IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER

(THROUGH VIDEO CONFERENCE)

ITA No.1251/Del./2019
(ASSESSMENT YEAR : 2011-12)

Young Indian, 5A, Herald House, Bahadurshah Zafar Marg, New Delhi – 110 002.	vs.	ACIT (E), Circle 1 (1), New Delhi.

(PAN : AAACY4625Q)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : Shri Saurabh Soparkar, Sr. Advocate
Shri Ankit Agarwal, CA
Ms. Anjali Agarwal, CA

REVENUE BY : Shri G.C. Srivastava, Special Counsel
Shri Kalrav Malhotra, Advocate
Shri Mayank Patawari, CA

Date of Hearing : On various dates and last hearing on 02.03.2022

Date of Order : 31.03.2022

O R D E R

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the above-named appellant/assessee against the impugned order dated 06.12.2018, passed by the ld. CIT(Appeals)-40, Delhi for the quantum of assessment passed under section 143 (3)/147 of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2011-12.

2. Assessee has challenged the impugned order as well as the assessment order by taking the following grounds of appeal :-

"GROUND NO.1: ORDER PASSED WIHTOUT JURISDICTION

1. On the facts and in the circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) - 40, New Delhi ["the CIT(A)"] erred in holding that the Asst. Commissioner of Income Tax (E), Circle 1 (1) ("the AO") had requisite jurisdiction over the Appellant and that the order passed by him u/s. 143(3) r.w.s. 147 was valid.

2. On the facts and in the circumstances of the case, after the Appellant surrendered its registration u/s. 12A/12AA of the Act, the AO did not have the jurisdiction to assess the Appellant.

3. The Appellant prays that the order passed by the AO be held to be illegal as lacking the jurisdiction for the same under the Act.

WITHOUT PREJUDICE TO GROUND NO.1

GROUND NO. II: REOPENING OF ASSESSMENT BAD IN LAW

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the re-opening of the assessment u/s. 147 of the Act.

2. The Appellant prays that the re-assessment u/s 147 be held to be void ab initio and/or otherwise bad-in-Iaw.

WITHOUT PREJUDICE TO GROUND NO. I & II

GROUND NO. III: THE ORDER PASSED IN VIOLATION OF THE PRINCIPLES OF NATURAL JUSTICE

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the principles of natural justice were not violated during the reassessment proceedings.

2. The Appellant prays that the order be held as illegal having been passed in contravention of the principles of natural justice which are applicable to all the income-tax proceedings and mandate that the assessee be given a fair opportunity of hearing before making any addition/disallowance.

WITHOUT PREJUDICE TO GROUNDS NO. I, II AND III

GROUND NO. IV: NON ADMISSION OF ADDITIONAL EVIDENCES FILED BY THE APPELLANT

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not admitting the additional evidences filed by the Appellant during the appellate proceedings and thereby, not considering the said additional
evidences while passing the Appellate Order.

2. The Appellant prays that it be held that the additional evidence filed by the Appellant were admissible and the Ld. CIT (A) ought to have considered the same while passing the Appellate order.

WITHOUT PREJUDICE TO GROUNDS NO. I, II, III and IV
GROUND NO. V: TAXING THE PURPORTED FAIR MARKET VALUE (UFMV") OF THE IMMOVABLE PROPERTIES, OWNED BY THE ASSOCATED JOURNAL LIMITED (UAJL"), U/S. SECTION 28(iv) OF THE ACT:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of taxing u/s. 28(iv) of the Act the purported Fair market Value ('FMV') of the immovable properties owned by Associated Journal Limited ('AJL') in the hands of the Appellant allegedly as a benefit or perquisite arising in the course of the business of the Appellant.

2. The Appellant prays that the addition of Rs.413,40,55,980/- u/s. 28(iv) of the purported FMV of the immovable properties of AJL be deleted.

3. Without prejudice to the above, even if section 28(iv) of the Act is held to be correctly invoked, even in that case, the Appellant prays that in absence of any method prescribed under the Act to compute the value of the purported benefit or perquisite for the purpose of section 28(iv) the same ought to be computed in accordance with the method prescribed under Rule 11UA.

WITHOUT PREJUDICE TO GROUNDS NO. I TO V

GROUND NO. VI: IGNORING PROVISIONS OF SECTION 56(2)(viia) THAT SPECIFICALLY DEAL WITH RECEIPT OF SHARES

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the AO was right in overlooking the specific provisions of section 56(2)(viia), which are applicable to receipt of shares of a company in which public are not substantially interested ('closely held companies').

2. She erred in disregarding that when the anti-abuse provisions of section 56(2)(viia) and rules framed thereunder have been made applicable only to closely held companies by the Legislature, the Appellant, which is a company in which public are substantially interested, cannot be treated worse than such closely held companies, by indirectly invoking provisions of section 28(iv).

3. The Appellant prays that it be held that as there is a specific section 56(2)(viia) that governs the taxation of receipts of shares of a company, the AO could not have invoked Section 28(iv) of the Act in respect of such transaction.

WITHOUT PREJUDICE TO GROUNDS NO. I TO VI

GROUND NO. VII: REFERENCE TO THE DEPARTMENTAL VALUATION OFFICER ("DVO") BEYOND THE SCOPE OF SECTION 142A OF THE ACT:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of making reference to the Departmental Valuation Officer ('OVO') u/s. 142A of the Act for the purported determination of the FMV of the immovable properties owned by AJL.

2. The Appellant prays that the said reference and consequential determination of the purported FMV be held to be illegal.

WITHOUT PREJUDICE TO GROUNDS NO. I TO VII

GROUND NO. VIII: COMPUTING THE PURPORTED FMV BEYOND THE VALUE COMPUTED BY THE DVO:

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO in adopting Rs. 132,94,44,4801- as the purported FMV of the land at Bandra (East) Mumbai, ignoring the value of Rs.30,08,82,0001- computed by the DVO.

2. The Appellant prays that the AO has no power to adopt the FMV of the said Bandra (East) property at a value that is beyond the value determined by the DVO.

WITHOUT PREJUDICE TO GROUNDS NO. I TO VIII

GROUND NO. IX: VALUES COMPUTED BY THE DVOs ARE ERRONEOUS AND CANNOT BE RELIED ON:

1. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in holding that the methods adopted by the various DVOs/AO, while valuing the immovable properties of AJL are not riddled with any inconsistencies and errors and, therefore, valid.

2. The Appellant prays that the valuations of the immovable properties of AJL determined by the DVOs/AO be struck down as being incorrect and in violation of the principles of valuation.

WITHOUT PREJUDICE TO GROUNDS NO. I, II, III AND IV

GROUND NO. X: ADDITION OF RS. 1,00,00,000/- RECEIVED FROM DOTEX MERCHANDISE PVT. LTD. AS UNEXPLAINED CASH CREDIT U/S. 68 OF THE ACT

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of treating the loan of Rs.1,00,00,000/- received from Dotex Merchandise Pvt. Ltd. ("Dotex") as unexplained cash credit and taxing the same u/s. 68.

2. The Appellant prays that the addition of Rs.1,00,00,000/- towards purported unexplained cash credit be deleted.

WITHOUT PREJUDICE TO GROUNDS NO. I, II III AND IV

GROUND NO. XI: DISALLOWANCE OF INTEREST OF RS.1,72,603/- PAID ON LOAN TAKEN FROM DOTEX

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of disallowing interest expense of Rs.1,72,603/- paid on the loan taken from Dotex by treating it as interest on unexplained advance taken.

2. The Appellant prays that the interest expense of Rs.1,72,603/- incurred on the loan taken from Dotex be allowed as a deduction.

WITHOUT PREJUDICE TO GROUNDS NO. I, II III AND IV

GROUND NO. XII: TREATMENT OF THE TRANSACTION OF ASSIGNMENT OF LOAN BY AJL TO THE APPELLANT AS A FRAUDULENT TRANSACTION

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in treating the assignment of loan taken by AJL from the All India Congress Committee ("AICC") to the Appellant as a fraudulent transaction of purchase of a non-existent loan.

2. The Appellant prays that the assignment of loan by AJL to the Appellant carried out be held to be a genuine transaction.

WITHOUT PREJUDICE TO GROUNDS NO. I, II, III AND IV

GROUND NO.XIII : DISALLOWANCE OF RS.50,00,000/- PAID FOR ASSIGNMENT OF LOAN FROM AJL AS AN EXPENSE INCURRED TOWARDS THE OBJECTS

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of not granting deduction of Rs.50,00,000/- paid by the Appellant for assignment of the loan from AJL as an expense incurred on the objects of the Appellant on the ground that the Appellant had paid the said amount to purchase a non-existent loan.

2. The Appellant prays that the said payment of Rs.50,00,000/- be treated as an expense incurred on the objects of the Appellant.

WITHOUT PREJUDICE TO GROUNDS NO. I, II, III AND IV

GROUND NO. XIV: ADDITION OF RS.1,00,000/- AS AN UNEXPLAINED EXPENDITURE UIS 69C OF THE ACT TOWARDS RAISING OF THE LOAN FROM DOTEX

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of making a notional addition of Rs.1,00,000/- towards the

purported commission paid to take the so-called accommodation entry from Dotex.

2. The Appellant prays that the addition of Rs.1,00,000/- made towards purported commission paid by the Appellant be deleted.

WITHOUT PREJUDICE TO GROUNDS NO. I TO XIV

GROUND NO. XV: DENYING EXEMPTION UIS 11 TO THE ASSESSED INCOME

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of not granting exemption u/s. 11 of the Act to the total assessed income.

2. The Appellant prays that the AO be directed to allow exemption u/s 11 of the Act to income assessed under the Act.

WITHOUT PREJUDICE TO GROUNDS NO. I, II, III AND IV

GROUND NO. XVI: LEVY OF INTEREST OF RS.111,49,93,917/- UIS 234B OF THE ACT

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in upholding the action of the AO of charging interest u/s. 234B of the Act.

2. The Appellant prays that in the facts and in the circumstances of the case, such interest was not chargeable.

3. Before we deal with the various issues and contentions raised in the grounds of appeal by the assessee as well as the

contentions of the Revenue, it would be relevant to discuss the relevant background of the case of the controversy involved in this appeal in brief.

BACKGROUND OF THE CASE

4. The appellant, Young Indian (YI), was incorporated and registered as a company on 23.11.2010 when licence was granted u/s 25 of the Companies Act, 1956. As per the Memorandum of Association dated 14.10.2010, it was subscribed by two Directors, namely, Suman Dubey having 550 equity shares and Satyan Gangaram Pitroda (Sam Pitroda) with 550 equity shares. Appellant company was incorporated with authorized capital of 5000 shares of Rs.100 each valued at Rs.5,00,000/- and the paid-up capital was 1100 shares of Rs.100/- each of Rs.1,10,000/-. The main object of the appellant company was as under :-

> ***"(1) To inculcate in the mind of India's youth commitment to the ideal of a democratic and secular society for its entire populace without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that may promote the foregoing objective in any manner whatsoever including, without limitation, participating in all democratic activities through open***

and transparent electoral process, so as to conform to the ideals of the founding fathers of India, Mahatma Gandhi and Pandit ji, Jawahar Lal Nehru.

(2) No object of the company will be carried out without obtaining prior approval/no objection certificate from the concern competent authority wherever required and/or prescribed."

5. Immediately after its incorporation, both the Directors transferred the shares to Mr. Oscar Fernandes, Mrs. Sonia Gandhi, Shri Rahul Gandhi and Shri Moti Lal Vohra. Later on, Shri Rahul Gandhi was appointed as Director of Young Indian to acquire 1900 shares. The assessee company disclosed the list of shareholders and directors of Young Indian during the relevant assessment year as under :-

Name	***Position in YI & No. of shares held***
Mrs. Sonia Gandhi	***Director since 22.01.2011*** ***1900 shares (36%)***
Shri Rahul Gandhi	***Director since 22.01.2011*** ***1900 shares (36%)***
Shri Moti Lal Vora	***Director since 22.01.2011*** ***600 shares***
Shri Oscar Fernandes	***Director since 22.01.2011*** ***600 shares***
Shri Satyan Gangaram Pitroda	***Director since 23.11.2010***

(Sam Pitroda)	***Held 550 shares but transferred it to Shri Oscar Fernandes***
Shri Suman Dubey	***Director since 23.01.2010*** ***Held 550 shares but transferred it to Mrs. Sonia Gandhi.***

6. Later on, the appellant company applied for registration u/s 12A read with section 12AA of the Act on 31.03.2010 before DIT Exemptions Delhi. The appellant was granted registration u/s 12AA by Director of Income-tax (Exemption) vide order dated 09.05.2011, i.e., w.e.f AY 2011-12, subject to various terms and conditions. On the basis of said registration granted to the assessee under section 12A, the assessee claimed exemption of income u/ss 11 & 12 for the AYs 2011-12 to 2016-17. Later on, ld. CIT (E) cancelled the registration granted to the assessee u/s 12A vide order dated 26.10.2017 right from the date of inception i.e., from AY 2011-12 onwards. The cancellation of the registration was subject matter of challenge before this Tribunal in ITA No.7751/Del/2017. After detailed analysis and discussion and after taking note of all the contentions raised by both the parties, the order of ld. CIT (E) cancelling the registration was upheld by the Tribunal on the ground that; *firstly*, no genuine activities were carried out by the assessee either in furtherance of its objects or otherwise which can be held to be charitable

purpose; and *secondly*, the assessee itself had surrendered the registration vide its letter dated 21.03.2016 and between that period also, no worthwhile purported charitable activities were carried out by the appellant company. Thus, as on date, the registration u/s 12A/12AA of the appellant stands cancelled and no benefit of exemption u/ss 11 & 12 is available to the appellant company nor it is anymore recognised as Charitable entity under the Income Tax Act.

