the Assessee also placed on record letter Dated 26.06.2015 issued by Swiss Competent Authority addressed to the Government of India in which it is specifically mentioned that information as required could be provided from F.Y. 2011-2012 as the prior years are not covered by temporal scope of Article 26 of the Amended Double Taxation Avoidance Agreement between India and Switzerland. Therefore, such information could be provided from 01.04.2011. Learned Counsel for the Assessee also placed on record Notification Dated 27.12.2011 between India and Switzerland Confederation for avoidance of double taxation. These would clearly show that these are applicable after assessment years under appeals and as per information provided vide letter Dated 26.06.2015 no such information could be provided prior to 01.04.2011. Therefore, Swiss Authorities have not provided any information to Revenue Authorities in India about assessee's bank account with HSBC, Geneva, Switzerland ITA.Nos.427 to 432/Del./2017 & ITA.Nos.434 to 439/Del./2017 Late Shri Bhushan Lal Sawhney through his L.R./ Wife Smt. Sneh Lata Sawhney, New Delhi. for assessment years under appeals i.e., A.Ys. 2006-2007 to 2011- 2012."

19. In light of the aforementioned discussion, we are of the considered view that the information called for by the department from Swiss authorities could not have been received by them for the period prior to 01.04.2011. Therefore, it would be a futile exercise to wait for such information, and

that too, by an invalid reference. Therefore, in our considered opinion, the period of limitation could not be extended as claimed by the Revenue. The impugned assessments are clearly bared by limitation and deserve to be quashed."

14. Applying the ratio as laid down by the Delhi bench of the Tribunal in our considered view the information sought for pertaining to the assessee for A.Y. 2008-09 could not have been received by the revenue since Article 26 of the Indo Swiss Treaty regarding exchange of information is applicable for information that relates to the period on or after 1st April, 2011 and therefore is not a valid reference. In the light of these discussions, we hold that the claim of the revenue that period of limitation is extended by one year under section 153B based on the reference is not tenable and in assessee's case, the assessment should have been completed on or before 31/12/2015. Accordingly the order passed by the A.O. 153A read with section 143(3) dated 29/12/2016 is clearly barred by limitation and is liable to be quashed.

15. The Ld.AR during the course of hearing made an alternative argument praying that the assessment order is liable to be quashed for the reason that the period of limitation for completing the assessment under section 153A read with section 143(3) in assessee's case expires on 31/12/2015 whereas the revenue has made the reference to FT & TR on 08/08/2016, which itself is made after the expiry of the limitation. Since we have already quashed the assessment order stating that the same is barred by limitation, the alternate argument of the Ld.AR has become academic not warranting any adjudication.

16. Since we have adjudicated the legal issue raised through additional ground, the grounds raised on merits have become academic and does not warrant separate adjudication.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 31/10/2023

Sd/- **sd/-**

(VIKAS AWASTHY)	PADMAVATHY S.
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 31st October, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy// /

Senior Private Secretary, **ITAT, Mumbai,** Asstt. Registrar