

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**Before Sh. N. K. Saini, AM and Smt. Beena Pillai, JM**

**ITA No. 5448/Del/2016 : Asstt. Year : 2006-07**

Shyam Sunder Jindal, 12A, Green Avenue, Sector-D, Pocket-3, Vasant Kunj, New Delhi-110070	Vs	Asstt. Commissioner of Income Tax, Central Circle-30, New Delhi
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>
<b>PAN No. AAGPJ0184N</b>		

**Assessee by : Sh. Ajay Vohra, Sr. Adv. &  
Sh. Rohit Garg, Adv.  
Revenue by : Sh. S. S. Rana, CIT DR**

<b>Date of Hearing : 16.02.2017</b>	<b>Date of Pronouncement : 10.04.2017</b>
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**ORDER**

**Per N. K. Saini, AM:**

This is an appeal by the assessee against the order dated 24.08.2016 of Id. CIT(A)-30, New Delhi

2. Following grounds have been raised in this appeal:

*"1. That the CIT(Appeals) erred on the facts and in law, in not holding that the assessment order dated 27.02.2015 passed by the assessing officer under section 153A of the Income-tax Act, 1961 ('the Act') was bad in law and void-ab-intio.*

*1.1 That the CIT(Appeals) erred on the facts and in law in not appreciating that the above assessment order passed under section 153A is barred by*

*limitation as prescribed in section 153B(1)(viii) of the Act.*

*1.2 That the CIT(Appeals) erred on the facts and in law in not appreciating that the assessing officer passed the assessment order in undue haste and in gross violation of principles of natural justice.*

**Without prejudice:**

*2. That the CIT(A) erred on facts and in law in confirming addition of Rs.69,07,414 (US\$ 155923.57 @ Rs.44.30), being the peak balance lying in some account of HSBC Bank, Geneva made by the assessing officer alleging that:*

*a) the above bank account though belongs to the appellant was not disclosed either in the return of income or during the course of assessment proceedings; and*

*b) the appellant failed to furnish explanations/documents, etc. in respect of the deposits lying in the above bank account.*

*2.1 That the CIT(A) erred on facts and in law in not appreciating that the aforesaid addition has been made by the assessing officer de-hors any material found/ seized during the course of search in the premises of the appellant and is not sustainable in law.*

*2.2 That the CIT(A) / assessing officer erred on facts and in law in drawing adverse inference on the basis of some general/ vague particulars appearing in some unsigned/ undated/ unauthenticated loose photocopied*

*sheets of papers, whose source is also not known/reliable/ credible, not appreciating that the same does not constitute evidence in the eyes of law.*

*2.3 That the CIT(A) erred on facts and in law in confirming the above addition without appreciating that the assessing officer has admitted in para 6 of the assessment order that authentic information/ communication regarding the alleged foreign bank account was still awaited from the Swiss Authorities.*

*2.4 That the CIT(A) erred on facts and in law in not appreciating that - (a) the above alleged foreign bank account did not belong to the appellant; (b) none of the deposits, as alleged, related to the appellant; and (c) no transaction was made by the appellant, and that the above addition made in the hands of the appellant is without any evidence or basis.*

*2.5 That the CIT(A)/assessing officer erred on facts and in law in alleging that the appellant had intentionally concealed vital information by not signing the consent /declaration form and drawing adverse inference therefrom, without appreciating that the question of signing such form did not arise as the appellant denied having any foreign bank account in the first place.*

*The appellant craves leave to add to, alter, amend or vary the aforesaid grounds of appeal at or before the time of hearing.”*

3. From the aforesaid grounds, it would be clear that the assessee had challenged the jurisdiction of the AO in passing the assessment order u/s

153A of the Income Tax Act, 1961 (hereinafter referred to as the Act) and sustenance of the addition of Rs.69,07,414/- made by the AO.

4. Facts of the case in brief are that the assessee filed the original return of income on 29.07.2006 declaring an income of Rs.7,05,730/- which was processed as such on 20.11.2006. Later on, the case was selected for scrutiny and the assessment was framed u/s 143(3) of the Act on 08.10.2008. Subsequently, a search and seizure operation u/s 132 of the Act was conducted on various business premises of Sh. V. C. Jindal Group of cases as well as the residential premises including the residence of the assessee at 12A, Vasant Kunj, Pocket-D, New Delhi on 14.11.2011. The AO issued the notice u/s 153A of the Act on 19.10.2012. In response to the said notice, the assessee filed the return of income declaring an income of Rs.7,05,730/-. The said income was declared on account of professional fee and income from other sources being interest on dividend and also included income of minor son Sh. Bhavesh Jindal in the form of interest income and dividend income.

5. During the course of assessment proceedings, the AO observed that as per the information available with his office, the assessee maintained an account with HSBC Bank, Geneva, Switzerland. A reference was made to the appropriate authority for exchange of information. The AO reproduced translation in English of the said information which was available in French in para 4.1 of the assessment

order dated 27.02.2015, for the cost of repetition, the same is not reproduced herein. The AO mentioned that the assessee was maintaining a bank account with HSBC Bank, Geneva, Switzerland with BUP No. 9070145843 and this account remained undisclosed to the Income Tax Department and that the assessee had not furnished a copy of complete statement of this bank account. The AO also mentioned that the requisite information from Swiss Banking Authorities had not been received. At the same time, he stated that as per the bank statement with his office, the credit balance in this account was US\$155507.80 at the end of March 2006 and US\$152027.93 at the end of February, 2007. The peak balance was US\$156740.81 in the month of September 2006 and maximum balance in this account for the financial year 2005-06 was US\$155923.57 in February 2006. The AO asked the assessee to furnish the complete statement, the details and particulars of HSBC Bank account and observed that the assessee had not furnished bank account statement or consent waiver form to obtain statement, inspite of various opportunities given to him. The AO pointed out that during the search proceedings, statement of the assessee was recorded u/s 132(4) of the Act and he denied of having any such bank account. He also mentioned in para 9 of the assessment order that the assessee during the course of assessment proceedings on queries made by notices or letters did not accept of having bank account with HSBC Bank, Geneva, Switzerland.

The AO highlighted the facts of the aforesaid bank account with HSBC Bank, Geneva, Switzerland with BUP No.9070145843 as under:

<i>Particulars appearing in Bank information</i>	<i>Particulars of the assessee</i>
<i>Name mentioned - Shyam Sunder Jindal</i>	<i>Name of assessee. Each alphabet of the name &amp; surname are that of assessee as mentioned in return as well as passport.</i>
<i>Date of Birth - 26.08.1955</i>	<i>26.08.1955 is the correct date of birth of the assessee as mentioned in the return filed &amp; passport.</i>
<i>Profession - Chairman</i>	<i>The assessee is chairman of Jindal Group of companies.</i>
<i>Postal - 56, Hanuman Road, New Delhi/India (Legal Address)</i>	<i>This was the Registered Office of M/s Jindal Rubber Pvt. Ltd as proved by a screenshot downloaded from website.</i>
<i>Place of birth – 356, Bhiwani, Haryana.</i>	<i>This is birth place of assessee as mentioned in his passport.</i>
<i>The telephone no. - +11 3345463.</i>	<i>This telephone no. 23345463 is a MTNL telephone issued in the name of M/s Jindal Rubber Pvt. Ltd. A screen shot obtained from MTNL directory through website establishes this fact Screen shot is place in file. The earlier seven digit number was 3345463 and 2 was prefixed to all MTNL numbers to make them eight digit. +11 denote the state code number of Delhi.</i>
<i>Client profile linked to person -Bhavesh Jindal. Profile created on 24-11-2000 was closed on 27/06/2001.</i>	<i>The name of son of assessee who was minor at the time of profile created &amp; closed. Income of Sh. Bhavesh Jindal, minor, has been shown by assessee in his return of income for AY 2006-07.</i>
<i>Identification marks &amp;</i>	<i>Appearing in Account</i>

<i>pieces</i>	
<i>No. B0129826</i>	<i>This is the number of passport issued in the name of assessee. A certificate confirming this fact obtained from passport authority vide F.No. 25/Misc./15/Pol.GR.II/24-S dated 20/02/2015 establishes the fact.</i>
<i>Place of office - New Delhi</i>	<i>New Delhi, Head Office of the business of assessee as well as his residence is in Delhi.</i>
<i>Date -23/08/1999-</i>	<i>This is the date of issue of passport No. B0129826 in the name of assessee. Copy obtained u/s 133(6) of I.T. Act from passport authority Delhi vide letter No. 25/Misc./15/Pol.GR.II/24-S dated 20/02/2015 established the fact. Although the assessee was asked to furnish copy of passport issued on 23/08/1999 but instead assessee filed copy of passport issued dated 23/08/2011.</i>
<i>Date of modification 11/03/2005</i>	<i>From the details of arrival &amp; departure it has been found that the assessee departed on 05/03/2005 through flight Q407 with passport no Z052887 issued on 06/12/2000 from Delhi &amp; arrived on 22/03/2005 through flight AF148 at Delhi Airport. During the intermediate time the assessee is likely to have done the modification on 11/03/2005 in the bank.</i>