7. The genesis of the controversy had started with the acquisition of shares of **Associated Journals Limited (hereinafter referred to as 'AJL')** on 26.02.2011. The AJL was incorporated as a public limited company on 20.11.1937 under the Indian Companies Act, 1913, for the purpose of publication of newspapers in different languages. AJL started publishing newspapers such as ***National Herald*** in English, ***Navjivan*** in Hindi and ***Quami Awaz*** in Urdu.

8. The business of publication of newspaper was suspended on various occasions due to certain financial difficulties and certain labour problem etc. In the year 2008, precisely from 02.04.2008, the business of publication of newspaper was closed/ suspended

and all the employees of the AJL were given VRS w.e.f. 02.04.2008. After the publication of the newspaper was suspended or ceased to exist, income of AJL was mainly from exploitation of various properties held by it in different parts of the country. Earlier, the AJL was allotted certain immovable properties located in Delhi, Patna, Lucknow, Punchkula and Mumbai at a nominal price by respective Government of States where the cities are located. The properties were allotted for carrying out newspaper business and publication of newspaper in different languages. However, it was also allowed to let out these properties on rent to feed or cater to its publication business and these properties were commercially used for earning of rental income which has always been shown as part of business income and continued to do so post closure of the newspaper business. The office of AJL was shifted from Lucknow to Delhi on 01.09.2010 at its Delhi property situated at 5A, Herald House, Bahadurshah Zafar Marg, New Delhi.

9. In this chain of events, an important fact factor is that, All India Congress Committee (AICC) which is an Apex Body of Indian National Congress, a national party, had advanced loans

to AJL from time to time; and as on 31.03.2010, there was outstanding loan of Rs.88,86,68,976/- and further loan of Rs.1,35,00,000/- was received during the period 01.04.2010 to 16.12.2010 aggregating to Rs.90.21 crores. On 16.12.2010, AICC who had given the loan to AJL over the period of time transferred the entire loan of Rs.90.21 crores due from AJL in favour of appellant company, Young Indian, for a consideration of Rs.50,00,000/-. In other words, AICC assigned the loan outstanding in the books of AJL at Rs.50,00,000/- to appellant. Ergo, YI purchased asset in form of loan of Rs.90.21 crores from AICC which was due from AJL to AICC for paltry sum of Rs. 50 Lakhs. The loan assigned to the appellant was converted into shares of AJL and AJL allotted 9,02,16,899 equity shares to Young Indian in lieu of aforesaid loan amount and consequently the authorised share capital of AJL was increased to Rs.10 crores from 1 crore. In this manner, almost 99.99% shares of AJL were transferred to Young Indian.

10. Since Young Indian did not had funds to pay the consideration of Rs.50,00,000/- to AICC, it decided to take loan of Rs.1 crore from M/s. Dotex Merchandise Pvt. Limited, Kolkata

(**hereinafter referred to as Dotex**). Out of the said amount, Rs.50,00,000/- was paid to AICC on 01.03.2011. However, prior to the payment of Rs.50,00,000/- to AICC, AJL had already allotted entire shareholding of Young Indian in lieu of loan of Rs.90.21 crores. In order to understand chain of events right from inception of Young Indian u/s 25 of the Companies Act till 31.03.2011, it would be relevant to summarize it in the following manner as culled out from the assessment order as well as ITAT order in case of appellant dated 15.11.2019 in ITA No.7751/Del/2017 :-

Dates	Documents	Event
13.08.2010	Application made for incorporation of YI as Section 25 Company	
01.09.2010	Resolution passed by board of directors of AJL for change of address of office.	Registered office of AJL shifted from Lucknow to Delhi at 5A Herald House, Bahadur Shah Zafar Marg, New Delhi to provide easy and efficient control and management to the Directors.
14.10.2010	Objects of Young Indian were	Main object was

	incorporated	"To inculcate in the mind of India's Youth ....."
18.11.2010	Grant of license u/s. 25 of the Companies Act, 1956	• To promote object in terms of Section 25(1)(a)
23.11.2010	Incorporation of Young Indian	• Authorised capital of Rs. 5,00,000 being 500 shares of Rs 100/- each as on 31.03.2011 • Address of Registered office was at the same property of AJL, i.e., 5A Herald House, since inception.
23.11.2010	Commencement of directorship of Mr. Sam Pitroda	He held 550 shares in YI, which were later on, were transferred to Mr. Oscar Fernandes. He was Director of AJL since 21.12.2010
23.11.2010	Commencement of directorship of Mr. Suman Dubey	He held 550 shares in YI which were later on transferred to Mrs. Sonia Gandhi He was Director of AJL since 21.12.2010
13.12.2010	First Managing Committee Meeting of YI	• Mr. Rahul Gandhi appointed as director
13.12.2010	Commencement of directorship of Mr.	• 1900 shares held for 36% stake in YI

	Rahul Gandhi	
16.12.2010	Transfer of Loan by of Rs 90 Crores By AICC to AJL assigned to YI by Journal Entry	Within 25 days of incorporation of Young Indian
21.12.2010	Mr. Suman Dubey and Mr. Sam Pitroda appointed directors of AJL in Extra Ordinary General meeting	• Initially directors of YI, were appointed as director of AJL before allotment of shares;
28.12.2010	Assignment of Loan through letter to Young Indian	• At the time, YI had no funds to pay Rs. 50 lakhs to AICC , therefore it obtained a loan of Rs. 1 crore from M/s. Dotex Merchandise Pvt. Ltd., Kolkata • Assignment Deed was executed
28.12.2010	Letter by Mr. Motilal Vora, as Treasurer of AICC to AJL	• That the loan has been assigned by AICC to YI • Mr. Motilal Vora was Director of AJL since 2002
A.Y. 2011-12	Loans advanced by AICC to AJL	• Rs. 88,86,68,976 till 31.03.2010 (as claimed) • Rs. 1,35,000 during 01.04.2010 to 16.12.2010

		• Total Loan by AICC to AJL is Rs 90 Crores.
AY 2011-12	List of shareholders and directors	• Mr. Suman Dubey and Mr. Sam Pitroda - Founder Members with 550 Shares each • Rs. 53,21,290 spent towards objects including RS 50 lakhs paid to AICC towards acquisition of loan of Rs 90 Crores and only Rs. 200 as income from subscription
21.01.2011	EGM of AJL	• Approving fresh issue of 9.021 crore shares
22.01.2011	Commencement of directorship of Mrs. Sonia Gandhi	• Holds 1900 shares 36% stake in YI
22.01.2011	Commencement of directorship of Mr. Moti Lal Vora	Held 600 shares in YI • Chairman and MD of AJL since 22.03.2001
22.01.2011	Commencement of directorship of Mr. Oscar Fernandes	Held 600 shares held in YI • Director in AJL since 17.06.2010
14.02.2011	Bank Account of YI opened	• After issue of PAN by IT authorities
15.02.2011	Loan from Dotex Merchandise (P) Ltd., Kolkata	Loan of Rs 1 crore was taken from this company to pay AICC Rs. 50 Lakhs for assignment of loan in AJL.

		• Confirmation letter dated 24.12.2010
26.02.2011	Allotments of shares in AJL to YI	• 9,02,16,898 shares issued in lieu of assignment of loan of Rs. 90 Crore by increasing its authorized share capital to 10 crores from 1 crore. • Mrs Sonia Gandhi, Mr. Rahul Gandhi and Ms. Priyanka Gandhi purchased additional shares to gain full control of AJL
01.03.2011	Payment of Rs. 50 Lakhs to AICC for loan assignment	Payment of Rs 50 lakhs was disclosed as an expenditure for the object enshrined in MOA of YI

11. Before us, ld. Special Counsel, Shri G.C. Srivastava, on similar lines has summarised various steps which has also been discussed in the impugned assessment order alleging it to be predetermined sham steps, which though are repetition are reproduced as under :-

S.NO.	PARTICULARS
STEP-1	As a first step, AICC claimed that it had advanced a loan of Rs. 90 crores to AJL on several occasions in the past.

	This loan had accumulated to Rs. 90,21,68,980/-. The books of account of AJL from 01.04.2010 to 31.03.2011 showed an outstanding debt of Rs. 88,86,68,976/-and it ultimately became Rs.90,21,68,980/-. After the closure of the publication business, Sh. Oscar Fernandes was appointed as the director of AJL on 17.06.2010. On 13.08.2010, an application was made for the incorporation of a charitable non-profit company i.e., a company under Section 25 of the Companies Act, in the name of the Appellant. The application was filed in Form IA with the competent statutory authority. On 18.11.2010, the Appellant was granted the license under Section 25 of the Companies Act, and ultimately, the Appellant was incorporated on 23.11.2010 with Sh. Suman Dubey and Sh. Sam Pitroda as its founding Directors. In the meantime, the registered office of AJL had already been moved from Lucknow to Delhi from 01.09.2010. The Appellant started its office at Herald Office, Bahadur Shah Zafar Marg, New Delhi, which was the property of AJL, without any agreement to that effect or any payment of rent to AJL. The Appellant had an authorized share capital of 5,000 shares of Rs. 100/- each, valued at Rs. 5,00,000/- and the paid-up share capital of the Appellant was 1100 shares of Rs. 100/- each valued at Rs. 1,10,000/-. The

	Appellant at that point of time had only two shareholders i.e., - (a) Sh. Sam Pitroda holding 550 shares valued at Rs. 100/- each; and (b) Sh. Suman Dubey holding 5000 shares valued at Rs. 100/- each. On 13.12.2010, the first Managing Committee Meeting of Young India took place and Sh. Rahul Gandhi was appointed as its director, (namely a non-shareholder director) and Sh. Motilal Vora and Sh. Oscar Fernandes as ordinary members. Within five days thereafter, i.e., on 18.12.2010, the loan of Rs. 90 crores and odd outstanding in the books of INC as recoverable from AJL for the period between 2002 to 2011 was assigned to the Appellant without entering into any deed of assignment. Three days thereafter, on 21.12.2010, a board of AJL called for an extraordinary general meeting ("EGM"), which was subsequently held on 24.12.2010, and on the said date, the loan of Rs. 1 crore was received by the Appellant through cheque from another company based in Kolkata being M/s Dotex Merchandise Pvt. Ltd ("Dotex"). It is interesting to note that on the date when the cheque was received, the Appellant did not even have a bank account where such a cheque could be deposited. On 28.12.2010 (about 10 days after the assignment of the loan), a formal deed of assignment was executed by AICC assigning the loan of Rs. 90 crores in favour of the Appellant. It may be mentioned that though the loan of Rs.90 crores was assigned for a paltry sum of Rs. 50 lakhs, yet the Appellant did not have the capacity to pay

	even that 50 lakhs to AICC and that is the reason why the plea of having received a loan of Rs. 1 crore from Dotex was raised. Soon thereafter, on 21.01.2011, an EGM of AJL was held 'approving' fresh issue of Rs. 9.021 crore shares to the Appellant and on 22.01.2011 i.e., on the very next day the second Managing Committee Meeting of Young India was held in which Smt. Sonia Gandhi, Mr. Motilal Vora and Mr. Oscar Fernandes were appointed as directors and the 550 shares of the existing shareholders of the Appellant i.e., Sh. Suman Dubey and Sh. Sam Pitroda were transferred to Smt. Sonia Gandhi and Mr. Oscar Fernandes. On the same day i.e., 22.01.2011, a fresh allotment of the shares of the Appellant were made in the following manner:- (a) 1900 shares having paid-up value of Rs. 1,90,000/- to Sh. Rahul Gandhi; (b) 1350 shares with a paid-up amount of Rs.1,35,000/- in the name of Smt. Sonia Gandhi; (c) 600 shares with a paid-up value of Rs. 60,000 in the name of Sh. Motilal Vora; and (d) 50 shares with a paid-up value of Rs. 5,000 in the name of Sh. Oscar Fernandes. A bank account was opened by the Appellant with Citibank on 14.02.2011 and the cheque dated 24.12.2010 issued by Dotex for Rs. 1 crore was deposited in the bank account of the Appellant on the said day and on 26.02.2011, the Appellant issued a cheque of Rs. 50 lakhs to AICC as consideration for assignment of Rs. 90

	crores debt payable by AJL to AICC. On the same day i.e., 26.02.2011, AJL allotted 9,02,16,899 equity shares to the Appellant in pursuance to the AGM Meeting decision held on 21.01.2011 and the AJL board meeting on 26.02.2011 and thereafter the Appellant applied for exemption under Section 12A on 29.03.2011 and on 09.05.2011, the Income Tax Authorities granted the exemption with effect from A.Y. 2011-12.
STEP-2	As discussed above, the Appellant (which was newly incorporated by Sh. Suman Dubey and Sh. Sam Pitroda) had no assets or funds of its own except those allegedly transferred by AICC i.e., the funds of Rs. 90.21 crores which was camouflaged as sale of alleged loan of Rs. 90.21 crores for a meager sum of Rs. 50 lakhs and Rs. 1 crore was arranged by the Appellant through Dotex which was a company engaged in providing hawala transactions, by laundering of Appellant's own money). This loan of Rs. 1 crore was also flagged as suspicious transaction in the Suspicious Transactions Report ("STR") by Financial Intelligence Unit ("FIU"), India. The amount of loan entry of Rs. 90.21 crore was fixed in order to ensure that the amount was just sufficient to allot 99% share of AJL to the Appellant.
STEP-3	It is pertinent to note that the Appellant which was registered under Section 25 of the Companies Act for charitable purpose, had no business or income of its own

	and had not carried out any activities for the object of the company in FY 2010-11, 2011-12 and subsequent years. It had only carried out one adventure in the nature of trade leading to the takeover of AJL with the only intention to obtain benefit from business assets of AJL represented by its immovable properties, which was otherwise not possible without sale of these properties to the Appellant at Fair Market Value ("FMV") which was several times more than the price at which such properties were purchased by AJL.
STEP-4	Even before the transaction of purchase of loan of Rs. 90.21 crore could be completed by making payment of Rs. 50 lakhs to AICC, AJL swiftly increased its authorized capital from 1 crore ordinary shares having face value of Rs. 10 to 10 crore ordinary shares having face value of Rs. 10 and allotted 9.021 crore shares being 99% of total paid-up capital to the Appellant on the basis of incomplete and undated share application form and without complying with the provisions of Companies Act. It may be appreciated that no price was paid by the Appellant for the acquisition of these shares. It was only by sail/ exchange/ extinguishment of the liabilities which AJL had that the consideration for the sale of these shares was adjusted in the books of AJL.
STEP-5	The takeover of AJL was complete within 3 months from the date of incorporation of the Appellant. In fact, after taking over AJL, the Appellant started enjoying the benefits embodied in the business/commercial assets of

	AJL.
STEP-6	The Appellant citing its object for incorporation, obtained registration under Section 12A of the Act. This entitled the Appellant to claim exemption on its income so that the value of all benefits arising from the transaction leading to the takeover of AJL gets exempted.
STEP-7	In order to fulfil its objective of acquiring 100% shares of AJL, Sh. Rahul Gandhi (one of the majority shareholders of the Appellant) along with Smt. Priyanka Gandhi Vadra purchased additional shares amounting to 47,513 and 2,62,411 through Ratan Deep Trust and Janhit Nidhi Trust respectively, without complying provisions of the Companies Act.
STEP-8	The Appellant did not disclose the transaction of purchase of alleged loan of Rs. 90.21 crores at a paltry sum of Rs. 50 lakhs, in its Profit and Loss Account. This was camouflaged as expenditure on the object of the Appellant. In fact, the value of 9,021 crore shares of AJL was also not disclosed in the audited balance sheet on the ground of insignificant investment. It is submitted that the reason for the above-referred accounting treatment was to hide the real transaction from regulatory authorities and Income Tax Department.
STEP-9	As discussed above, after the takeover of AJL by the Appellant, Sh. Suman Dubey and Sh. Sam Pitroda who

	founded the Appellant company (as per the MOA), exited as a shareholder of the Appellant by transferring their share to Smt. Sonia Gandhi and Sh. Oscar Fernandes. This resulted in the transfer and control of the Appellant in the hands of Smt. Sonia Gandhi and Sh. Rahul Gandhi, both majority shareholders, having shareholding of 38% each and their close associates Sh. Motilal Vora and Sh. Oscar Fernandes each having 12% shares of the Appellant. It is submitted that later on, the Appellant has in its annual report and its application for registration under Section 12A, disclosed the names of Smt. Sonia Gandhi and Sh. Rahul Gandhi as founding members of the Appellant, by changing names of the actual founding members as disclosed in the MOA. These facts clearly prove that Sh. Suman Dubey and Sh. Sam Pitroda were only name lenders and in reality, it was Smt. Sonia Gandhi and Sh. Rahul Gandhi, the majority shareholders of the Appellant who were the actual founding members of the Appellant, as disclosed in the annual report for FY. 2010-11.

12. Further, based on these chronology of events and the nature of association of key persons with AICC, AJL and Young Indian have been enumerated in the following manner :-

NAME	POSITION IN	POSITION IN	POSITION IN YI & NO.

	INC	AJL	OF SHARES HELD
Smt. Sonia Gandhi	President of INC	-	Director since 22.01.2011 holding 1900 shares (which includes 1,350 freshly allotted shares of YI on 22.01.2011 and the 550 transferred shares of Sh. Suman Dubey) constituting 38%.
Sh. Rahul Gandhi	Then General Secretary	-	Director since 13.12.2010 holding 1900 shares constituting 38%.
Sh. Motilal Vora	Treasurer of INC	Chairman and Managing Director since 22.03.2002.	Director since 22.01.2011 holding 600 shares constituting 12%.
Sh. Oscar Fernandes	Long standing office bearer, presently the General Secretary.	Director since 17.06.2010.	Director since 22.01.2011 holding 600 shares (which includes 50 freshly allotted shares of YI on 22.01.2011 and the 550 transferred

			shares of Sh. Sam Pitroda) constituting 12%.
Sh. Satyan Gangaram Pitroda (Sam Pitroda)	Close associate of Sh. Sonia Gandhi and Sh. Rahul Gandhi.	Director since 21.12.2010.	Director since 23.11.2010. Had previously held 550 shares but transferred it to Sh. Oscar Fernandes on 22.01.2011.
Sh. Suman Dubey	Close associate of Sh. Sonia Gandhi and Sh. Rahul Gandhi and Press Advisor to Former Prime Minister	Director since 21.12.2010.	Director since 23.11.2010. Had previously held 550 shares but transferred it to Smt. Sonia Gandhi on 22.01.2011.

13. The aforesaid background has been narrated herein-before as preface to understand the genesis of the controversies which are involved in this appeal and shall also have a vital bearing on adjudication of the issues which are being subject matter of appeal hereinafter in the forth-coming paras.

INITIATION OF PROCEEDINGS U/S 148 OF THE ACT

14. The appellant company has filed return of income for the AY 2011-12 on 11.10.2011 declaring nil income. The said return was processed u/s 143(1). As noted by the Assessing Officer subsequent to the processing of return, an information was received from the Investigation Wing of the Income-tax Department that the assessee had purchased loan of Rs.90.21 crores which was given by AICC to AJL for a paltry sum of Rs.50,00,000/- and immediately after assigning of loan, AJL allotted 9.021 crore shares to the appellant company. Assessing Officer based on this information and material, deduced that the transaction of purchase of loan and the transaction of transferring of shares from AJL to appellant which owned properties, has in fact transferred its properties to appellant as well as accruals of business assets of the AJL. It has been further noted by him that after the receipt of information and examining of copies of return of income along with audited income and expenditure account for the year under consideration, further enquires were made from the parties of the transaction u/s 131 and 133 (6) of the Act. Thereafter, AO came to his reasons to

believe that income chargeable to tax has escaped assessment during the year under consideration and proceedings u/s 147 was initiated vide issuance of notice u/s 148 dated 10.01.2017 by ACIT (E), Circle 1(1), Delhi by recording reasons to believe. The copy of reasons recorded have been placed in the paper book on pages 104 to 127 which for the sake of ready reference is incorporated hereunder:-

> ***"1. Details of information received through Tax Evasion Petition and Directorate of Investigation. New Delhi***
>
> *Information has been received from the Investigation Wing, that a Tax Evasion Petition (TEP) was received in the Investigation Wing, in which it had been alleged that Young Indian, hereinafter referred to as "the Yl" a Section 25 Company, assessed to tax in this charge, purchased an interest free loan of Rs. 90 Crores (approx.) of Indian National Congress/ All India Congress Committee hereinafter referred to as "the AICC" alleged to be given to M/s Associated Journal Private Limited, (here-in-after referred to as "AJL") by making payment of only Rs. 50 lakh to the AICC. It was also informed that the Yi was founded in the month of Nov. 2010, just 23 days prior to assignment of the above loan, with a nominal capital of Rs. 5 Lakh. The Young Indian did not even have any funds of its own for purchase of alleged loan of Rs. 90 Crore of the AICC. Accordingly, YI took an interest bearing loan of Rs. 1.00 Crore from M/s Dotex Merchandise Private Limited of RPG Group of Kolkata. A survey u/s 133A of the I.T. Act was conducted on M/sDotex Merchandise Pvt. Ltd. During survey, it was found that M/sDotex Merchandise Pvt. Limited was originally incorporated by persons engaged in providing accommodation entries and subsequently the company was purchased by R P Goenka Group from the entry operators. Immediately after the Deed of Assignment of loan by the AICC to the Young Indian, on 16.12.2010, the said loan was converted into equity by the AJL, on 26.02.2011 (even when the YI had not paid Rs. 50 Lacs to the AICC in lieu of assignment of loan of Rs. 90 Crore), resulting in holding of 99% of the total issued capital of the AJL by Young Indian. As such, in reality the AJL has become a subsidiary of Young Indian.*

The Investigation Wing has further informed that though the Deed of Assignment is dated 28.12.2010, the AJL made Journal entries of transfer of loan to the YI in its Books of Accounts, as early as 16.12.2010. Even though the payment of Rs. 50 Lakhs, in lieu of Assignment of loan of Rs. 90,21,68,980/ , was made by the YI to the AICC, only on *01.03.2011, whereas the AJL had issued shares to the YI in lieu of the said loan amount, much earlier, in the month of Feb. 2011. It has been pointed out by the Investigation wing that the assigning of loan owed by M/s AJL to M/s Young Indian by the AICC is an adventure in the nature of trade, as defined u/s. 2(13) of the I.T. Act. The Investigation Wing has further conveyed that high ranking Office bearers of the AICC are also Directors of Young Indian and that of the AJL.*

S.No.	*Event*	*Date*	*Remarks*
1	*Date of Incorporation of Y.I.*	*23.11.2010*	*u/s. 25 of Companies Act, 1956*
2	*Date, of Deed of Assignment of loan by the AICC to YI*	*28.12.2010*	*12 days after the date of Journal entry made*
3	*Date of Journal entry made by AJL. regarding transfer of loan to YI*	*16.12.2010*	*12 days prior to Deed of Assignment*
4	*Payment of Rs. 50 Lakhs by YI in lieu of the assignment of loan of Rs. 90,21,68,980/-*	*01.03.2011*	*Transfer of Loan as per Deed of Assignment took place on 16.12.2010.*
5	*Date of issue of shares by AJL to YI in lieu of the loan*	*26.02.2011*	*Shares were allotted even before getting payment of Rs. 50 Lakhs from Y.I.*
6	*Date of loan taken by YI from M/s Dotex Merchandise Pvt. Ltd. out of which payment of Rs. 50 Lakhs was made for purchase of loan*	*15.02.2011*	*This indicates that on the date of assignment of loan by the AICC, the Young Indian did not have the funds.*

The Investigation Wing further concluded that AJL allotted the shares of the company to Young Indian in lieu of recently purchased asset i.e. Rs. 90 Crore at the rate of face value of Rs. 10/- per share.lt has also been informed that investment in shares of a business entity, making it a subsidiary through an adventure in the nature of trade by

taking over a loan of Rs. 90.21 Crores for a sum of Rs. 50 Lakhs had resulted in takeover of assets of the AJL fair market value which would need to be ascertained. Subsequent to the information received from the Investigation Wing, further facts were collect from the available assessment records and inquiries were also made to ascertain real nature of the transaction.

2. Brief details of Parties Involved

Indian National Congress (AICC)

The AICC is an apex body of Indian National Congress which is a national political party. The Indian National Congress is registered under People Representation and is covered under provisions of section 13A of the Income Tax Act, 1961. Mrs. Sonia Gandhi MP, Sh. Rahul Gandhi MP, Sh. Motilal Vora MP and Mr. Oscar Fernades MR are high ranking official bearers of the party. It is pertinent to mention he e that a political party which received fund from the public as donation can utilize its s for the prescribed object of the political party.

Young Indian (YI)

The YI is a company incorporated under provisions of section 25 of the Companies Act, 1956 on 23.11.2010 with authorized share capital of Rs 5,00,000. The company was incorporated with the main object of inculcating in the mind of India's youth. Commitment to the ideal of a democratic and secular society for its entire population without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that promote foregoing objectives. Smt Sonia Gandhi, MP, Sh. Rahul Gandhi, MP, Sh. Moti Lal Vora MP, treasurer of the AICC and Mr. Oscar Fernandes MP are Directors of M/s Young Indian and Mrs. Sonia Gandhi and Mr. Rahul Gandhi: are majority shareholder i.e. 76% of share capital of the YI (Annual Report for AY 2011-12). The YI is registered u/s 12A of the Act and is enjoying benefit of tax exemption It is further noticed that the YI filed its return for AY 2011 12 on 11.10.2011 disc.' sing loss of Rs. 51,99,276. The case was processed u/s 143(1) of the Act on returned loss. It is evident from Income & Expenditure Account for the period 23.11.2010 to 31.03.2011 (relevant to AY 2011-12) that the assessee had shown income of Rs. 200 from annual fee only and had claimed incurring expenditure of Rs. 53,21 290. The payment of Rs. 50,00,000 lakh was made to the AICC for purchase of alleged loan of Rs. 90.12 crore of the AICC to the AJL, a real estate company and the same was claimed as expenditure on the object of the Yl i.e. "Youth Commitment to the ideal of democratic and secular society." However, the YI did not incur any expenditure on the object of the company during AY 2012-13.

Associated Journals Limited (AJL)

The AJL is an Indian company limited by shares. The company was earlier engaged in publishing National Herald, Nav Jeevan and Qaumi Awaz Newspaper. However, business of publication of newspaper ceased to exist w.e.f. 02.04.2008 and all the employees of the company took VRS w.e.f. 02.04.2008. Since then only, business of the company which owns immovable property of more than Rs. 2000 crores is earning income from Real Estate i.e. the company is engaged in purchase, construction and renting out its property. Sh. Motilal Vora, MP and Oscar Fernandes MP, office bearer of the AICC are also Managing Director and Director of the company, The details of important property of the AJL are summarized as under:

1.	*Lease Hold Land*	*Address*
	Delhi	*5-A, Bahadur Shah Zafar Marg, New Delhi-02*
	Patna	*Village Phulwari, Patna*
2.	*Free Hold Land*	
	Lucknow	*1, Bishweswhwar Nath Road, Lucknow*
	Panchkula	*C-17, Sec-6, Panchkula*
	Mumbai	*S.No.340, Part Aliyavar Marg, Bandra, East Mumbai.*
3.	*Building*	
	Delhi	*5-A, Bahadur Shah Zafar Marg, New Delhi-02*
	Lucknow	*1, Bishweswhwar Nath Road, Lucknow*
4.	*Capital Work in Progress*	
	Mumbai	*S.No.340, Part Aliyavar Marg, Bandra, East Mumbai.*
	Panchkula	*C-17, Sec-6, Panchkula*
	Patna	*Village Phulwari, Patna*
	Lucknow	*1, Bishweswhwar Nath Road, Lucknow*

It is pertinent to mention here at most of these properties were acquired by the AJL by sale/ lease from Central and State Government for purpose of publication of newspaper. However, after closure of newspaper business in year 2008, the AJL started business of construction of buildings for commercial purpose and had let out its existing building on rent.