6. The AO provided copy of account statement for the period November 2005 to February 2007 to the Authorized Representative of the assessee on 21.11.2014 and observed that the details of account

holder mentioned in the account as name of the assessee, date of birth, address, telephone number, residential address, passport number etc. pertaining to the assessee which established that the assessee was maintaining his bank account with HSBC Bank, Geneva and he deliberately and willfully had avoided the production of statement of his bank account and had preferred not to avail the help extended by the department to obtain the account statement from HSBC, Geneva, Switzerland through FT&TR by not furnishing the consent waiver form. He, therefore, considered the maximum credit balance of US\$155923.57 on conversion of Indian Rupees @ Rs.44.30 per \$ (rate of \$ taken at average rate for the relevant year as per Reserve Bank of India rates) to Rs.69,07,414/- as undisclosed deposit/credits of the assessee for the year under consideration. The AO also observed that the assessee had been Resident in India during the period of existence of the above said account, the source of deposit/credit in the said account had not been disclosed by the assessee in his returns of income filed for the relevant assessment years, therefore, the addition on account of deposit/credit in the said bank account was being made in the hands of the assessee. Accordingly, addition of Rs.69,07,414/- was made.

7. Being aggrieved the assessee carried the matter to the Id. CIT(A) and challenged the order u/s 153A of the Act passed by the AO, as without jurisdiction, bad in law and *void ab initio*. The Id. CIT(A)

dismissed the said ground of the assessee by observing that the objection raised by the assessee were not substantiate since:

- *In the case of the appellant action u/s 132 was initiated on 14.11.2011.*
- *As per provision of Sec. 153A(1)(a), the AO is required to issue the notices for 6 proceeding assessment years, and*
- *There is no statutory requirement for referring any document before issuance of notices.*

8. The assessee submitted that the assessment order passed by the AO was barred by limitation as prescribed u/s 153B(1)(viii) of the Act and furnished the written submission as under:

*“2.2 In terms of provisions of Section 153B of the Act, an order of assessment or reassessment shall be made within a period of two years from the end of the financial year in which the search was executed. Relevant text of Section 153A is reproduced hereunder, for your Honour's ready reference:*

***"Section 153B (1) Notwithstanding anything contained in Section 153, the Assessing Officer shall make an order of assessment or reassessment,-***

*(a) in respect of each assessment year falling within six assessment years referred to in clause (b) of sub section (1) of Section 153A, within a period of two years from the end of the financial year in which the last of the authorizations for search under Section 132 or for requisition under Section 132 was executed;*

*(b).....”*

*2.3 As mentioned in the preceding paragraphs, the search operation was carried out on November 11, 2011. In view of*

*the provisions of Section 153B of the Act, the order under Section 153A of the Act ought to have been passed within a period of two years from the end of the financial year 2011-12 (during which the last of authorizations for search was executed) punchnamas dated 15.11.2011 are enclosed (Pages 13 to 21 of the paper book). Accordingly, the limitation period for conclusion of the impugned assessment proceedings was March 31, 2014, whereas, the impugned order has been passed as late as February 27, 2015.*

*2.4 It does appear from a perusal of the impugned order that the Ld, AO had resorted to the clause (viii) of the Explanation to sub section (I) of Section 153B of the Act, which states that the period commencing from the date on which the reference has been made for exchange of information under an agreement referred to in Section 90 or 90A of the Act to the date on which the such information is received or period of one year, whichever is less, is to be excluded from the computation of limitation period for completing assessment under Section 153A of the Act. Relevant text of the aforesaid provision is reproduced hereunder, for your honour's ready reference:*

*"Section 153B.....*

*Explanation - In computing the period of limitation for the purposes of this section-*

*.....(viii) 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* .....  
*shall be excluded* (Emphasis supplied by us)

2.5 *The issue of limitation was raised by the Appellant before the Ld. AO, during the course of assessment proceedings vide his letter dated November 25, 2014. (Pages 22 to 25 of the paper book)*

2.6 *The Ld. AO replied vide a letter dated December 24, 2014 (Page 26 of the paper book), relevant extracts from which are reproduced below:*

*"As regards the source of the document from the records it revealed that it has been obtained under DTAA.*

*The information was sought through FT & TR division vide letter dated 27.11.2012 which is yet to receive. Hence the assessment have not yet barred by limitations."*

2.7 *The Appellant counter replied vide his letter dated January 05, 2015 (Pages 27 to 29 of the paper book) and submitted that since the Ld, AO has claimed that he has already got information under DTAA the Appellant may be informed as to what additional information has been sought through FT& TR division and how the said information is relevant in Appellant's case, for the purpose of examining the limitation of assessment proceedings. The Appellant also invited the Ld. AO's attention to the media's reports that the Indian authorities have been denied providing of information with reference to the foreign bank accounts and as such the Appellant assumes that the reference stated to have been made by FT & TR division on 27.11.2012, which the Ld. AO has stated to be still pending, might have been declined by the concerned foreign authorities long back. The Ld. AO was requested to clarify the above point so as to*

*enable the Appellant to understand as to how his assessment proceedings are yet not barred by limitation.*

*2.8 The Ld. AO neither gave any clarification to the Appellant on the issues raised by him, nor did he mention anything about the query raised by the FT & TR division on November, 27, 2012 (which alone could have saved the assessment from limitation) in his assessment order. Instead, the Ld. AO relied upon a much later reference made by the FT & TR division on January, 30, 2015, which by itself is of no avail to the department in extending the limitation period. At this juncture, it may be emphasized that the extension of time-limit for completing the assessment under Section 153A of the Act can be availed by virtue of clause (viii) of Explanation to Section 153B(1) of the Act, only if the reference is made before the completion of prescribed time-limit of two years from the end of the financial year in which the search is completed.*

*2.9 In the aforesaid circumstances the Appellant respectfully submits that your honour may be kind enough to direct necessary enquiries as regards the fate of queries raised by FT & TR division on November, 27, 2012 and if as a result of such enquiries it transpires that these queries were summarily rejected by the concerned foreign authorities and consequently the time limit of completion of assessment does not get extended till February, 27, 2015 (the date on which the Ld. AO completed the assessment), Your Honour may declare the assessment void, being barred by limitation."*

9. The Id. CIT(A) after considering the submissions of the assessee held that the assessment u/s 153A of the Act was completed within the

statutory time limit by observing in para 5.3 of the impugned order as under:

*“(i) In this regard, the appellant has submitted that the search and seizure action u/s 132 was initiated on 14.11.2011 and therefore, as per appellant the limitation expires u/s 153B for completing the assessment u/s 153A on 31.3.2014. In the assessment order, in para 6 at page no. 10, A.O, has made a reference vide letter dated 30.01.2015 to the concerned authorities, for obtaining the information relating to the appellant under DTAA.*

*(ii) However, on the perusal of the assessment record presented by the A.O. in the assessment proceedings, it is clear that the above referred reference by the A.O. in the assessment order, is not the first reference but it is a reminder of the first reference vide letter dated 27.11.2012, for obtaining the information under DTAA. Therefore, the limitation for completing the assessment u/s 153A, will expire on 31.3.2015, by proviso to section 153B(1). As the assessment order u/s 153A was completed on 27.02.2015, which is in the above prescribed time limit and therefore, the arguments of the appellant, are not acceptable.”*

10. The assessee apart from challenging the jurisdiction of the assessment on legal issue challenged the addition made by the AO and submitted as under:

*“2.10 At the outset, it is submitted that it is incomprehensible as to the basis on which the assessment was concluded. It seems that the assessment has been concluded merely with a preconceived notion, influenced by certain media reports highlighting the ownership of the bank*

*accounts with HSBC Bank, Geneva on the basis of some information supposedly received by Indian Government, through means, the veracity of which is highly doubtful.*

*2.11 It may also be submitted that the Ld. AO has grossly breached the principles of natural justice by not affording any opportunity to examine the so called correspondence (exchange of information) made available to Indian Government purportedly under the 'DTAA'. The same was never furnished thereby denying any opportunity to assail the same.*