Dotex Merchandise Pvt. Ltd.

M/s Dotex Merchandise Pvt. Ltd., Kolkata was originally incorporated by persons engaged in providing accommodation entries. Subsequently, the company was purchased by RPG Group from the entry Operators.

It may be seen from brief detail of parties involved that office bearer of the AICC, Directors of the YI and the AJL are common persons which had helped these entities in carrying out transactions among these entities with great speed even without following a logical sequence of transactions as a prudent business man which prima facie lead to irresistible conclusion that these transactions are pre determinate, pre-planned and stage managed.

3. Non Cooperation of Parties to the transaction during enquiry

The Investigation Wing sought information u/s 133(6) of the I T. Act, from the AJL as well as from the Yl, followed by summons u/s. 131 of the I.T. Act. However, only part information was provided and no compliance was made by both the entities viz. the AJL as well as the Yl, by taking the plea of irrelevance for the purpose of the I. T. Act and by ascribing ulterior motive behind seeking the information. On 15.12.2014, a show-cause notice u/s. 272A of the I.T. Act, was also issued by the Addl. DIT (Investigation), Unit-IV, New Delhi, and penalty u/s. 272A of the I.T. Act, was imposed on 05.02.2015, on both the YL and the AJL for not complying with the terms and conditions of the summons.

After receipt of the above information, further verification and inquiries were conducted from this Office with reference to allegations, made in the TEP and observations of the Investigation Wing

Notice u/s. 133(6) of the I.T. Act, was issued from the Office of the undersigned on 14.07.2015 to the YI requesting the assessee to provide information regarding the details of the above transaction. The assessee was requested to provide the requisite information by 22.07.2015. The notice was duly served on the assessee on 14.07.2015. In response, the assessee (Young Indian) vide its letter dated 21.07.2015, preferred not to file the requisite information and took a stand that information u/s 133(6) of the I.T. Act could be sought only for the purpose of the Act, which means that proceedings are required to be pending with the department to seek information u/s. 133(6) of the I.T. Act. The undersigned vide letter dated 27.07.2015, informed the assessee that "pendency of proceedings" is not a pre-requisite for seeking information

u/s 133(6) of the I.T. Act. The assessee was also informed about the decisions of Courts including the decision of the ,Hon'ble Supreme Court in the case of Kathi Roor Service Cooperative Bank Ltd. Vs. CIT & cithers, in Civil appeal No. 7460 of 2013 arising out of SLP (C No. 3976) of 2010 dated 27,08.2013, vide which it was held by the Apex Court that an Income Tax authority below the rank of Director or Commissioner can exercise the power of 133(6) of the I T. Act, in respect of any enquiry in a case, where no proceedings is pending, only with the prior approval of the Director or the Commissioner. The above observation of the Apex Court was in pursuance to an amendment made by the Finance Act (Act 22 of 1995), which has been explained by the CBDT in Circular No. 717dated 14.08.1995. The assessee was again requested to provide the required details/ clarifications/ documents, as asked for vide letter dated 14.07.2015, by 31.07.2015. This letter was also duly served upon the assessee on 27.07.2015.

The assessee this time filed its reply in Dak on 27,07.2015, reiterating its stand that no proceedings are pending in this case and it should be informed, how information called for, is required for the purpose of the Act. Another letter dated 31.07.2015 was again filed by the assessee in the Dak with a request to provide the assessee with a copy of approval of the CIT referred to in the earlier communication. It was further requested that copy of an application to GIT seeking his approval be also provided. This office vide letter dated 03.08.2015, informed the assessee that prior approval of Cl'l (E), New Delhi, for seeking information u/s 133(6) of the I.T. Act, was duly conveyed to the undersigned vide letter No. CIT (E)/ Vi/ 2015-16/ 598 dated 14.07.2015. It was again clarified that the required information is being sought in connection with an inquiry in the In response, the assessee vide its letter dated 07.08.2015, again requested to be provided with copy of authorization received by the undersigned from the CIT(F) as well as copy of the application made by the undersigned for the said authorization. The assessee vide its letter dated 10.08.2015, requested for grant of an inspection of records. However, the A/R of the Yl did not provide information sought u/s. 133(6) of the I.T. Act. During these proceedings, it was clarified to the assessee several times that necessary permission of the CIT (E) had been obtained before issue of the first notice u/s 133(6) of the I.T. Act, dated 14.07.2015. On 10 Aug. 2015, Sh. Sandeep Anand, CA/ AR attended on behalf of the assessee along with the above mentioned letter dated 10.08.2015. He was shown the copy of approval conveyed by the CIT (E) and was again requested to provide the required details/ documents. However, the assessee vide its letter dated 11.08.2015, again insisted for complete inspection of the file and to allow it to make copies of the documents, which are deemed important in its case. Sh. Sandeep Kumar, Office Clerk of the assessee company, who came to deliver this letter, was again informed that the assessee is bound by the decision of the

Hon'ble Supreme Court as well as the amendment made in the !.T. Act, to provide the required information/ clarification.

It is pertinent to mention here that in this case, notice u/s 133(6) of the I.T. Act, was Issued to obtain only those information, which was in knowledge of the assessee, and was not available with the Income Tax Department. Instead of submitting the .requisite details, the AR of the assessee requested for inspection of records, which were not required in the above referred context, i.e. information which was not available with the department was requested u/s 133(6) of the Act. It appears that the Yf instead of complying with the terms & condition of Section 133(6) of the Income Tax Act, has created a legal facade, to with-hold the information available with the assessee, It has not been explained by the A/R that when the information sought u/s 133(6) of the I.T. Act, is not available with the department, how come the inspection of the records of the department will facilitate in providing the requisite information as per the terms & conditions of the Income Tax Act.

The above discussion proves that the assessee has been afforded number of opportunities to clarify and submit details in respect of the transactions involving acquisition of loan/ shares of AJL. However, the assessee did not submit the requisite information during several opportunities allowed to it. It is pertinent to mention here that the assessee has adopted similar modus-operandi to with-hold information before the Investigation Wing, despite the fact that penalty u/s 272A was levied on the assessee for non- compliance of notice issued u/s 131 of the Income Tax Act.

4. Sum*mary of findings*

It is evident from above that due to the non-cooperation of the AICC and the Yl no information could be collected from these parties. Accordingly, all the available information on records with the Income Tax Department, as sent by Investigation Directorate of Income Tax and available in the public domain were examined. The result of these enquiries has been summarized as under:

Indian National Congress/AICC:

It has been claimed by the AICC (as reported by the Investigation Wing) that they have advanced loan of Rs. 90.21 Crore at different points of time till F.Y. 2010-11 to the AJL. A careful perusal of the 72nd Annual Report 2010 of AJL revealed that the company had disclosed loan of Rs.89.71 Crore, as on 31.03.2010 (which included unsecured loan of Rs. 89.67 crores) and the nature of which was explained in schedule-X of the report, which records as under:

"***Advances/Security Deposits receipt from the parties in earlier years relating to construction activity on company's land at Lucknow and Mumbai has been grouped under "other liabilities '' and ''unsecured loans" and no provision of interest have been made on their own. "***

[Copy of the relevant part of schedule X of the report is enclosed as Annexure A to the reason recorded]

It is evident from the above narration that the loan of Rs.90.21 Crore from the AICC was not disclosed in the Annual Report of the company, because as per the report, loan (including unsecured loan) only included Advances, loan and Security Deposits for construction activities from parties and from others, not from the AICC. In this context, notices u/s 133(6) of the I. T. Act, were issued to the AICC on 14.07.2015 and 27,07.2015 after taking approval from the competent authority to obtain evidence relating to time mode, manner of advancing loans and nature of fund out of which these loans were advanced, However, no clarification or evidence was submitted to prove that the alleged loan of Rs. 90.21 Crore was actually advanced by the AICC to the AJL, accordingly, at this point of time it is not possible to confirm the claim of the AICC, that it had actually given loan of Rs 90 Crore to the AJL. However, this issue will be examined during reassessment proceedings in case of the YI. This information has been also passed on to the AO of the AJL, who has been requested to make necessary inquiries n this regard, u/s. 68 of the I.T. Act. In view of above, herein after, I intend to use the term "alleged loan of Rs. 90.21 Crore".

*As discussed above, the unsecured loan of Rs. 87.67 crore was disclosed i**n the** balance sheet of the AJL as on **31st** March **2010** and notes to the account (An**nexure X) did** not disclose the AICC as creditors. Even amount of the unsecured loan of Rs.**90.21** does not tally with amount of unsecured loan as per balance sheet of the AJL. Another important issue is about quantum of loan of **Rs 90.21** crore which was coincidentally just sufficient for allotment of **9.021 crore** shares of the AJL to the YI which accounted for **99%** of share capital of the AJL **allowing** takeover of the AJL by the YI.*

Since, the AICC claimed advancing loan of Rs. 90.21 crore to the AJL a, engaged in real estate business since year 2008, the issue whether political party can advance interest free loan to a real estate company under its stated object is being separately in the case of the Indian National Congress u/s 13A of the Act.

The YI

All the rights over the above referred to alleged loan, has been sold by the AICC to a newly *incorporated company, the YI, i.e. within 23 days of its incorporation (Date of incorporation 23.11.2010 and date of sale of alleged loan of Rs. 90.21 crore on 16.12.2010) at paltry sum of Rs. 50 lakh. At the time of assignment of loan, The YI did not have any money to make payment of even Rs. 50 Lakhs only (authorized capital of Rs.5 Lakh was available.) and it could allegedly arranged the money to make, payment of Rs. 50 only in this month of Feb. 2011 only (after two and a half months from the date of assignment of the alleged loan to the YI) by taking a loan of Rs. 1 crore from Dotex Merchandise Pvt. Ltd on 15.02.2011.*

It has been reported by the Investigation Wing that the AICC assigned the alleged loan of Rs. 90.21 crore to the YI for a paltry sum of Rs. 50 Lakhs, for the reason that the AICC was not sure if the AJL would be in position to return the loan. However, the above claim of the AICC is not tenable for following reasons:

a. The AJL has several properties in prime location at Delhi, Mumbai, Lucknow, Patna and Panchkula worth several hundred Crores. Accordingly, the only logical conclusion is that the AJL was financially sound enough to return the loan of Rs. 90.21 crore to the AICC.

b. In the Notes to Accounts for the financial year 2010-11 of AJL,. in para-1, it :s been mentioned that "however, (he Management is of the view that the operation of the company will be started soon and the operation of the company is such that there are fair chances of turnaround, to make the financial position of the company sound, "[refer Annexure B to the reason] It is pertinent to mention here that office bearer of AICC and the AJL were common people and if Chairman of the AJL Mr. MotiLal Vora was confident about sound financial position of the AJL, how could he was not hopeful of recovery of loan of Rs. 90.21 crore to the AJL as treasurer of the AICC. No explanation on above reasons for treating loan as bad has forth come from the AICC in response to notice u/s 133(6) of the Act.

The other intriguing facts in this case are that the alleged assignment deed dated 28.12.2010 was not filed before the AO in response to the notice u/s 133(6) of the Act dated 14.07.2015, but a copy of the letter dated 28.12.2010 from Shri Motilal Vora (Treasurer) to the Board of Directors, AJL was filed, however, the assignment of the loan by the AICC to the YI was not acknowledged and confirmed by the AJL, (copy enclosed as Annexure C). Even if the alleged date of assignment of the loan of Rs. 90.21 crore to the YI was 28.12.2010, the date of actual payment of Rs. 50 Lakhs by the YI to the AICC was on 01.03.2011. It may be seen from the sequence of events that the loan was allegedly assigned on 28.12.2010 by the AICC to the YI and the

benefit of assignment of loan culminated taking over the AJL by YI by allotment of shares by AJL to YI on 26.02.1010 on the basis of incomplete share application form. However, the payment for alleged assignment of loan was made only on 01.03.2011, whereas the takeover of the AJL by YI through allotment of shares (99% of paid up capital) got completed on 26.02.2011.

Since, the YI did not have any fund at the time of alleged purchase of loan of Rs. 90.21 crore it claimed taking loan of Rs. 1 crore from M.s Dotex Merchandise Pvt. Ltd. The Financial Intelligence Unit (FIU), Department of Revenue, Ministry of Finance has reported loan transactions of Rs. 1 crore between YI and M/s Dotex Merchandise (P) Ltd as Suspicious Transaction Report (STR) vide reference No. 1000040468. However, the genuineness of the loan transaction of Rs. 1 Crore by the YI from M/s Dotex Merchandise Pvt. Ltd. could not be verified due to lack of evidence on case record. Accordingly, a notice u/s 133(6) of the I.T. Act, was issued to YI, after taking prior permission of the competent authority. However, the source and the genuineness of the loan was not filed by the YI.

A careful scrutiny of return of income of the YI for AY 2011-12 and 2012-13 revealed that the YI had not incurred any expenditure on the object of the company (Youth Commitment to the ideal of democratic and secular society). However, the YI claimed expenditure of Rs. 50,00,000/- for purchase of loan of the AICC to the AJL as expenditure on the object of the company. Since, primary motive of incurring expenditure of Rs.50,00,000/-to acquire real estate company i.e. the AJL, the claim the YI that expenditure of Rs, 50 lakh was incurred on "Youth Commitment to the ideal of democratic and secular society" is incorrect. It was further noticed that no expenditure was incurred by the YI on its object in next financial year F.Y. 2011-12.

The YI is a registered entity u/s 12A which makes it entitle to tax exemption on income u/s 11 and 12 of the Act. However, takeover of a real estate company by the YI by incurring expenditure of Rs. 50 lakhs is not covered within stated object of the YI.A report in this regards have been sent to Commissioner of Income Tax (Exemption) separately for consideration u/s 12A of the Act. It is to mention here that a communication in regard is being sent to Ministry of Corporate Affairs informing about violation of stated object by the YI a company u/s 25 of the Companies Act incurring expenditure of Rs.50,00,000 on acquisition of real estate company.

AJL

As discussed above, the AICC had claimed making advance of an interest free loan amounting to Rs. 90.21 crore to the YI and the AICC

later assigned the entire loan, to the YI for a consideration of Rs. 50 Lakhs only vide a Deed of Assignment dated 28.12.2010, copy of which was not produced in response to notice u/s 133(6) of the Act and a letter dated 28.12.2016 (refer Annexure was filed in which the AJL did not a:ce or confirm assignment of the alleged loan of Rs. 90:21 crore to the YI. Thereafter, the AJL converted the aforesaid loan of Rs. 90.21 crore in to -ordinary shares at face value of 10 per share on 26.02.2011 and allotted e shares to the YI on the basis of incomplete share application form which neither mention amount remitted nor had details of payment, etc. (a copy enclosed as Annexure D). In order to ascertain the factual position certain enquiries were conducted which included calling for information/records from the office of DCIT, Circle-6, Lucknow (Assessing Officer of the AJL). Information received from AO revealed that Young India received 9,02,16,898 ordinary shares of the AJL, which forms almost 99% of total share of the AJL. However, perusal of the Balance Sheet for the relevant Financial Year i.e. for the year ending 31st March 2011, revealed that M/s The YI has not shown allotment 9.21 shares of the AJL in the Balance Sheet and investments were disclosed at NIL value in Schedule 4. It has further been noticed that the YI a payment of Rs 50 Lakhs for purchase of the alleged loan of Rs. 90.21 crore to acquire assets of the AJL, a company engaged in the real estate business however, the transaction was also incorrectly recorded in the P&L A/c of the YI as expenditure on the object of the company. It is evident from above that real purpose of buying alleged loan at paltry sum of Rs. 50,00,000/- by the YI was to acquire property and real estate of the AJL by taking over the company and not to serve prescribed object of the YI.

It is important to note here that most of properties owned by the AJL have been sold/leased to it by the Central and State Governments at meager sum for the purpose of publication of newspaper. However, the activity of publication of newspaper has ceased to exist since 2008 and existing buildings were put to commercial use and the AJL also started construction of properties on vacant land for commercial use. The AO of the AJL has been requested separately to examine actual use of these properties and inform Central and State Governments about closure of publication business of the AJL and misuse of terms and conditions of sale/ lease of property i.e. for the purchase other than publication of newspaper.

Due to non-cooperation of all the entities to the transaction, it is not possible to ascertain the fair market value of the assets of owned by the AJL now controlled by the YI which was real target of the transaction. In view of non-cooperation by the parties to transactions, I have no option but to examine the issue of fair market value of

properties on the basis of information available in public domain. One of the prime properties of the AJL is located at Bahadur Shah Zafar Marg, New Delhi. The property is a six storey commercial building. The market value of these properties would help in determining the FMV of properties of the AJL on the date takeover by the YI. Considering the fact that tree value of Veal estate transactions are not revealed in public domain, the fair market value of properties of the AJL is expected to be much higher than quoted market rate at time of takeover of the AJL by the YI. Since most of properties were allotted by Central and State Government at paltry amount for publication of newspaper an object which ceased to exist since 2008 the book value of these properties in balance sheet will not represent FMV. The correct fair market value of various properties located in Delhi, Patna, Lucknow, Panchkula and Mumbai, shall be ascertained during the reassessment proceedings in order to compute the FMV of properties transferred to the Yi on 26.02.2011 by the takeover of the AJL which will enable me to compute income of for taxation. The AJL also earns rental income of Rs. 6.02 Crore per annum from letting out of some of the properties. Besides, the AJL is also engaged in construction of commercial building at Panchkula and at Mumbai. It is pertinent to mention here that a petition has been filed in this case before Metropolitan Court in Delhi along with evidences wherein the petitioner had estimated fair market value of properties of the AJL of more than Rs. 1600 crore (the value of the property at Bahadur Shah Zafar Marg along *with few other properties was estimated at Rs. 1600 crore by the petitioner. The Metropolitan Magistrate taking cognizance of prima facie evidence has admitted the case and issued summons to the parties in the last week of June2015. The fact suggests that fair market value of the property leased or owned by the AJL worth of few thousand crore.*

M/s Dotex Merchandise Pvt. Ltd. :

Enquiries were made in respect of loan transaction between YI and M/s Dotex Merchandise Pvt. Ltd. which has revealed following important facts:

- *It is an undisputed fact that Mr. Sunil Bhandari and Mr. Sunil Sanganeria were not only directors of M/s Dotex Merchandise Pvt. Ltd. but were directors of 50 other Kolkata based companies. Many of these companies have been found engaged in the business of providing accommodation entries as noticed during course of survey by Income Tax Department*

- *The business of providing accommodation entries stipulates issue of cheques by these companies in lieu of cash payments of equivalent amount by the beneficiary (in this case M/s Young*

Indian). These companies also charge commission for issuing cheques which varies from 1% to 5% of the cheque amount. The cheque payment is then shown as loan by these companies in the books of A/c of the beneficiary who never return back the loan for simple reason that loan represent the laundered money of the beneficiary.

- *M/s Young Indian had claimed taking loan of Rs. 1 crore from M/s Dotex Merchandise Pvt. Ltd. on 15.02.201.1 which was not returned back till date. The amount of 1 crore in this case represents own laundered money of M/s Young Indian for following reasons:*

- *M/s Dotex Merchandise Pvt. Ltd., a company known to be engaged in business of providing accommodation entries had claimed giving loan of Rs. 1 crore to M/s Young Indian.*

- *Directors of M/s Dotex Merchandise Pvt. Ltd. were directors of 50 other companies engaged in similar business where as provisions of the Companies Act and stipulate whole time director only in one company. ;*

- *The loan of Rs. 1 crore was given to M/s Young Indian, a newly incorporated company with a small capital base of only Rs. 5 lakh without any guarantee. M/s. Young Indian made a provision for payment of interest of Rs. 1,72,603 on this loan in its Balance sheet for the year ending on 31.03.2011. Apparently, no TDS has been applied on such payment. Perusal of Return of Young Indian filed with ROC for F.Y. 2013 14 shows unsecured loan of Rs. 1 crore M/s Dotex Merchandise Pvt. L.td. is standing as it is and it has not been repaid. As per Note-6 of Balance sheet of Young Indian for the year ending on 31.03.2014, even provision for interest to be paid on unsecured loan has not been made for the FY.2013-14. This shows unsecured loan of Rs 1 crore is an accommodation entry which has neither been repaid nor any interest paid on it.*

- *The alleged loan of Rs. 1 crore was interost free loan. No prudent businessman will give the loan to any unrelated party without expecting any return of such investment.*
- *Copies of bank A/c of companies engaged in business of accommodation entries typically contains deposits of cash and issue of cheque of equivalent amount. This is being ascertained in this case.*

- *No reasonable explanation for not demanding return of the loan of Rs 1 crore by M/s Dotex Merchandise Pvt. Ltd. and non-returning*

of the loan by M/s Young Indian has forth come.

Information from the ***Registrar of*** Companies :

The information were also collected from the Registrar of Company which revealed that prior to assignment of loan, there were series of appointment of Directors in the AJL and YI who were either office bearer of AICC or close associates of President of AICC as per the following details:

AJL :

- *Mr. Oscar Fernandes was appointed as Director on 17.06.2010*
- *Mr. Suman Dubey was appointed as Director on 21:12.2010*
- *Mr. Satyam Gangaram Pitroda @ Sam Pitroda on 21.12.2010*

- *It is pertinent to mention here that Mr. MotilalVora was Managing Director of AJL since 22.03.2002.*

YI :

- *Mr. Suman Dubey was appointed as Director on 23.11.2010*
- *Mr. Sam Pitroda was appointed as Director on 23.11.2010*
- *Mr. Rahul Gandhi was appointed as Director on 22.01.2011*
- *Mrs. Sonia Gandhi was appointed as Director on 22.01.2011*
- *Mr. MotilalVora, Managing Director of AJL was appointed as Director on 22.01.2011*
- *Mr. Oscar Fernandes was appointed as Director on 22.01.2011*

A careful analysis of timing and sequence of appointment of Directors in AJL and early proves that the claim of assignment of alleged loan to YI by the AICC for allotment of shares of AJL was one of the several artificially inserted steps in a predetermined scheme of taken over of the AJL by the YI.

***5. Real* nature of above referred to transactions :** *In order to understand real purpose of the transaction following findings need a careful consideration:*

- *Some of the Office bearers of the AICC, Chairman and Director of the AJL, and Directors of the Yl are common people. Most important office bearers of the AICC, Chairman and Directors of*

the AJL as well as of the Yl who have participated in the transactions are as under:

- *Mrs. Sonia Gandhi, M.P. - AICC, YI and AJL*
- *Sh. Rahul Gandhi, M.P. - AICC, YI and AJL*
- *Sh. MotiLalVora, M.P. - AICC, YI and AJL*
- *Sh. Oscar Fernandes, M.P. - AICC, YI and AJL*

- *All the transactions like purchase of loan of Rs. 90.21 crore of the AICC to the AJL by the YI, taking loan of Rs. 1 crore by the YI from M/s Dotex Merchandise Pvt. Ltd., increase of authorized capital of the AJL from 1 crore share to 10 crore shares and allotment of shares of the AJL to Yl occurred within short period of two month.*

- *All the above referred to transactions took place within two and half month from date of incorporation of the YI.*

- *The AICC sold its loan of Rs, 90.21 crore to the AJL to the YI within 20 days from date of incorporation of the YI even when deed of assignment of loan was not signed by both the parties and the YI did not have its own fund to buy the loan for Rs. 50,00,000/-.*

- *The YI claimed raising loan of Rs. 1 crore from M/s Dot ex Merchandise Pvt. Ltd., a company having history of providing accommodation entry however the claim was not proved and the enquiry made have revealed that loan of Rs. 1 crore was prima faded own laundered money of the YI as discussed earlier. It is pertinent to mention here that the loan transaction was reported in Suspicious Transaction Report of FIU, India.*

- *The sequence of these transactions carried on by entities to transactions are not as per normal commercial practices. For example in this case the AICC claimed selling loan of Rs.90.21 crore to the YI in month of December 2010 even when assignment of loan was not acknowledged and confirmed by the AJL but the YI paid sale consideration to the AICC only in month of March 2011 at the time when the AJL was already taken over the YI by allotment of 99% of paid share capital of the AJL.*

- *No reasonable explanation for selling good loan of Rs.90.21 crore to the YI at meager amount of Rs.50,00,000/- has forth come. However the amount of Rs.90.21 crore was pre-mediated amount essential for YI taking over the AJL by allotment of 9.021 shares of the AJL (99% of paid share capital) in order to full takeover of the AJL.*

- *The end result of the these transactions was takeover of the AJL a real estate company having properties of several hundred crore by the YI by making meager investment of Rs. 50,00,000/-. However, such takeover of a real estate company having assets worth of more than Rs. 1600 crore the value which was taken cognizance by Metropolitan Court of Delhi at the price of Rs. 50,00,000/- is unheard of.*

- *The YI is company registered u/s 25 of the Companies Act 1956, accordingly, takeover of the AJL, a real estate company was not a prescribed purpose of the YI.*

- *The takeover of the AJL by the YI has resulted actually in acquisition of all the immovable properties of the AJL along with right to enjoy huge rental income of several crore from some of the properties.*

- *Since more than 75% shares of the YI are held by Srnt. Sonia Gandhi, MP and Shri Rahul Gandhi, MP they were real beneficiary of the transaction.*

- *The YI did not disclosed purchase of loan of Rs. 90.21 crore in the P&L A/C for FY 2010-11. However, expenditure of Rs. 50 lakh was disclosed for purpose of "Youth Commitment to the ideal of democratic and secular society" whereas the expenditure was not incurred for the disclosed purpose but was incurred for the purpose of takeover of the AJL, a real estate company. The value of investment in the 9.021 crore shares of the AJL was also not disclosed in balance sheet of the YI for FY 2010-11 on the ground that net value of investment was negative.*

- *The celerity at which properties of the AJL at prime location of India, were acquired by the YI by making meager investment of Rs, 50,00,000/- through takeover of the AJL was possible due to common Office Bearers of these parties who were in charge of management of all these parties to transactions. This proves that all the three entities were same and one in realty but on the paper these three are distinct and different legal entities.*

- *The purchase of loan of Rs. 90.21 crore at paltry sum of Rs.50 lakh by the YI resulted into takeover of the AJL with following benefits to the YI within short period of two months:*

    - *Fair market value of immovable properties of the AJL in reality transferred to the YL.*

    - *Right in benefit of accretion in value of above referred*

immovable properties in future years transferred to the Yl. o Regular annual income from business of construction of non-commercial properties.

- *Regular annual rental income of several crore from letting out of existing building.*

Since investment of Rs. 50 lakh was made with profit motive as discussed above the transaction was adventure in nature of trade u/s 2(13) of the Act and value of above referred to benefit represent profit and gains to the YI u/s 28(iv) of the Act for FY 2010-11.