*The significance of the opportunity to examine has been well established in law. Here, one may usefully cite the decision of the Hon'ble Apex Court in Dhakeshwari Cotton Mills v. CIT [1954] 26 ITR 775 (SC), wherein, the right of examination has been considered as an essential ingredient of reasonable opportunity to be afforded to an assessee.*

*Furthermore, in the case of K.T. Shaduli vs State of Kerala (1972) [29 STC 44], the Hon'ble Kerala High Court reiterated the aforesaid view. Here it is relevant to highlight that the judgment of the Hon'ble Kerala High Court has been affirmed by the Hon'ble Apex Court in State of Kerala Versus KT, Shaduli Yusuf [39 STC 478] (SC).*

*Also, the Hon'ble jurisdictional High Court has also applied the said principle in the case of CIT Vs P.C. Chemicals (2013) 359 ITR 129.*

*2.12 In the instant case, the Ld, AO did maintain that the loose sheet of paper, supposedly a foreign bank*

*account, which allegedly, was held by the Appellant, was received under the 'DTAA'. In this regard, one may mention that based on contemporaneous media reports, such information has been made available to the Indian Income tax authorities through means, the legitimacy of which, is a matter of doubt.*

*2.13 Given that the authenticity of the aforesaid papers, based on which the assessment was proposed to be framed, was questionable, the Appellant did request the Ld. AO to make available the source of the aforesaid alleged bank account.*

*However, the Ld. AO failed to provide any such document to the Appellant and also failed to provide an opportunity for cross examination of the person whose statement or information was relied upon by the Ld. A. O. against the appellant, therefore, denied him an opportunity to assail the aforesaid information/ based on which, adverse inference were drawn against him. Such failure is a blatant breach of natural justice and renders the impugned order void.*

*2.14 It may also be noted that the Ld. AO never took into consideration any of the submissions made by the Appellant vide innumerable replies dated November 30, 2012, July 19, 2013, July 28, 2014 September 5, 2014 and February 27, 2015 wherein the source of the said documents and the authenticity of the said documents were repeatedly questioned / requisitioned by the Appellant. However, the Ld. AO proceeded to conclude the assessment in a preconceived notion without giving due*

*consideration to any of the submission made by the Appellant.*

*2.15 The Appellant vide submission dated November 25, 2014 once again placed his detailed averments on the authenticity of the loose sheets of papers shared by the Ld, AO, which were purported to be copy of some foreign bank account. The same is enclosed at page no. 22 to 25 of paper book.*

*2.16 Furthermore, the perusal of the order also indicated that the Ld. AO has not applied his mind at all in concluding the impugned assessment under Section 153A of the Act, but only relied on some stray sheet of papers whose authenticity/credibility was neither established neither was made available to the Appellant despite the repeated requests made by him.*

*2.17 In this backdrop, wherein, the appellant has always co-operated with the tax department and has consistently maintained that he never owned any foreign bank account, coupled with the fact that the Ld. AO does not have anything on record to substantiate the veracity of the purported bank account, it is most humbly submitted before your honour that the order is made in violation of the principles of natural justice has no value and is thus void-ab-initio.*

*Thus, it is humbly prayed that since the impugned order violates the principles of natural justice and has been made with a preconceived notion and bias against the appellant, the same should be quashed.*

*2.18 Vide the above ground, the appellant contests that the impugned order passed by the Ld. AO is a presumptuous order based on some extraneous materials whose authenticity has not been established by the revenue authorities. The detailed legal and factual submissions made in the Ground #2 should be read in support of this ground.*

*2.19 At the very outset your honour's kind attention is invited to the decision of honourable Jurisdictional Bench of Income Tax Appellate Tribunal in the case of CIT vs Ravi Kant Jain [2001] 250ITR 141 (Delhi), wherein, it has been held :*

*"The assessment of 'undisclosed income' as defined in section 158B(d) is only relatable to material found as a result of search. Unless the materials are unearthed as a result of search, there is no question of assessment of undisclosed income in terms of Section 158BA in Chapter XIV-B"*

*Further, in a recent judgement in the case of CIT Central-III vs Kabul Chawla (DB) [2015] 234 Taxman 300 (Delhi) dated August 28, 2015 the Jurisdictional High Court has discussed the provisions of section 153A of the Income Tax Act in detail, and held:*

*"37. On a conspectus of section 153A(1) of the Act, read with the proviso thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:*

*vii. Completed assessments can be interfered with by the AO while making the assessment u/s 153A only on*

*the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.*

*Conclusion*

*38. The present appeal concerned AYs 2002-03, 2005-06 and 2006-07. On the date of the search said assessment already stood completed. Since no incriminating material was unearthed during the search, no additions could have been made to the income already assessed.*

*Copy of the said order is enclosed for your ready reference Pages 30 to 55 of the Paper Book.*

*This view also finds support from CIT vs Anil Kumar Bhatia [2013] 352 ITR 493 (Del) and Anil Kumar Bhatia vs ACIT [2010] ITR (T) 484 (Delhi).*

*2.20 In the instant case the pivotal fact remains that nothing incriminating was found during the search in the Appellant's premises, therefore, in view of the ratio of the judgements in aforementioned cases, no addition could be made in the hands of the Appellant in consequent assessment made u/s 153A. Needless to mention that the fact that the search team had confronted the Appellant with unauthentic document, allegedly a statement of foreign bank account, is not enough to warrant any such addition."*

11. It was further submitted as under:

*"2.21 It is further submitted that it is a settled Law that addition made by Income Tax authorities can be founded only*

*on credible and cogent evidence. Where revenue authorities failed to demonstrate the same, the addition made is liable to be deleted. It bears repetition that in the instant case, the impugned addition was made solely on the basis of photostat copies of some loose sheet of papers purported to be Appellant's bank statement in a foreign bank (herein after referred to as photostat copy), but which actually appears to be a mere printout of spreadsheet rather than a valid or authenticated bank statement, whose source was never disclosed to the Appellant. The purported bank account whose peak credit has been added in the assessment is incorporated on page 4, 5 & 6 of the assessment order and reads as under:*

<i>Name of legal entity</i>	<i>PORTMAN INVESTMENTS HOLDING (9070231643)</i>
<i>Place of domicile</i>	<i>ROAD TOWN - TORTOLA-BRITISH VIRGIN ISLD</i>
<i>Date of creation</i>	<i>17-11-1994</i>
<i>Date of closure</i>	<i>No reference</i>
<i>Reason of closure</i>	<i>No reference</i>
<i>Addresses</i>	<i>PORTMAN INVESTMENTS HOLD. LTD .c/o POSTFACH365 POSTSTRASSE 403 9491 RUGGELL [ENVOI CORRESPONDANCE]</i>
	<i>PORTMAN INVESTMENTS HOLDING LIMITED MOSSACK FONSECA &amp; CO. (B. V.I) LTD. SKELTON BLDG. MAIN STREET P.O. BOX 3136 ROAD TOWN, TORTOLA [SITZADRESSE]</i>
	<i>PORTMAN INSVESTMENT HOLDING LIMITED C/o POSTFACH 365</i>

*POSTSTRASEES 403 FL-9491 RUGGELL  
[ADDMIN ADRESSE]*

*Code BUP: 9070145843 / Code profile: 9072021170*

*Monthly balances in the account of profile: PORTMAN  
INVESTMENTS HOLDING LIMITED*

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*It cannot be disputed that the above referred alleged bank account, if at all it exists, it pertains to some PORTMAN INVESTMENTS HOLDING, and not to the Appellant. The place of domicile as well as the address of PORTMAN INVESTMENTS HOLDING are clearly mentioned in the photostat copy and the same has no connection whatsoever with the Appellant. PORTMAN INVESTMENTS HOLDING is a separate legal entity and the Ld. AO has not even attempted to establish any link between the said entity and the Appellant; he has not even pointed out whether the Appellant is a shareholder or a director or is having any connection with the said entity. Without establishing any nexus or connection of the Appellant with the said entity, the addition of peak balance in the bank account of the entity, made in the hands of the Appellant is liable to be quashed. The appearance of some personal details of the appellant on the photostat copy does not make any material difference since the photostat copy in no uncertain terms mentions that the bank account was in the name of PORTMAN INVESTMENTS HOLDINGS (and not in the name of Appellant).*

*2.22 Be that as it may, the burden of proof for proving the connection of the supposed foreign bank account with the Appellant was always upon the Ld. AO and not on the Appellant. In other words, where the Ld. AO attempts to draw out an inference that the Appellant owns and maintains a*

*foreign bank account, based on some unverified sheet of paper which is reminiscent of a bank statement, it is upon the assessing officer to prove the reality of the same.*

*In this regard, useful reliance may be placed on the decision of the Hon'ble High Court of Bombay in the case of Sukhdayal Rambilas v. CIT [1982]10 Taxman 151 (Bom), wherein the aforesaid principle has been upheld. The Hon'ble Court held as under:*

*"Where it is contended that what is apparent is not real, the burden to establish that is on the person who alleges this. Thus, when the revenue contended that impugned amount in the fixed deposit really belonged not to S but to the assessee-firm, the burden was on the revenue to establish that the moneys belonged to the assessee-firm".*

*(Emphasis supplied by us)*

*2.23 Also, one may also refer to the recent decision of the Hon'ble High Court of Rajasthan in the case of CIT v. Vinayak Plasto Chem (P) Ltd. [2014] 42 taxmann.com 43 (Rajasthan), wherein, the Hon'ble Court held that in terms of Section 69 of the Act, the onus is on the assessing officer to prima facie prove that investment was made by the assessee.*

*2.24 Furthermore, it is apt to bring to your kind attention that the Hon'ble High Court of Andhra Pradesh has held in the case of CIT Vs Shri Ramdas Motor Transport Ltd. [2015] 230 Taxman 187, that the department must press in to service any other credible supporting material, in order to sustain the addition/deletion.*

*2.25 Here, it ought to be mentioned that the alleged unauthenticated and uncorroborated sheet of papers can neither be considered as primary nor be considered as*

*secondary evidence and therefore, no prima facie case arises to suggest that the Appellant was the owner of the alleged foreign bank account.*

*2.26 At this point, it is worthwhile to invite Your Honour's kind attention to page 6, PARA 10 of the assessment order wherein the Ld. AO has himself admitted "the requisite information from Swiss Banking Authorities has not been received so far". This admission on the part of Ld. AO leaves no doubt in mind that, what to speak of discharge of burden of proof cast on the Ld. AO (by bringing conclusive evidence on record to substantiate his allegations), the Ld. AO has not even brought the enquiry to a logical conclusion, before completing the assessment, as a result of which the entire assessment proceedings are vitiated.*

*2.27 Without prejudice it is reiterated that in statement recorded on oath during the course of search, the Appellant had categorically mentioned that he had never owned/maintained any such foreign bank account, Furthermore, the Ld. AO has not been able to bring any material on record to disprove the statement of the Appellant.*

*Here, it would not be out of place to highlight the decision of the Hon'ble Supreme Court in the case of Sreelekha Banerjee v. CIT [1963] 49 ITR 112 (SC), wherein it has been held that the department should not reject the explanation of the assessee -without any convincing evidence on record.*

*The relevant passage from the judgment of the Hon 'ble Court has been usefully extracted hereunder:*

***"Before the department rejects such evidence, it must either show an inherent weakness in the explanation or rebut it by putting to the assessee some information or evidence which it***

***has in possession. The department cannot by merely rejecting unreasonably a good explanation, convert good proof into no proof. It is within the range of these principles that such cases have to be decided.***"(Emphasis Supplied by us)

*The Appellant submits that the bald conclusion of the Ld. AO based on some unauthenticated information, without countering the consistent argument put forth by the appellant is invalid and vitiated. The Ld. AO has failed in convincingly rebutting the explanation consistently made by the appellant from time to time.*

*2.28 Further, one may note that the Ld. AO in the impugned order highlighted that the stray sheet of papers purported to be a statement of a foreign bank account was available with the department and supposedly received under the 'DTAA'.*

*2.29 The impugned assessment order does not even hint from where the said documents were received. It is incumbent upon the Ld. AO to explain the source of the said information as well as make available the said information to the Appellant for examination, which, in the instant case, the Ld. AO has blatantly failed to do so.*

*2.30 At the cost of repetition, it is submitted that the media reports do suggest that the aforesaid information in possession of the revenue authorities, has been received otherwise than by due process and procedure laid down under law, and more particularly the mechanism prescribed under the tax treaty entered into by India with other sovereign countries."*

*It is therefore inconceivable as to how, an entire assessment can be framed on the basis of information which apart from being unreliable and unverified, has not even been obtained through legitimate means.*

*Additionally, the Ld. AO failed to corroborate the same with any other documentation which must have been exchanged with the competent authority of the other sovereign. Here, it is imperative to mention that the Ld. AO has not even stated the specific tax treaty under which, such information has been received and the manner thereof.*

*This conduct only indicates non application of mind and the prejudicial and presumptuous nature of the proceedings conducted by the Ld. AO. Needless to reiterate, the addition was made on the basis of surmises and conjectures, without bringing any cogent evidence on record.*

*2.31 One must be mindful that in the instant circumstances, it was incumbent upon the Ld. AO to prove his allegation. The Ld. AO has all along remarked that the Appellant has failed to furnish the requisite information pertaining to the alleged bank account and even levied penalty twice under Section 271(1)(b) of the Act on the inevitable failure of the Appellant to do so.*

*It is quite unfathomable as to how the Ld. AO can expect the Appellant to furnish information which is not in his possession and to penalise for his inevitable failure to produce the same. The Ld. AO has totally failed to consider the well accepted legal maxim of "**Lex non cogitadimpossibilia**" which implies that an impossible act cannot be enforced or compelled to be done.*

*Here, one may usefully rely on the decision of Hon'ble ITAT Benches of Chennai in the case of **ACIT Vs Sri Ramachandra (2010) 128 TTJ 408**, wherein, it was held that exemption cannot be denied to the assessee because of non-performance of an act which was not in the control and possession of the assessee.*

2.32 Without prejudice, even otherwise, in law, admissibility of the Photostat copies of some loose sheets of paper, which are unverified, unauthenticated, unstamped and unsigned, by way of evidence is assailable [**Moosa S. Modha & Azam S Madha vs CIT [1973] 89ITR 65 (SC)**]; and as such it is incomprehensible as to how a man of ordinary prudence can associate such papers with a foreign bank account. Even more inexplicable is the fact that such dumb document has been the sole basis of framing an adverse assessment against the Appellant and initiation of penal proceedings. Your Honour would appreciate that such sheets of paper do not carry any evidentiary value, whatsoever, and, therefore, no inference could be drawn, solely on the basis of such papers.

2.33 In view of what has been stated above, the impugned addition made is unwarranted, unjustified and fit to be deleted.

2.34 In this regard, it is respectfully submitted at the cost of repetition, that the Appellant never owned/maintained the alleged foreign bank account which stance has been maintained by the Appellant since the statement recorded during the course of search proceedings. In view thereof, it is inconceivable that the necessary information as sought in the above-referred notice is available with the Appellant.

2.35 The Ld. AO has stated that the Appellant has not furnished consent waiver forms requisitioned. In this regard, we wish to draw your attention to the relevant provisions of Section 142(1) of the Act, which reads as under:

"(I) For the purpose of making an assessment under this Act, the Assessing Officer may serve on any person who has made a return under section 115WD or section 139 or in whose case the time allowed under sub-section (I) of section

*139] for furnishing the return has expired a notice requiring him, on a date to be therein specified,—*

*where.....*

*to produce, or cause to be produced, such accounts or documents as the Assessing Officer may require, or*

*to furnish in writing and verified in the prescribed manner information in such form and on such points or matters (including a statement of all assets and liabilities of the assessee, whether included in the accounts or not) as the Assessing Officer may require;"*

*2.36 The language of the above-mentioned provisions would reveal that an Assessing Officer is empowered to seek accounts, documents or information as the Assessing Officer may require. Whilst it is abundantly clear that a 'consent form' cannot be included in the ambit of 'accounts' or 'documents' as envisaged by Section 142(1), one may nevertheless, examine whether execution of such consent form may be enforceable under the umbrella of 'information' as envisaged by Section 142(1) of the Act.*

*2.37 It is respectfully submitted that by no stretch of imagination, can the expression 'information as the Assessing Officer may require', be suggestive of the proposition that an Assessing Officer is authorised to seek the signature of an assessee on any form, much less, a consent form. Such authority to enforce signature on any consent form may only be exercised under any explicit provision of the law, which is absent, insofar as provisions of Section 142(1) of the Act are concerned.*

*2.38 To buttress our contention, your Honour's attention is invited to the provisions of Section 94A of the Act that were enacted by the Finance Act, 2011. In terms of Section*