6. Summary of Escapement of Income

6.1 It is evident from the enquiry u/s 133(1) of the Act as sequel to the information received from the Investigation Wing and other sources that following undisputed sequence of events of this deal has taken place in taking over of the AJL by the YI:

- *Shri Suman Dubey, Shri Satyam Gangaram Pitroda and Mr. Oscar Fernandes, found members of M/s Young Indian became directors of the AJL on 21.12.2010 and 17.06.2010 respectively along with Mr. Motilal Vora, Chairman of M/s AJL all close associates of Smt. Sonia Gandhi.*

- *A resolution was passed on 01.09.2010 to shift registered office of the AJL to Delhi from Lucknow to Delhi.*

- *M/s Young Indian, a section 25 company was incorporated on 23.11.2010 with founder members namely Sh. Suman Dubey and Sh. Satyam Gangaram Pitroda who later transferred their shares to Mrs. Sonia Gandhi, Rahul Gandhi, MotiLalVora and Oscar Fernandes having office address of 5A, Bahadur Shah ZafarMarg, New Delhi (a properly owned by the AJL) with share capital of Rs. 5 lakh.*

- *The alleged loan of Rs. 90 crore was transferred by the AICC to M/s Young Indian on 16.12.2010 (within 25 days from date of incorporation) however the alleged loan was assigned though a letter dated 28,12.2010 to M/s Young Indian.*

- *At the time when loan of Rs. 90 crores was assigned to M/s Young Indian for Rs. 50 lakh it had no fund to make payment of Rs.50 lakh. Later, it took loan of Rs. 1 crore from M/s Dotex Merchandise Pvt. Ltd. on 15.02.2011 i.e. three months from the date of assignment of loan of Rs. 90 to A/l/s Young Indian. M/s*

AJL allotted 90,21,68,980 shares to M/s Young India on 26.02.2011 in lieu of assignment of loan of Rs. 90 crore to M/s. Young Indian.

- *M/s Young Indian paid Rs. 50 lakh to AICC on 01.03.2011 for loan of Rs. 90 crore which was assigned to it on 16.12.2010.*

- *M/s Young Indian did not disclose the transaction of loan of Rs. 90 crore at paltry sum of Rs. 50 lakh in its P&L A/c. The same was camouflaged as expenditure on prescribed object of the M/s Young Indian.*

- *The Young Indian citing object of the company obtained registration u/s 12A of the Income-tax Act on 09.05.2011 so that value of all benefit from real estate business of the AJL get tax exemption.*

- *In order to achieve object of taking over 100 percent shares of the AJL by M/s. Young Indian and Smt. Sonia Gandhi, MP and Sh. Rahul Gandhi, MP, Shri Rahul Gandhi and Smt. Priyanka Gandhi Vadhera also purchased addition 47,513 and 26,244 shares of the AJL through Rattan Deep Trust and Janhit Nidhi Trust respectively.*

The above referred to sequence of events have been summarized in the following table for the sake of clarity:

Sr. No. of Step	*Date*	*Details of Event*	*Prima Facie purpose/ remark*
1	*02.04.2008*	*Business of publication of newspaper closed and VRS was offered to all employees and the same was accepted on 02.04.2008*	*Purpose was to use property of M/s Associated Journals Limited (the AJL) worth of several thousand crore for other commercial purpose.*
2	*17.06.2010*	*Oscar Fernandes, a close associate of Smt. Sonia Gandhi and Sh. Rahul Gandhi and Member of M/s Indian*	*To facilitate takeover of the AJL by M/s Young Indian (the YI).*

		National Congress (the AICC) appointed as Director of AJL.	
3	*01.09.2010*	*Resolution was passed by the Board of Directors to shift the Registered Office of the AJL from Lucknow to Delhi*	*To facilitate takeover and to provide easy and efficient control by Smt. Sonia Gandhi and Sh. Rahul Gandhi.*
4	*23.11.2010*	*YI, a section 25 company, was incorporated with Mr. Suman Dubey, Mr. Satyam Gangaram Pitroda with paltry capital of Rs. 5 lacs having registered office at 5A, Bahadur Shah Zafar Marg, New Delhi, a property of AJL*	*It is evident from address of registered office of the YI that since its incorporation, it had started treating property of the AJL as its own.*
5	*13.12.2010*	*Rahul Gandhi was appointed as Director of the Yl.*	*Just three days before assignment of alleged loan of Rs. 90 to the YI by the AICC for paltry sum of Rs. 50 lacs.*
6	*16.12.2010*	*AICC claimed assigning its alleged loan of Rs. 90 crore with the AJL to the YI for paltry sum of Rs. 50 lacs vide assignment deed dated 28.12.2010.*	*It is not known how a loan could be assigned earlier to assignment deed dated 28.12.2010 and when the Yl had capital of only Rs. 5 lacs i.e. no capacity to pay even paltry sum of Rs.50 lacs.*
7	*21.12.2010*	*Mr. Suman Dubey and Mr. Sam Pitroda, Director of the Yl were also appointed Director of the AJL.*	*Appoint of the Director of YI as Director of AJL before allotment of the share of the AJL to the YI defies all the established norms. However, this step*

			provided total control of the AJL to trusted man of Smt. Sonia Gandhi and Sh. Rahul Gandhi (Mr. Oscar Fernandes, Mr. Suman Dubey and Mr. Sam Pitroda as director and Mr. Motilal Vora as MD of the AJL.
8	*28.12.2010*	*It was stated that loan was assigned by assignment deed dated 28.12.2010. however, no such deed was furnished before the AO and only a copy of letter dated 28.12.2010 was filed assigning loan of Rs. 90 crore.*	*It is not known that why loan was transferred on 16.12.2010 much before the date of assignment deed? The letter dated 28.12.2010 proposing assignment of loan was not even acknowledged by the AJL as token of acceptance of such transfer.*
9	*22.01.2011*	*Mrs. Sonia Gandhi, MotilalVora and Mr. Oscar Fernandes were appointed as Director of YI*	*Control of the AJL was transferred to the YJ by way of common director before allotment of shares.*
10	*15.02.2011*	*YI claimed receiving loan of Rs. 1 crore from M/s Dotex Merchandise Pvt. Ltd. to make payment of Rs. 50 lacs to the AICC*	*When the alleged loan was assigned to the Yl it had no money to pay consideration Rs. 50 lacs for assignment of such loan and surprisingly, it claimed taking loan of Rs 1 crore after three months from the date of assignment of loan of Rs.90 crore to it.*
11	*26.02.2011*	*AJL allotted 90,21,68,980 shares to the Yl in lieu of*	*Allotment of shares which constitute 99% of shares of the AJL*

		assignment of alleged loan of Rs. 90 crore to the YI for Rs.50 lacs.	*completed takeover of the AJL by the YI*
12	*01.03.2011*	*The YI paid Rs. 50 lacs to the AICC for assignment of loan of Rs. 90 crore on 16.12.2010.*	*No prudent management will assign the loan of Rs.90 crore for a paltry sum of Rs.50 lacs that too was received after a gap of more than 3 months from the date of assignment*

If one take note of the above referred to illogical sequence of events (e.g. step 8 should precede step 6, step 10 should precede step 6, step 12 should follow step 6 simultaneously, etc.) and the celerity at which these transactions were made by common office bearers of the AJL, the YI and the AICC then conclusion is simple to guess that Mrs. Sonia Gandhi and Mr. Rahul Gandhi along with their trustworthy associates have taken over property of more than Rs. 2000 crore for a paltry sum of Rs. 50 lacs.

6.2 Income from investment of Rs. 50 lakh

It is evident from findings as recorded in para-5 that above referred to transactions/ arrangements were not real and genuine and were sham transactions. A pre-mediated scheme was devised to obtain control over immovable properties of the AJL worth of several hundred crore by person who have incorporated Yl. The scheme consisted of following eight steps to takeover immovable properties of the AJL without paying any taxes on benefits accrued to the Yl and its majority shareholders.

Step 1:

It is evident from above referred to findings that as a first step the registered office of AJL was shifted from Lucknow to Delhi and a new company, the Yl was incorporated wholly owned by some important persons (Smt. Sonia Gandhi, Sh. Rahul Gandhi, Sh. MotilalVora, Sh. Oscar Fernandes) who were also Office bearers of AICC of Indian National Congress and Chairman and Directors of the AJL (Sh. MotilalVora, Chairman and Sh. Oscar Fernandes, Director).

Step 2:

The newly incorporated company had no assets of its own except

those transferred by the AICC of Indian National Congress i.e. fund of Rs. 90.21 crore which was camouflaged as sale of loan of Rs 90.21 for meager sum of Rs. 50 lakh and Rs. 1 crorewas arranged through M/s Dotex Merchandise Pvt. Ltd,, (prima facie by laundering of own money of Yl) a company with dubious antecedents and the loan of Rs. 1 crore was also flagged- as suspicious transaction in the STR by FIU, India. The amount of loan of Rs. 90.21 crore was fixed in order to insure that the amount is just sufficient to allot 99% of share of the AJL to the Yl.

Step 3:

The YI, which was registered p/s 25 of the Companies Act, 1956 for charitable purpose has no business or income of its and had not carried out any activities for the object of the company in FY 2010-11 and FY 2011-12. It has carried out only adventure which was in nature of trade to takeover real estate business of the AJL to its benefit.

Step 4:

The alleged sale of loan of Rs. 90.21 crore to the Yl was not proved through document because assignment of loan was not acknowledged and confirmed by the AJL. In this context, it is important to highlight the quantum of alleged loan of Rs. 90.21 was also a pre-fixed amount which was just sufficient to allot 99 percent shares of the AJL to the Yl. Even before transaction of purchase of loan of Rs. 90.21 crore could be complete by making payment of Rs. 50 lakh to the AICC, on 01.03.2011 the AJL increased its authorized capital from 1 crore ordinary share having (face value of Rs. 10) to 10 crore ordinary share (face value of Rs. 10) and allotted 9.021 crore shares (99% of total paid up capital) to the YI on 26.02.2011 on the basis of incomplete and undated share application form.

Step 5:

The takeover of the AJL was complete within three months from the date of incorporation. After taking over all the immovable properties of the AJL in control, the YI shifted to Herald House, Bahadur Shah Zafar Marg, New Delhi, one of prime properties of the AJL worth of several hundred crore without paying any compensation for use of space to the AJL i.e. in reality the YI used the properly on the name of the AJL as its own property.

Step 6:

The YI citing the object of the company obtained registration u/s 12 A of the Act which entitled it to exemption on its income on 09.05.2011 so that value of all benefit from real estate business of the AJL get tax exemption.

Step 7:

In order to achieve object of holding 100 percent share of the AJL by the Yl and :s majority shareholders and their relative like Sh. Rahul Gandhi and Smt. Priyanka Gandhi Vadhera have purchased additional 47,513 and 2,62,411 shares through Rattan Deep Trust and Janhit Nidhi Trust respectively.

Step 8:

The YI did not disclose the transaction of purchase of loan of Rs. 90.21 at the paltry sum of Rs. 50 lakh in P&L A/c the same was camouflaged as expenditure on project of the YI. The value of 9.021 crore shares was also not disclosed in the balance jet on the ground of insignificant investment. The reason for above referred to accounting treatment was to hide real transaction.

For the purpose of deciding true character of above referred to pre-determined scheme involving eight steps I have taken note of aforementioned peculiar facts of this case. The AJL even though continues to remain a legal entity with a right to hold properties. The true character of the above transactions has to be judged by looking at reality after removing or piercing the veil of these two companies and the AICC, as the above referred to circumstances of the case justify such an exercise. The real purpose of the loan from Indian National Congress and allotment of the share to the YI by the AJL in reality was only to transfer immovable properties of the AJL to the YI along with full right over rental income and business income from real estate business of the AJL at paltry sum of Rs.50 lakh without having paid any taxes. The above referred to artificially inserted; steps have no business purpose except for evading taxes on income earned by the Yl on the takeover of immovable properties of the AJL.

In order to hide in above referred to pre-mediated scheme of tax evasion, the YI resorted to unfair reporting of its financials like non-reporting of value of 9,021 crore shares of the AJL in its balance sheet on the ground of insignificant investment. How come full takeover of a company having property of worth of Rs. 1600 crore or more could be an insignificant investment? The answer stare at one's face that actual reason for suppressing the transaction in P & L A/c and balance sheet was a conscious efforts to avoid detection of real transaction leading to payment of tax.

In view of above, I have reasons to believe that income of the YI u/s 28(iv) r.w.s 2(13) had escaped assessment for AY 2011-12. At this point of time, cost of investment of Rs. 50 lakh by the YI is known,

however, Fair Market Value (FMV) of properties of the AJL as on 26.02.2011 are not available due to non-cooperation by parties to transactions. Even though Metropolitan Court, Delhi has taken cognize of FMV of properties of the AJL above Rs. 1600 crore, the exact FMV of the all properties on the name of the AJL in India is not known at the time of recording of reasons accordingly, the quantum of income u/s 28(iv) i.e., value of benefit accrued to the YI from these assets minus cost of investment of Rs. 50 could be not computed with the precision which shall be determined during reassessment proceeding.

6.3 Unexplained loan of Rs. 1 Crore from M/s. Dotex Merchandise Pvt. Ltd.

The YI claimed taking a loan of Rs. 1 Crore from M/s Dotex Merchandise Pvt. Ltd., Kolkata, a company known for providing bogus entries. The transaction is also notified in the STR of FIU India. The YI did not furnish any evidence of genuineness of the loan. Prima facie, it appears that the amount (Rs. 1 Crore) which appears to be money-laundering of own money of YI as discussed earlier is an unexplained credit, as the source of which has not been explained properly. The amount is required to be taxed u/s. 68 of I.T. Act. In view of these facts, I have reason to believe that income of Rs. 1 crore has escaped assessment for AY 2011-12.

6.4 Expenditure of Rs.50 lakh by the YI outside the Aims and Objects:

As discussed above, the YI has paid an amount of Rs. 50 Lakhs to the AICC for acquiring the alleged loan from the AJL. Since making payments for acquiring loan to takeover a real estate company do not form part of application of income for charitable purposes. I have reason to believe that such expenditure is to be disallowed and added back to the income of the YI for AY 2011-12. I have therefore reason to believe that income amounting to Rs.50,00,000/- has also escaped assessment.

6.4 Violation of terms and conditions of 12A:

The YI has made payment of Rs. 50 lakhs to purchase of alleged loan of Rs.90.21 crore from the AICC, resulting ultimately in taking over of 99% share capital of AJL *a company engaged in real estate business. This activity is outside the aims and objects of the Memorandum of Association of the YI. In this regard, a report is being sent to the CIT (E).*

7. Prior to 1989 section 147 provided for two grounds to reopen concluded assessments:

- *On basis of information received by the Assessing Officer*

assessment could be reopened. This had to be within four years.

- *Where facts material for. assessment are not disclosed in the course of assessment, whether within or beyond four years.*

Supervening these two requirements in the alternative, the initial condition is that the Assessing Officer has reason to believe that there is escapement of income. The first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only requirement is "reason to believe". For a period beyond 4 years in cases where an original assessment was made u/s 143(3), further requirement is the non-disclosure of material facts necessary for assessment by the assessee. However, in cases where no scrutiny assessment has been made even beyond period of 4 years but before 6 years the only requirement is "reason to believe".

In this case a return of income was filed for the year under consideration but no security assessment u/s 143(3) of the Act was made accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe as recorded above. Since the assessee has filed return of income for the year but no scrutiny assessment was made clause (b) of explanation 2 to section147 is applicable and this is a deemed to be a case where income chargeable to tax has escaped assessment. On the basis of the reasons recorded above, I have reason to believe that income chargeable to tax as noted above has escaped assessment for Assessment Year 2011-12 and it is fit case to issue notice u/s. 148 of the Act.

In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and Income chargeable to tax which has escaped assessment is more than Rs. 1 lakh necessary sanction to issue notice u/s 148 of the Act has been obtained from the Commissioner of income Tax (Exemption), Delhi vide letter No. F. No. CIT (E)/u/s151(1)/2016-17/1809 dated 10.01.2017 under amended provisions of section 151 of the Act w.e.f. 01.06.2015."

15. Thereafter, the AO has passed the assessment order u/s 143(3) read with section 147 vide order dated 27.12.2017 determining the total income at Rs.4,14,40,07,490/- after

making the following additions:-

Sr.No.	Particulars	Amount (Rs.)
1.	Benefit/perquisite computed u/s. 28(iv) in respect of the purported Fair Market Value ("FMV") of the immovable properties owned by AJL.	413,40,55,980/-
2.	Unexplained cash credit u/s 68 computed in respect of loan from Dotex Merchandise Pvt. Ltd. ("Dotex")	1,00,00,000/-
3.	Disallowance of interest paid on loan taken from Dotex	1,72,603/-
4.	Unexplained expenditure added u/s. 69C towards purported commission paid to raise the loan from Dotex	1,00,000/-
5.	Expenditure not treated as spent on the objects of the Appellant	50,00,000/-

GROUND-WISE DISCUSSION AS RAISED BY THE APPELLANT IN THE VARIOUS GROUNDS OF APPEAL INCORPORATED (SUPRA)

GROUND NO.1

16. In Ground No.1, the appellant has challenged that the assessment order passed by the present AO is without jurisdiction.

17. Before us, ld. Senior Counsel for the appellant, Shri Saurabh Soparkar pointed out that here in this case, the appellant had surrendered its registration u/s 12A and 12AA vide letter dated 21.03.2016, addressed to DIT (E) for suo moto cessation of its registration u/s 12A/12AA. As a consequence, assessee was no longer a section 11 exempt entity for the purpose of Income-tax Act w.e.f. 22.03.2016. From AY 2017-18, the appellant has been filing its return with Company Circle, Delhi and not the present AO. Now, despite this change in jurisdiction, the appellant has received notice u/s 148 for AY 2011-12 on 10.01.2017 from ACIT (E) who had no jurisdiction over the appellant though he admitted that CIT (E) had cancelled

the registration vide its order dated 26.10.2017 which is post issuance of notice u/s 148 withdrawing the exemption u/s 11, which AO has also taken note in his impugned order in para 22. Despite noting this fact, AO continued with the reassessment proceedings u/s 147 even though assessee had surrendered its registration in March 2016, therefore, present ACIT (E) did not had jurisdiction over the assessee. According to him, the issue was also raised before the AO who has rejected this contention. Thus, entire assessment order and the reassessment proceedings are bad in law. In support, he relied upon the judgment of **Hon'ble Delhi High Court in the case of CIT vs. S.S. Ahluwalia 46 taxman.com 169** (copy of which has been placed in the Legal Paper Book-I) wherein Hon'ble Court held that in case assessee has shifted his residence or place of his business or work etc., AO of place where assessee has shifted or otherwise, will have the jurisdiction and it is not necessary that in such case, an order u/s 127 is required to be passed. He further relied upon the judgment of **Hon'ble Rajasthan High Court in case of CIT vs. Poonam Chand Surana 221 Taxman 151,** wherein it was held that a notice u/s 148 issued by the Income-tax authorities, who has no jurisdiction over the assessee at the time when the said

notice was issued, is bad in law and void. He also relied upon the following decisions:-

(i) *S.N. Bhargava v. ITO (147 ITD 306)(Agra - Trib.)*

(ii) *Anant Concrete Products Pvt. Ltd. vs. ITO (ITA.No.1632/Del./2017)*

(iii) *DCIT vs. Shri Ram Agarwal (ITA No.756 & 757/LKW/2011)*

18. Mr. Soparkar further submitted that ld. CIT (A) has rejected this ground for the reason that assessee has raised this issue for the first time vide letter dated 18.07.2017 which is after 30 days of issuance of notice u/s 143(2) issued on 21.03.2017 and accordingly, the objection is not maintainable being barred by limitation u/s 124(3)(a).

19. Rebutting the said observation of the ld. CIT (A), he submitted that it was factually incorrect, because the appellant did challenged the jurisdiction and notice u/s 143(2) at the first instance vide letter dated 29.03.2017 and it was objected in the following manner :-

"Needless to say, this is without prejudice to all our rights and contentions in the matter including that your aforesaid notice u/s. 148 of the Act is ab initio or otherwise void, illegal and inoperative"

He further pointed out that the Appellant had in its first reply dated 9.2.2017 to the notice issued u/s. 148 dated 10.1.2017 stated as under:

> *"May we hasten to mention that this is without prejudice to all our rights and contentions in the matter to challenge even your aforesaid notice u/s. 148 of the Act being ab initio or otherwise void, illegal and inoperative."*

Hence, the Appellant had placed its objection on record in its first reply itself, which was within 30 days of issue of the notice. It is submitted that limitation u/s 153(3)(a) is not applicable in the present case.

20. Apart from that, he submitted that u/s 124 (4), where the assessee has raised the objection of jurisdiction, the AO, if not satisfied with the claim, then it is mandatory required under the Act to refer the matter for determination of jurisdiction to higher authorities under sub-section (2) of section 124 before continuing with the proceedings. In support of this contention, he strongly relied upon the decision of **Abhishek Jain vs. ITO 94 taxman.com 355 (Del.)**. Thus, he submitted that the impugned assessment proceedings as well as assessment order is bad in law and requires to be quashed on this ground.

21. On the other hand, ld. Special Counsel for the Revenue, Mr. G.C. Srivastava strongly objected to the aforesaid contentions and stated that statutory recognition of a company as a charitable institution or its statutory entitlement for exemption under Section 11 of the Act is not something which can be obtained or given-up on the whims and fancies of the assessee. The registration was granted as early as in 2011 and since then, the jurisdiction had been with the Deputy Commissioner of Income Tax (the A.O.) in the Directorate of Exemption, New Delhi. The Appellant also filed its return of income with the said Directorate and no challenge to the jurisdiction arose at this stage. It was only at a later stage when certain enquiries began against the Appellant, that it started building up case to create defense. The registration was later found to have been obtained by mis-representation of facts as held by the Hon'ble ITAT in Young Indian v. CIT (Exemption), New Delhi, ITA No.7751/Del/2017, wherein the cancellation was upheld.

21.1 In the backdrop of the facts and circumstances of the case, it needs to be appreciated that the jurisdiction over the Appellant was exercised by virtue of the provisions contained in

Section 120 of the Act, more particularly, sub-Section (3) thereof. It is submitted that it is not a case of territorial jurisdiction based on residence or place of business, but it is a case of jurisdiction assumed on the basis of registration granted by the Revenue on the application of the Appellant-Assessee, which brings them into a class of assessees or class of cases.

21.2 The registration has been subsequently cancelled and the assessment relevant to those years for which the Appellant had already claimed exemption was re-opened and relevant proceedings were commenced. To suggest that the cancellation of registration or the notice under Section 148 denying the exemption and assessing the income in the facts of the case did not fall in the jurisdiction of the A.O. in the Directorate of Exemption is simply ridiculous.

21.3 In this regard, it is imperative to note that an act of surrender of registration is not permissible under the law for the reason that the registration granted was not any kind of award or some gratuitous action on the part of the government which could be rejected by the recipient or surrendered after the receipt. The order of cancellation of registration is a statutory order

passed on the basis of certain facts leading to the breach of the conditions of registration and such breach cannot be undone by voluntary surrender of registration. The cancellation of registration has to be followed in accordance with the statute. It would not be out of place to mention that even such surrender was not bonafide as it was post enquiries conducted by the Revenue and the materials found which clearly showed that the Appellant was not entitled for registration at all.

21.4 As regards the judicial precedents referred to by the Appellant, in this context, he submitted that those cases discuss territorial jurisdiction and not jurisdiction based on a class of persons or a class of cases. The Appellant did not challenge the jurisdiction of the A.O. assumed under Section 120 of the Act, read with relevant notifications in this regard. The Appellant is seeking to derive the benefit of the objections raised against the notice under Section 148 and those objections challenge the notice being void, illegal and inoperative for reasons which are subject-matter of Ground No. 2 of this appeal. However, there is no challenge to the jurisdiction with reference to Sections 120 or 124 or even 127 of the Act. Mere challenge of notice issued under

Section 148 in general terms will not necessarily mean that this was a challenge of jurisdiction when no objection to that effect was raised. The nature of the challenge against notice under Section 148 has been elaborated by the A.O. in Para 3.1 of his order of assessment. He thus submitted that it was for the first time in a writ petition before the Hon'ble High Court that the Appellant took the ground of territorial jurisdiction. However, the said writ petition was dismissed as withdrawn.

In view of the above, the contentions raised in Ground No.1 are not tenable.

DECISION ON GROUND NO.1

22. We have heard the rival submissions and also perused the relevant facts on record. The appellant's contention has been that, ***firstly***, since it has surrendered its registration u/s 12A and 12AA vide letter dated 21.03.2016, therefore, it was no longer an entity that required exemption u/s 11 and consequently DIT (E) or ACIT (E) did not had jurisdiction at the time of issuance of notice u/s 148 on 10.01.2017. ***Secondly***, once the assessee had raised the objection before the AO

regarding its jurisdiction then it was incumbent upon the AO to refer the matter to higher authorities for determining the correct jurisdiction. However, we are unable to subscribe to the contention raised by the ld. Senior Counsel for the appellant before us for the reason that, it is an undisputed fact that after granting of registration u/s 12A/12AA by the ld. DIT (E) vide certificate & order dated 09.05.2011, thereafter the assessee has been regularly filing its return with Directorate of Exemption including the AY 2011-12. Upto the stage of issuance of notice u/s 148 on 10.01.2017, ld. CIT (E) had not passed any order cancelling the registration which was granted to the appellant u/s 12AA and withdrawing the exemption u/s 11 though from AY 2011-12 onwards. Since grant of registration till the cancellation of registration, the jurisdiction of the AO lies with Exemption circle, therefore, at the time of issuance of notice u/s 148 the jurisdiction was with Exemption circle. The registration has been cancelled even for the assessments relevant for those assessment years for which it had claimed exemption. The assessment for AY 2011-12 has been reopened in the period when statutorily the appellant was holding certificate of registration u/s 12A/12AA. Once company has been recognized as a charitable institution by

grant of registration u/s 12A, then such registration can be cancelled only by an authority under the law and not by voluntary act of the assessee. The act of suo motto surrender of registration is neither permissible under the law nor is dependent upon the voluntary act of the assessee. Even if the assessee had filed letter surrendering its registration, it has no consequence till competent authority acts upon it and accepts the surrender letter and passes the order of cancellation. The order of cancellation of registration is a statutory order which is based on the foundation of certain facts coming on record during the breach of conditions for which registration was granted and such a breach cannot be reckoned from voluntary surrender of registration. The entire process has to be followed in accordance with the statute. Merely because the assessee had filed a letter on 21.03.2016 surrendering its registration u/s 12A or giving its benefit of section 11, does not mean that from the date of the letter, the jurisdiction of the AO automatically got changed. As stated above, at the time of issuance of notice u/s 148, the ACIT or DCIT, Circle Exemption, New Delhi had the valid jurisdiction not only to initiate the proceedings u/s 148 but also pass the assessment order.

23. Insofar as the contention raised by the appellant that, since the assessee had challenged jurisdiction, it was incumbent upon the AO to refer it to the higher authorities in terms of section 124(4). Such a contention is not tenable on the present facts for the reason that the jurisdiction over the assessee lied with the AO, Exemption Circle by virtue of provisions contained u/s 120 of the Act, because here it is a case of jurisdiction assumed by granting registration by the Income-tax Department on the application filed by the assessee which falls within the definition of ***"class of assessee and class of cases"*** as defined under clauses (c) & (d) of sub-section (3) of section 120. The appellant ostensibly falls into a specific category of cases and it is not open for the assessee on its own remove itself from specific category of cases and then contend that it should have been assessed by different Assessing Officer. The matter of jurisdiction is not by the choice of the assessee *albeit* it depends upon the specific provisions contained in sections 120 & 124. Thus, we do not find any merits in the contention raised in ground no.1 that Assessing Officer did not had jurisdiction either to issue notice or pass assessment order and the same is thus dismissed.