*94A(3)(a) of the Act, deduction in respect of payments made to specified financial institutions shall be denied unless the assessee furnishes an authorisation in the prescribed form authorising the Board or any other income tax authority to seek relevant information from the said financial institution on behalf of the assessee.*

*2.39 Vide notification 47 dated June 26, 2013, Rule 21 AC has been introduced in the Income Tax Rules, 1962, to provide the form of the said authorisation. The aforesaid Rule prescribes Form 10FC, which facilitates waiver of protection available to an assessee in terms of data protection, privacy and banking secrecy laws.*

*2.40 The aforesaid provision clarifies beyond doubt that where the legislature intended to seek the consent from any assessee to waive protection under the aforesaid laws, an effective machinery to obtain such consent has been built in the statute books. Whilst Section 94A affords legal benediction to a similar consent form for its limited purpose, the absence of any such mechanism for obtaining information related to foreign bank account of any assessee, execution of the subject consent form is not enforceable in law.*

*2.41 Furthermore, even for argument sake, if it is conceded that the provisions of Section 142(1) are wide enough to enable Assessing Officers to enforce execution of a consent form, the need for the mechanism provided in Section 94A would not arise and therefore, the said provision may be regarded as otiose. However, it is a well settled canon of construction that a provision cannot be interpreted in such a manner to render the other provision as otiose or redundant.*

*2.42 In view thereof, it is respectfully submitted that the provisions of the Act, in their present form, do not enforce*

*execution of the subject consent form and therefore, no adverse inference need be drawn against the Appellant for non-execution of the consent form.”*

12. The Id. CIT(A) after considering the above submissions of the assessee sustained the addition made by the AO by observing in paras 6.4 and 7.4 of the impugned order which read as under:

*“6.4 (i) On perusal of the assessment order, it is clear that the copy of alleged HSBC Bank account no. BUP no. 9070145843, at Geneva, Switzerland (herein with referred as "the bank account") was available with the A.O. and copy was given to the AR of assessee. From the assessment order, the A.O. has given sufficient opportunity to the assessee to represent the case and therefore, the A.O, has allowed sufficient opportunity of being heard. Accordingly, the claim of the appellant that there is a violation of principle of natural justice is not substantiated and therefore, hereby rejected.*

*(ii) From the information available with the A.O., which has been discussed in the assessment order, there is no doubt about the alleged Bank account, maintained by the assessee, which is not disclosed to the department. However, the assessee has not accepted and disclosed the alleged Bank account:*

- *During the search and seizure action u/s 132 on 14.11.2011,*
- *In the return of income filed on 29.7.2006 u/s 139(1),*
- *In the return of income filed on 20.12.2012, in response to notice u/s 153A on 19.10.2012, and*
- *Also during assessment proceedings.*

*(iii) During the appellate proceedings, in the statement of fact, the appellant has objected that the alleged bank statement is a*

*piece of unsigned and unauthenticated document, which was not found in the search and seizure action and therefore, same cannot be considered as his bank account. This argument of the appellant, is not acceptable for the details available and reproduced by the A.O. in the assessment order, clearly proves that alleged bank account, belongs to the appellant, which has been denied by the appellant for the reasons best known to him, inspite of the fact that all the minute details e.g. name, date of birth, place of birth, address, phone no. etc. belongs to the appellant.*

*From the above, following facts emerged:-*

- *The alleged bank account, belongs to the appellant and*
- *The alleged bank account has not been disclosed by the appellant and therefore, the transactions in the bank statement, show undisclosed income.*

*In view of the above, I hold that the alleged piece of paper in the form of bank statement is proving beyond doubt that the alleged bank account belongs to the appellant. Therefore, information available in the form of bank statement is an incriminating document and the transactions in the bank statement, show undisclosed income. In the result, the undisclosed income as per bank statement is not disclosed to the department till date. Therefore, the submissions of the appellant that alleged piece of paper, was not found in the search and seizure action u/s 132 of the Act, is not acceptable.*

*(iv) In the appellate proceedings, the appellant has submitted that during action u/s 132, no incriminating material was found and therefore, the A.O. has no authority to make addition, which is not based on seized material. But that does not mean that the credit entries representing taxable income in this bank account to be excluded. Thus, there is a failure on*

*part of the appellant to disclose the correct income in the original return, as well as in the subsequent return filed in response to notice u/s 153A and has willfully made the false / untrue statement at the time of filing original return, as well in the return filed in response to notice u/s 153A. Therefore, now the appellant wants to say that you have accepted my lie and now your hands are tied. Therefore, this argument of the appellant is not acceptable, as now falsity has come to notice of the department. This view is also supported by the ratio laid down by Hon'ble Supreme Court in the case of M/s. Phool Chand Bajrang Lal v. ITO [1993] 69 taxman 627(SC).*

*In view of the above, I am of the considered opinion that the HSBC bank account, belongs to the appellant, which is not disclosed to the department. Therefore, the credit entries in the bank account represent the undisclosed income of the appellant. In these facts and circumstances, the arguments of the appellant are not acceptable and hereby rejected. Accordingly, I do not find any infirmity in the findings of the A.O.*

*Accordingly, ground no. 1.2, 1.3 and 1.4, are hereby dismissed.”*

.....  
 .....  
 .....

*7.4 (i) In the assessment order, A.O. has stated that the Income Tax Department had certain documents in its possession, evidencing the fact that the appellant was operating an undisclosed bank account with HSBC, Geneva. The Department also possesses details in relation to the Monthly balance in the bank account from Nov., 2005 to Feb., 2007. As per the information, the peak balance in the bank account in February, 2006 amounting to US\$1,55,923.57, on conversion*

*in INR comes out to Rs 69,07,4147- @ Rs. 44.30 per USD . During the assessment proceedings, the A.O. had asked the assessee to submit the complete Bank Statement, but no such statement was filed nor was consent waiver form furnished by the appellant, in order to obtain the bank statement from HSBC, Geneva.*

*The above submission of the appellant, are not acceptable, as the bank statement was not furnished by the appellant, which belongs to the appellant.*

*(ii) During the appellate proceedings, the appellant submitted that the alleged bank account with HSBC, Geneva, does not belong to the appellant. It has been further submitted by the appellant that as per the details, the alleged bank account belongs to M/s Portman Investments Holding Limited and not to the appellant. From the details of the bank account, it is clear that name of the appellant is appearing alongwith correct date of birth, place of birth, profession, nationality etc. and even postal address was belonging to the appellant. In these facts and circumstances, the claim of the appellant that the alleged bank account belongs to M/s Portman Investments Holding Limited, is nothing but an intermediary for facilitating to the appellant and the HSBC Bank only, since all the details/ particulars pertain to the appellant only. Therefore, above submission of the appellant, are not acceptable.*

*From the above, following facts emerged:*

- *The appellant Shri Shyam Sunder Jindal, maintained a bank account with HSBC Bank Geneva, Switzerland with BUP no. 9070145843 and this account remained undisclosed to the Income Tax Department. Therefore, the*

*credit entries, are also not disclosed as income in the returns of income filed, and*

- *The A.O. has determined the peak balance of USD 1,55,923.57, on conversion in INR conies to Rs. 69,07,414/- @ Rs. 44.30 per USD.*

*From the above, it is clear that the HSBC bank account belongs to the appellant, as has been held (supra), while deciding the grounds no. 1.2 to 1.4. Therefore, the credit entries made in this alleged bank account is undisclosed income of the appellant. The A.O. has added the peak of balances at Rs. 69,07,414/-, found in the month of February, 2006, as undisclosed income.*

*In view of the above, I am of the considered opinion that the A.O. has correctly made the addition of undisclosed income, by taking peak of balances in the bank account. Accordingly, I do not find any infirmity in the findings of the A.O. and addition of Rs. 69,07,414/-, on account of peak balance in the bank account with HSBC, Geneva, is confirmed.*

*Accordingly, ground no.2, including sub-grounds 2.1 to 2.5, are hereby dismissed.”*

13. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that search in this case took place on 14.11.2011 and no incriminating material was found during the course of search. A reference was made to page nos. 72 to 75 of the assessee's paper book which is the copy of panchnama. It was further submitted that the AO passed the assessment order on 27.02.2015 while the time limit to pass

the assessment order expired on 31.03.2014. Therefore, the assessment order passed by the AO was beyond limitation period. It was emphasized that in view of the provisions of Section 153B of the Act, the order u/s 153A of the Act ought to have been passed within the period of two years from the end of the financial year, during which the last of authorization for search was executed and in this case the last panchnama was drawn on 15.11.2011. A reference was made to page no. 75 of the assessee's paper book which is the copy of the panchnama drawn. It was stated that since the relevant financial year ended on 31.03.2012, therefore, the order could have been passed by the AO u/s 153A of the Act on or before 31.03.2014 but the order was passed as late as February 27, 2015, therefore, it was *void ab initio*. It was further submitted that as per the observation of the AO in para 6 at page 10 of the assessment order, a reference vide letter dated 30.01.2015 was made to the concerned authority for obtaining certain informations relating to the assessee under DTAA of the Act. It was stated that although the said letter was not brought on record, however, the same was beyond the limitation period for completing the assessment u/s 153A of the Act which expired on 31.03.2014. It was accordingly submitted that the assessment framed by the AO beyond the time limit prescribed u/s 153B of the Act was *void ab initio*. It was pointed out that the AO himself admitted in letter dated 24.12.2014 (copy of which is placed at page no. 56 of the assessee's paper book) that the information sought vide letter

dated 27.11.2012 from the concerned authorities were not yet received. Therefore, nothing was available with the AO while framing the assessment. As such in the absence of incriminating material the addition made by the AO was not justified particular when the original assessment was framed u/s 143(3) of the Act on 08.10.2008. The reliance was placed on the following case laws:

- *CIT Vs Chetan Das Lachman Das 211 Taxman 61 (Del.)*
- *CIT Vs Anil Bhatia 352 ITR 493 (Del.)*
- *CIT Vs Kabul Chawla 380 ITR 573 (Del.)*
- *CIT Vs Continental Warehousing Corporation 374 ITR 645 (Bom.)*

14. It was contended that the onus was on the department to establish that the bank account was of the assessee but nothing was brought on record to substantiate that the assessee was having any bank account with HSBC Bank, Geneva, Switzerland. It was further contended that the assessee in response to the queries raised by the department from time to time requiring him to provide information/details in relation to the bank account in HSBC Bank, Geneva like account opening form, bank statement etc., the assessee from the very beginning stated that he had not maintained any such bank account and even in the statement recorded during the course of search on 14.11.2011, the assessee categorically stated that he did not have any bank account outside India. A reference was made to page no. 84 of the assessee's paper book wherein in response to query no. 5, the assessee clearly stated that

neither he nor any of his family member had bank account outside India. It was submitted that the AO although stated that certain documents had been obtained under DTAA but the said documents did not demonstrate in any manner because the same is the photocopy of the bank statement, not on the letter head of any bank, did not bear signature of any official of any bank and did not carry seal of any bank. Therefore, the documents relied upon by the AO could not be said to be photocopy of a bank statement, leave alone bank statement of loan account in HSBC Bank. Therefore, those documents did not have any evidentiary value. The reliance was placed on the following case laws:

- *Collector of Customs Vs East Punjab Traders and Ors (1998) 9 SCC 115 (SC)*
- *Srichand P. Hinduja Vs State trough CBI CRLMA 169 of 2005 (Del.)*
- *Commissioner of Customs Vs Rajesh Polyfilm (2006) 202 ELT 416 (Cal.)*
- *Truwoods Pvt. Ltd. and Shri Sanjiv Agarwal Vs Commissioner of Customs (2005) 100 ECC 62 (CESTAT Delhi)*

15. It was accordingly submitted that the AO did not discharge the onus cast upon him and made the arbitrary addition by relying on the photocopies in the absence of original. The reliance was placed on the following case laws:

- *Ashok Dhulichand Vs Madahavlal Dube & Another (1975) AIR 1748 (SC)*
- *Moosa S. Madha and Azam S. Madha Vs CIT 89 ITR 65 (SC)*
- *Smt. J. Yashoda Vs Smt. K. Shobha Rani, Civil Appeal No. 2060 of 2007 (SC)*

- *Union of India Vs Shantilal Motilal Mehta (2006) 4 BomCR 119 (Bom.)*
- *Ram Saroop Saini (HUF) Vs ACIT 15 SOT 470 (Del. Trib.)*

16. It was contended that the onus was on the department to establish that the bank account was in the name of the assessee and belonged to the assessee but that onus was not discharged. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was not justified. The reliance was placed on the following case laws:

- *CIT Vs Ved Prakash Choudhary 305 ITR 245 (Del.)*
- *CIT Vs Anil Bhalla 322 ITR 191 (Del.)*
- *CIT Vs Lubtec India Ltd. 311 ITR 175 (Del.)*
- *CIT Vs Atam Valves (P.) Ltd. 332 ITR 468 (P&H)*
- *CIT Vs Dolphin Builders (P.) Ltd. 356 ITR 420 (MP)*
- *ACIT Vs Sharad Chaudhary 165 TTJ 145 (Del. Trib.)*
- *CIT Vs Ravi Kumar 294 ITR 78 (P&H)*
- *ITO Vs Twinkle Papers (P.) Ltd. 95 TTJ 987 (Chd. Trib.) (TM)*

17. In his rival submissions the Id. DR strongly supported the orders of the authorities below and further submitted that the AO made a reference to the concerned authority vide letter dated 27.11.2012 for obtaining the information under DTAA. Therefore, the limitation as per the proviso to Section 153B of the Act for completing the assessment u/s 153A of the Act will expire on 31.03.2015. As such the assessment order passed u/s 153A of the Act on 27.02.2015 was within the prescribed time limit and the assessment made by the AO was valid. The reliance was placed on the following case laws:

- *Smt. Dayawanti Vs CIT 75 Taxmann.com 308 (Del.)*

- *E.N. Gopakumar Vs CIT (2016) 75 Taxmann.com 215 (Ker.)*
- *CIT Vs St. Francis Clay Décor Tiles 385 ITR 624 (Ker.)*
- *CIT Vs Anil Kumar Bhatia 352 ITR 493 (Del.)*
- *Filatex India Ltd. Vs CIT 49 Taxmann.com 465 (Del.)*

18. It was further submitted that the addition had been made by the AO on the basis of statement on oath of the assessee recorded during the course of search on 14.11.2011 u/s 132(4) of the Act. It was also submitted that the assessee did not inform about his bank account for the period November 2005 to February 2007, copy of which was provided to the Authorized Representative of the assessee on 21.11.2014, in the said details, name, date of birth, address, telephone number, residential address, passport number etc. pertaining to the assessee were mentioned. Therefore, the addition was rightly made by the AO and the ld. CIT(A) was fully justified in confirming the same. It was stated that the ld. CIT(A) asked the assessee to furnish consent form and the AO asked the assessee to submit the complete bank statement but no such statement was filed nor consent waiver form was furnished by the assessee in order to obtain the bank statement from HSBC Bank, Geneva. It was also stated that all the details/particular pertained to the assessee only and the credit entries appearing in the alleged bank account were on account of undisclosed income of the assessee and the ld. CIT(A) was fully justified in sustaining the addition on account of peak balance amounting to Rs.69,07,414/- found in the month of February 2006 as an undisclosed income of the assessee.

19. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the only controversy relates to the addition made by the AO and sustained by the Id. CIT(A) on the basis of alleged bank statement of HSBC Bank, Geneva, Switzerland claimed to have been received by the AO as an information under DTAA through FT & TR. In the instant case, it is not in dispute that a search was initiated on 14.11.2011 in the case of the assessee and his statement was also recorded (copy of which is placed at page nos. 81 to 96 of the assessee's paper book). In the said statement the assessee replied to the various questions asked by the ADIT(Inv.), Unit-VI, Central Circle-30, Jhandewalan Exten. New Delhi. In the said statement vide question no. 5, it was asked that as to whether the assessee or his family member, had account outside India in the name of any trust, entities, firm etc. The assessee replied that to his knowledge, there was no bank account in his or his family member's names, however, some companies like M/s REXOR (subsidiary of Jindal Ply Films) Mining Company had bank account. A specific question no. 8 was asked relating to bank account with HSBC Bank, Geneva/London, in response, the assessee stated that neither he nor his family member had any bank account with HSBC Bank at Geneva/London. During the course of assessment proceedings also the assessee denied of having any bank account with HSBC Bank, Geneva. However, the AO pointed out that the assessee was having

account with HSBC Bank, Geneva. He reproduced the translated information in English at para 4 of the assessment order and also stated in para 6 of the said order that a reference was made to the concerned authorities through the FT&TR Division of the Central Board of Direct Taxes, New Delhi, in case of assessee, calling for certain information with regard to the said HSBC Bank account. The AO admitted that the requisite information from Swiss Banking Authorities had not been received so far. The assessee vide letter dated 25.11.2014 (copy of which is placed at page nos. 51 to 54 of the assessee's paper book) submitted before the AO as under:

*“Sir,*

*This has reference to your letter dated 12.11.2014, wherein it has been alleged that I have an account in HSBC Bank, as referred to in the above notice, in which deposits have been alleged to have been made by me in the financial years 2005-06 and 2006-07. I have been required to explain the source of credits in the above bank account, failing which the deposits in the above bank account, it is stated, would be added to my income of the relevant assessment years.*

*In this regard, it is respectfully submitted, as under:*

*I have, in response to queries raised by the Department from, time to time requiring me to provide information /details in relation to the aforesaid bank account, like account opening form, bank statement,, etc., categorically stated that I have not maintained any such bank account. In fact, in the statement dated 14.11.2011, recorded during the search carried out by the Department, I had stated that I did not have any bank account outside India.*

*In fact, I had been asking the Department to provide the document/evidence on the basis of which it has been alleged that the aforesaid bank account belongs to me. The principles of natural justice require that the 'document/evidence (duly signed and stamped), the source from which such evidence has been obtained, in order that the authenticity of the evidence can be established, is confronted to the undersigned in order that appropriate response in respect of the allegations leveled on the basis of the alleged information/document referred to in your aforesaid notice may be provided.*

*You have in the aforesaid notice dated 12.11.2014 offered to provide the copy of bank statement for the period November, 2005 to February 2007, in respect of the purported account with HSBC Bank alleged to be maintained by me. I was asked to collect the aforesaid bank statement by 19.11.2014, Your said letter was received by me on 19.11.2014. Thereafter, my representative went to your Honour's office to collect the alleged bank statement but the same was not handed over on the ground that the same had to be collected either by the assessee in person or by my representative duly authorized for this purpose. In the circumstances, adjournment was sought in the matter and the case was adjourned to 25.11.2014. Thereafter, authorization letter dated 20.11.2014 was filed with your honour on 21.11.2014 and pursuant thereto four photo copied pages were provided by your honour to my representative on 21.11.2014.*

*In the meantime, I have been provided through my representative an unsigned copy of your letter dated 20.11.2014 on 24.11.2014, (original thereof stated to be sent by post from your office is yet to be received by me) stating that opportunity granted to me to obtain the bank account statement provided vide letter dated 12.11.2014 was not availed on due date i.e., on 19.11.2014, and that in case such bank statement is not collected by 11 AM on.24.11.-2014, it would be presumed that I am not willing to obtain the same and intentionally evading the*

*opportunity. It has been further stated that any further requisition of any material will not be entertained and assessment will be made at the value after converting the dollars into rupees at the rate of exchange at that time. The aforesaid letter, dated 20.11.2014, I may point out, is of no consequence and infructuous as your honour has already provided the purported documents referred to in the notice dated 12.11.2014, to the assessee on 21.11.2014.*

*In relation to the documents handed over to my representative on 21.11.2014, I have to make the following submissions:*

*1) Re: Authenticity of documents provided:*

*i) The aforesaid documents are photo copies of certain sheets of paper. You have stated that the document being provided is bank statement of HSBC Bank. The said documents do not demonstrate in any manner that the same is a photo copy of a bank statement leave alone bank statement of HSBC Bank, considering that it is not on the letter head of any bank, it is not stamped by any bank, it does not bear signatures of any official of any bank and it does not carry seal of any bank. If, indeed it is a bank statement of HSBC Bank, there is no indication as to the branch and country to which the same relates. The aforesaid documents, therefore, cannot be said to be photo copies of any bank statement, leave alone account in HSBC Bank.*

*ii) The aforesaid document does not carry the stamp or signature of your office and cannot, therefore, be said to be official document provided by your office.*

*iii) The source of the aforesaid documents is not known and has not been provided.*

*iv) The aforesaid document, which is a foreign document, is not consularized by the Indian Embassy of the country from which such document has originated.*

*In view of the aforesaid, the aforesaid unauthenticated, unverified, unsubstantiated documents have absolutely no evidenciary value and no cognizance of the aforesaid document can in law be taken.*

*2) It has been, stated that the aforesaid documents have been obtained under DTAA. It has not been stated that under which DTAA (considering that India has entered into DTAA's with several countries), have the aforesaid documents been obtained? If the aforesaid documents have indeed been received under DTAA, the letter issued by the competent authority of the relevant country under/through which the aforesaid documents .were obtained may kindly be provided This information is relevant also for the purpose of determining the period of limitation under section 153B of the Act, as explained subsequently.*

*It may not be out of place to mention that as per the media reports, I understand that Government of India is making enquiries from alleged bank account holders based on certain stolen data. Therefore, the aforesaid information/details/documents to demonstrate the authenticity of the documents provided to me is absolutely essential in order for the same to constitute evidence which is recognized in law.*

*3) I may also point out that the aforesaid document is in a foreign language which I do not understand and, therefore, I am not able to understand the contents of the said document. The official translation of the aforesaid document needs to be provided.*

*In view of the aforesaid, you may kindly appreciate that I am handicapped in responding to your letter dated 12.11.2014, which is based on unauthenticated, unsubstantiated foreign documents and whose contents are not known. Further, I cannot be said to have been provided opportunity of hearing as*

*required in law in this regard and principle of natural justice cannot be said to have been observed in the present case.*

*Without prejudice to the aforesaid, it is observed in the photocopied sheets provided to me that certain amounts are appearing as Fiduciary deposits, liquid assets, stocks (the meaning of these terms are not clear to me which may kindly be provided) during the period November 2005 to February 2007, which appear to be balances only and there are no. entries for any deposit-or withdrawal therein during the aforesaid period and, therefore your honour's observations that "In aggregate the deposits during F.Y. 2005-06 stands at \$ 776800 & F.Y. 2006-07 at \$ 1702241. Since the deposits during this period are in form of Fiduciary Deposits, Liquid Assets & Stocks therefore it is not possible to establish any connection of a deposit entry with any withdrawal of earlier month/period. In that circumstances the entire deposits will have to be added in the" Income of the relevant year" has absolutely no basis.*

*No adverse inference on facts and in law can, therefore, be drawn based on the aforesaid document for the reasons mentioned hereinabove.*

*That apart, and without prejudice, it may be pointed out that the aforesaid notice is time-barred having regard to the provisions of section 153B of the Act, since in terms of section 153B(1)(a), the assessment under section 153 A of the Act, for assessment years 2006-07 and 2007-08 was required to be completed by 31.3.2014 as the search was carried out on 14.11.2011.*

*In view of the aforesaid, the aforesaid notice may kindly be withdrawn/dropped."*

*Thanking you,*

*Yours faithfully  
Sd/-  
(Shyam Sunder Jindal)*

20. The aforesaid contention of the assessee has not rebutted by bringing any cogent material on record. In the present case, the assessee is asking the department from time to time to provide the documents/evidence on the basis of which it has been alleged that he was having bank account in HSBC Bank, Geneva, Switzerland. The AO himself admitted in para 6 of the assessment order dated 27.02.2015 that a reference was made to the concerned authority through the FT&TR Division of the Central Board of Direct Taxes, New Delhi but the requisite informations from Swiss Banking Authority had not been received. In the instant case, the AO did not mention in assessment order that he was having any original documents in his possession rather he shifted the burden on the shoulder of the assessee and asked him to furnish the bank statement of the account maintained with HSBC Bank, Geneva, even when the assessee was denying from the very beginning that he was having any bank account with HSBC Bank, Geneva. In the present case, no original document was brought on record and also not confronted to the assessee. The AO also admitted in para 11 of the assessment order that a copy of bank statement for a period from November 2005 to February 2007 was provided to the Authorized Representative of the assessee on 21.11.2014 but nowhere he stated that the original document/evidence was confronted to the assessee. It is also noticed from the translation version of the said information reproduced by the AO at pages no. 3 to 10 of the assessment order dated 27.02.2015

that the said document/evidence was not signed by any authority and did not demonstrate in any manner that the same was a photocopy of bank statement, it was also not on the letter head of any bank, neither it was stamped by any bank nor it bore signature of any official of any bank. Therefore, it is not clear how and in what manner the said document was considered as the bank statement of HSBC Bank, Geneva, particularly when there was no indication as to the branch and country to which the alleged bank statement related. In the present case, the AO although stated that the documents had been obtained under DTAA but nowhere it was mentioned that under which DTAA those documents had been obtained. If the aforesaid documents had been received under DTAA, nothing is brought on record to substantiate that any letter was issued by the competent authority of the relevant country from which the aforesaid documents were obtained, the assessee also asked for the same but nothing was provided to the assessee. Therefore, in the absence of all the relevant documents/evidences on record, it is not possible to come to a just conclusion relating to the authenticity of the document relied by the AO or to the facts as to whether these documents pertained to the assessee. Now question arises as to whether the document relied by the AO are admissible in evidence as the documents were photocopies which were not duly authenticated.

21. On a similar issue in the case of Collector of Customs Vs East Punjab Traders and Ors. before the Honøble Supreme Court (1998) 9 SCC 155 (supra) their lordships in para 5 observed as under:

*“5. The single Technical Member, who wrote the minority judgment, however, held the view that it was not essential on the part of the Customs Officer to strictly prove the documents as required by the Evidence Act and that the authenticity of the documents, though copies, could not be doubted as they had been collected by the Collector from foreign sources and could be admitted in evidence by virtue of Section 139(ii) of the Customs Act, 1962 which permits the raising of a presumption in respect of documents received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under the Act. The majority points out that these documents, which are photocopies, do not bear the signature either of the exporter, the forwarding agent, the stevedore or the Customs Officer. In fact, they do not bear any signature whatsoever and, therefore, the authenticity of these documents is suspect and it is not possible to presume that the originals are duly signed. It is for this reason that the majority did not consider it safe to place reliance on photocopies of copies of the documents recovered by the Customs Officer not from the Customs Department in Japan but from the agencies which are stated to have exported the material in question. It is also found that one of these copies of the alleged declarations bears the seal of the Customs at Kobe and the name of the vessel is shown to be “Raya Fortune” but the itinerary of that vessel collected at the instance of the Indian Customs shows that the said vessel had never touched Kobe which raises a serious doubt as to how far this document is authentic. The majority raises the question as to how the declaration at Kobe and shipment from Osaka are reconcilable noting that*

*there is no explanation coming forth. The majority feels that the authenticity of the documents itself is suspect. In these circumstances, the presumption to be raised under Section 139(ii) of the Customs Act could not be raised because the document did not bear any signature, did not come from proper custody and it is difficult to understand why the Indian Customs did not interact with the Japan Customs and obtain authentic copies of the document from the latter. Merely because the Department offered cross-examination of the steamer agent from whom the export declaration had been obtained and the respondents chose not to avail of that opportunity is no ground for holding that the requirements of Section 139 are satisfied for the purpose of raising the presumption. In order to raise the presumption under the said provision, the basic facts had to be laid. Even though they bear a serial number and stamp of Japan Customs, the fact remains that they are copies of copies and indisputably bear no signature of the exporter, the forwarding agent, the stevedore or the Customs Officer; no signature at all of any of them. The discrepancy in regard to copies bearing the seal of Customs at Kobe also raises a serious doubt whether the copies relate to any of the consignments in question. In these circumstances, if the majority was disinclined to place reliance on these documents we find it difficult to hold that it was in error in doing so.”*

22. In the present case also the documents relied by the AO are the copies of the copies which did not have any signature of bank official or name of the bank or the place or the country where the branch was situated. The AO himself admitted in para 6 of the assessment order that the requisite information from the Swiss Banking Authority had not been received. It is also relevant to point out that the AO vide letter

dated 12.11.2014 (copy of which is placed at page nos. 44 & 45 of the assessee's paper book) stated to the assessee as under:

*"Sir,*

*Please refer to this office letter no. ACIT/CC-14/2014-15/132 dated 12-08-2014 your reply dated 05/09/2014 on the above subject.*

*In your reply you have submitted as under:*

*"In this regard, it is submitted that the undersigned is not, aware as to how and wherefrom, the above information has been extracted by your goodself, so as to relate such Information with the undersigned. Time and again, it has been clarified that no bank account has been maintained by the undersigned with HSBC Bank. It is submitted that no cognizance of the aforesaid unsupported information should be made, much less drawing any adverse inference therefrom."*

*In this connection please obtain a copy of bank statement for the period Nov. 2005 to Feb. 2007 of the Bank account with HSBC Bank with the following particulars.*

- |                                 |   |
|---------------------------------|---|
| <i>21. Name</i>                 | <i>: Sh. Shyam SunderJindal</i>             |
| <i>22. Date of Birth</i>        | <i>: 26-08-1955</i>                         |
| <i>23. Address</i>              | <i>: 356, Bhiwani Haryana,</i>              |
| <i>24. Profession</i>           | <i>: Chairman</i>                           |
| <i>25. Nationality</i>          | <i>: Indian</i>                             |
| <i>26. Sex</i>                  | <i>: Male</i>                               |
| <i>27. Tel. No.</i>             | <i>: + 11 334 54 63</i>                     |
| <i>28. Fax No.</i>              | <i>: + 113732126</i>                        |
| <i>29. Residence Address</i>    | <i>: 56, Hanuman Road, New Delhi-110001</i> |
| <i>30. Date of creation</i>     | <i>: 16-02-1999</i>                         |
| <i>31. Date of Modification</i> | <i>: 11-03-2005</i>                         |
| <i>32. BUP-SIFIC-PER-ID</i>     | <i>: 9070145843</i>                         |

*All the above said particulars pertain to the bank account are same as that of yours.*

*It is pertinent to mention that the telephone no. mentioned in the bank account stands in the name of M/s Jindal Rubber (Priv) Ltd., 56, Hanuman Road, Connaught Place, Delhi - 110001. To establish this fact a screen shot obtained from internet from the site of MTNL Delhi is enclosed.*

*This office is ready to provide you the copy of Bank account statement for the period Nov. 2005 to Feb. 2007 received obtained under DTAA in your case. Since the information is to be used only for income tax purposes so you are requested to collect it either in person or through any authorized person for this purpose. After having receipt of the same you are required to explain the source of the credits in the bank account. In aggregate the deposits during F.Y. 2005-06 stands at \$ 776800 & F.Y. 2006-07 at \$ 1702241. Since the deposits during this period are in form of Fiduciary Deposits, Liquid Assets & Stocks therefore it is not possible to establish any connection of a deposit entry with any withdrawal of earlier month / period. In that circumstances the entire deposits will have to be added in the Income of the relevant year. If you have any explanation for the nexus of entries during this period please provide the same.*

*From the above it is established beyond doubt that you had an account with the HSBC Bank for which you are still denying. The other persons associated with the account are M/s Portman Investments Holding Ltd., Darshna Saraf, Raghu, Bhavesh, Roland Oehri, Gerhard Aric Hoop, Vartika Saraf & AG Hab Consult, Please intimate your relations with the above persons and their nature-of activities connected to the account.*

*Another opportunity is granted to you to explain as to why the amounts appearing in the Bank account under consideration may not be considered as your undisclosed income for the relevant period.*

*The non submission of the statement of account from the date creation upto 31.03.2012 and otherwise the non submission of consent form despite a number of opportunities leads to a willful attempt on your part for non compliance as you are requested to furnish the consent form only to help you in obtaining the account if the same was not traceable by you.*

*Your case now stands fixed for 19.11.2014 at 11:30 A.M.”*

*Yours faithfully,*

*Sd/-*

**(Ram Niwas)**

*Asstt. Commissioner of Income Tax  
Central Circle-14, New Delhi*

23. From the aforesaid notings, it is clear that the AO informed the assessee about the copy of bank account obtained under DTAA. However, a contradictory observation has been made in para 6 of the assessment order that the requisite information from Swiss Banking Authority had not been received. We, therefore, considering the totality of the facts as discussed hereinabove, set aside the impugned order and restore the matter back to the file of the AO to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard and by confronting the assessee with the documents which relates to him. As regards to the legal issue relating to the validity of the

assessment u/s 153A of the Act, it is noticed that the assessee in para 2.20 of his written submissions dated 22.08.2016 stated that the search team had confronted the assessee with unauthentic document. In the present case, it is not clear as to whether any authentic document was confronted to the assessee or not. The AO also mentioned that a reference was made on 27.11.2012 but it is not clear for which purpose the said reference was made. So in the absence of clear facts on record, this issue is also set aside to the file of the AO to be adjudicated afresh, in accordance with law after providing a due and reasonable opportunity of being heard to the assessee.

24. In the result, the appeal filed by the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 10/04/2017)

**Sd/-**  
**(Beena Pillai)**  
**JUDICIAL MEMBER**

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

**Dated: 10/04/2017**

\*Subodh\*

Copy forwarded to:

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

**ASSISTANT REGISTRAR**