GROUND NO.2

24. The appellant has challenged the notice u/s 148 and reopening of assessment mainly on the ground that, approval from the CIT (E) u/s 151 was obtained prior to the recording of reasons and therefore, it tantamount of rendering the entire proceedings u/s 147/148 bad in law. Apart from that, assessee has also challenged that approval of CIT (E) u/s 151 was mechanically obtained and reopening has been done in the absence of new tangible material and for roving and fishing enquiry which is impermissible in law.

25. Various contentions has been raised by the ld. Senior Counsel for the assessee before us, same are being discussed hereinafter.

26. First of all, Shri Saurabh Soparkar referring to paper book submitted by the Revenue pointed out that from the copies of papers relating to reopening of proceedings, it can be observed that they have filed three copies of the reasons for reopening viz. :

- The first copy is at pages 5 – 30 of the Revenue PB which is a part of the 'proposal' for reopening sent to the JCIT/CIT for approval (as per the index of the PB). The said reasons are

neither signed nor dated (Please see page 30 of the Revenue PB).

- The second one is at pages 53-76 of the Revenue PB, which too is the part of the said 'proposal' as existing in the file of CIT(E) (as per the index of the PB). The said reasons are signed by the AO as 'draft' on 9.1.2017 which is clear at page 76.

- Lastly, the third reasons are attached at pages 77-100 of the Revenue PB, which is stated in the index to be the copy of the reasons recorded and the same is signed by the AO on 10.1.2017 (please see page 100) and it specifically mentions in the last para that the approval of the CIT(E) has already been obtained. The said para reads as under:

> "*In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lakh necessary sanction to issue notice u/s. 148 of the Act has been obtained from the Commissioner of Income Tax (Exemption), Delhi vide letter on F. No. CIT(E)u/s151(1)(2016-17/1809 dated 10.01.2017 under amended provisions of section 151 of the Act w.e.f. 01.06.2015.*"

26.1 From the above, it would be observed that in the present case, the reasons that were sent for approval by the AO to the CIT (E) were neither signed nor dated or at the most,

the same were signed as 'draft'. Such unsigned or draft reasons cannot be regarded as the final reasons recorded by the AO. Hence, what the AO sent to the CIT(E) for approval is (the reasons at pages 5-30 and 53-76) only a 'proposal' and not a recording of belief of the AO that income has escaped assessment. The reasons were recorded by the AO only on 10.1.2018 'after' seeking approval from the CIT (E), which is not permissible in law. Accordingly, it has been submitted that, since none of the three reasons have been validity in law, all of them are invalid and accordingly, reopening based on the same ought to be held as void. As regards the first two reasons at pages 5-30 and 53-76 of the Revenue PB, it was submitted that where reasons are typed on a plain paper, which is neither signed or dated or the same are signed as draft, the same cannot be regarded as 'recording of satisfaction' and the same is invalid. Accordingly, the first two reasons at pages 5-30 and 53-76, which are not signed or signed as a 'draft' are not valid reasons.

27. In support of his contention, Ld. Counsel relied upon the following decisions wherein it was held that unsigned reasons cannot be a valid document:-

"3.6 Prahalad Singh vs. ITO (ITA No. 3375/DEL/2O17) (pages 3-12 of LPB V):

The relevant extract of the decision reads as under: "7. It can be seen from the above that this document is not signed by the AO. The Hon'ble Punjab and Haryana High Court in the case of Atlas Cycle Industries Ltd Vs. CIT reported at 180 ITR 0319 has held that:

"the impugned reopening is bad in law for the reason that the reasons recorded is without any signature of the AO as is clear from the copy of reasons recorded supplied to the assessee in response to RTI application. In such a situation, present is a case where notice u/s 148 has been issued without recording reason".

8. A similar view was taken by the Hon'ble Calcutta High Court in the case of B.K. Gooyee Vs. CIT [1966] 62 ITR 109 [Cal] wherein on identical facts, the Hon'ble High Court has held that :

"A notice under Section 22(2) of the Act which initiates the assessment proceeding requires a signature. Service of valid notice is pre condition to the jurisdiction of the ITO. Non signing of a notice does not come within the formula of an obvious clerical mistake. There cannot be any waiver by the assessee of an irregularity of an unsigned notice."

9. The Hon'ble Madhya Pradesh High Court in the case of Umashankar Mishrareported in [1982] 136 ITR 330 has held that:

"Section 282 of the Act provides that a notice under the Act may be served on the person named therein as if it were a summons issued by a court under the Code of Civil Procedure, 1908. Sub-rule (3) of Rule 1 of order 5, CPC, provides that every summons shall be signed by the judge or such officer, as he appoints. In view of this provision, it must be held that the notice to show cause why penalty should not be levied issued by the ITO should have been signed by the ITO and the omission to do so invalidated the notice."

10. The judgment of the Hon'ble High Court of Calcutta in the case of B.K. Gooyee [supra] was relied upon and the Hon'ble Madhya Pradesh High Court further held that:

"The provisions of section 292B of the Act intended to ensure that an inconsequential technicality does not defeat justice. But, the signing of a notice under Section 271(1)(a) of the Act is not merely an inconsequential technicality. It is a requirement of the provisions of Order 5, Rule 1(3) of the CPC, which are applicable by virtue of Section 282 of the Act. Under the circumstances, the provisions of Section 292B of the Act would not be attracted in the instant case and the Tribunal in our opinion, was not right in holding that the notice issued under Section 271(1)(a) of the Act was a valid notice in the eye of law."

11.On the strength of these judgments of the Hon'ble High Courts, the reopening of assessment is quashed."

3.7 The foregoing decision has been affirmed by Punjab and Haryana High court vide order dated 27.02.2020. (pages 13 and 14 of LPB -V) wherein it was held as under:

"We find that the order of the Tribunal is correct. The mere fact that reasons exist on the file cannot sanctify them and the only way to ascertain whether the requirements under Section 147 of the Act have been met out would be at the very least that the assessing officer sign the same. Without signatures, the document becomes anonymous piece of paper to which no credence can be given. The action under Section 147 of the Act is quasi-judicial action and if it is permitted that such action can be done as anonymously, it would have very serious consequences in other cases also. If the Court accepts such pieces of paper who can tomorrow stop an assessee from substituting a signed paper with another unsigned paper?
6. Moreover the reasons are undated, hence do not establish that they were recorded prior to issuance of notice.
7. In the circumstances, the appeal is dismissed."

3.8 ACIT vs. Kartik Patel (I.T.A. No. 1682/DEL/2016) (pages 15 to 59 of LPB -V):

The relevant extract of the decision reads as under:

"Besides, on the satisfaction note, both X1 & X2, the name of the searched company M/s Sheela Foam Pvt Ltd is noted on top, meaning thereby that the satisfaction was recorded in the case

of SFPL on 28.08.2013 when notice u/s. 153A was issued to SFPL, but there is no satisfaction recorded in the case of the appellants (Kartik Patel Group family members). In this view of the matter, and in terms of the AO's reply that "the undersigned is unable to explain the unsigned/undated copies of satisfaction notes as claimed by the assessee", the satisfaction enclosed with the AO's letter F.No.DCIT/CC- 11/2013-14/1634 dt. 06.01.2014 sent to the assessee cannot be considered as valid satisfaction of the AO. We further note that since the AO has mentioned in his reply dt. 14.01.2016 that "The assessment records as available in this office were sent as desired by your goodself, it is necessary to mention that the assessment folders of all the five cases of the group was sent back to the AO on 06.01.2016 and the AO's reply is dt. 14.01.2016.

3.9Vijayalakshmi Oil Industries v. ITO [1985] (155 ITR 748)(Kar.) (Pages 60-62 of LPB-V):

The relevant extract of the decision reads as under:

"9. But, Sri Srinivasan strenuously contends that in a contemporaneous 'notes' recorded on the very same day, the ITO had found that he had received information as to a fact on driage under section 147(b) and, therefore, the notice issued by him under section 148 should be sustained as one really made under section 147(b) as was done by me in T.M. Kousali v. Sixth ITO [Writ Petition No. 4850 of 1978, etc., decided on 14/15-3-1984].

9. Sri Prasad contends that the 'notes' written by the ITO cannot be construed as recording his reasons under section 148(2) and cannot be relied on by this Court to sustain the notice issued by the ITO.

10. In the very case file, there is a 'notes' made by the very ITO in his own handwriting on the very same day, which reads thus:
"Notes
On a scrutiny of the stock account and other details it is seen that the true driage claimed at 18,142 kgs. is too high compared to other cases as under :

1. *Ennar Industries 0.3%*
2. *Neelakanteswara Oil Mills 1.0%*
3. *P. Govindasetty & Sons 1.3%*

The driage claimed by the 'a' firm works out to 4.04% and comparatively high. No reasons have been assigned for such a high percentage of driage. The assessment is, therefore, re opened under section 147(b)."

Whether this 'notes' can be construed as the ITO recording his reasons under section 148 that alone gives him jurisdiction to reopen the concluded assessment proceeding, is the first question that calls for my determination.

11. A 'note' or 'notes' is generally prepared by a subordinate or even by the very same officer, as in the present case, as an aide memoire or to help the memory or enable a superior officer to examine the same and pass his orders thereon. A 'note' even when the same is prepared by the very same officer and even

placing the most charitable construction on the same, cannot be elevated to or treated as the ITO recording his reasons under section 148, which is a statutory requirement. In a proceeding under article 226 of the Constitution this Court is empowered to examine only the reasons recorded by the ITO and cannot travel beyond the reasons recorded by him. On the other hand, the acceptance of the contention urged by Sri Srinivasan calling for an examination of the 'notes' which is also fraught with grave dangers, would render the requirements of section 148 otiose and would really convert this Court into a Court of appeal. On any legal principle, I cannot treat the notes prepared by the ITO as one recording his reasons as required by section 148.

12.In Kousali's case (supra) , on which strong reliance is placed by Sri Srinivasan, this Court sustained the notice on an examination of the very reasons recorded by the ITO in that case and not on any 'notes' prepared by the ITO. But, that is not the position in the present case. Hence, the true ratio in Kousa's case (supra) does not bear on the point and assist Sri Srinivasan.

13. When once I hold that the 'notes' had to be excluded, it follows that there are no reasons recorded by the ITO to justify the reopening of the concluded assessment under section 147(b). From this it follows that the notice cannot be sustained either under section 147(a) or (b) and is liable to be quashed."

3.10 B.K. Gooyee v. CIT (62 ITR 109) (Cal) (Pages 67-74 of LPB-V):

The relevant extract of the decision reads as under:

"It is now necessary to consider whether the legislature or the Rules made under the Act require that the notice under section 34(1) must not only be in writing but also bear the signature of the Income-tax Officer.....Therefore, in my opinion, on a consideration of the second part of section 63(1), read with Order 5, rules 1 and 10, the signature on a notice is not only necessary but an integral part of the notice."

3.11 Mahendra C. Gala vs. ACIT (ITA No.6590/Mum/2013) (Pages 75-78 of LPB-V):

The relevant extract of the decision reads as under:

"Before us, Authorised Representative (AR) stated that the assessee was provided an unsigned and undated reasons, that the assessee had objected the re-opening, that the objections were not dealt by the AO, that FAA had not considered the factors relevant for deciding the appeal. He referred to page no.29 of the paper book. He relied upon the cases of German Remedies Ltd. (287 ITR 494), GKN Driveshaft (India) Ltd. (259 ITR 19). Departmental Representative (DR) supported the order of the FAA.

... ...

We find that in the reasons supplied to the assessee, at the time of issuing unsigned reasons the AO had not mentioned anything as what was the basis of arriving at the conclusion of escapement of income, that also in the reasons recorded he had not mentioned that the escapement of income was due to

failure of the assessee to disclose truly and fully the material facts, that the assessee had raised objection to re-open the matter, that the AO did not deal with the objections and passed the order, that the FAA called for report from the AO, that the reasons mentioned in the report and submitted to the FAA were different from the reasons supplied to the assessee, that the AO himself admitted that the assessee was supplied only gist and same was unsigned, that the AO had not annexed the statements of Guptas while submitting the report to the FAA- though he had mentioned that same are annexed, that the FAA ignored the basic issue raised by the assessee with regard to the jurisdiction. Considering the various factors-like supplying unsigned reasons, existence f two different sets of reasons for issuing 148 notice, not adjudicating objections raised by the assessee, reopening of assessment after a very long period, relying on the statements of third party that were not confronted to the assessee etc.- we are of the opinion, that the notice u/s.148 had been issued without the jurisdictional foundation u/s .147 being available to the AO and that the notice and the subsequent proceedings were without jurisdiction. Holding the assessment invalid, we reverse the order of the FAA. Effective ground of appeal is decided in favour of the assessee."

3.12 Sri Pinnamaraju Venkatapathi Raju vs. JCIT (I.T.A. No. 132/Vizag/2016) (Vishakapatnam) (Pages 79-85 of LPB-V):

The relevant extract of the decision reads as under:

"In the instant case, on verification of the assessment record, it is noticed that the A.O. typed the reasons but not signed the order sheet, thus there are no reasons recorded for reopening of assessment as required u/s 148 of the Act. The A.O. neither complied with the statutory requirement of recording the reasons for issue of notice nor complied with the law laid down by the Hon'ble Supreme Court in the case of reassessment proceedings. Therefore, the notice issued u/s 148 is bad in law accordingly same is quashed and the consequent assessment order made u/s 147 r.w.s. 143 (3) is annulled and the appeal of the assessee is allowed."

3.13 Sri Sesha Sai Township P. Ltd. vs. ACIT (I.T.A.Nos.301 & 302 / Viz / 2015) (Vishakapatnam). (Pages 86-104 of LPB-V):

The relevant extract of the decision reads as under:

"17. We have heard both the parties and perused the material placed on record. From the perusal of the order sheet both for the A.Y. 2007-08 and 2008-09, it is evident that though the reasons for issue of notice u/s 153C was typed on plain paper, it was not signed by the officer who has recorded the satisfaction and it was also undated. Similarly, the direction for issue of notice u/s 153C was also remained unsigned and undated. The order sheet is a manually maintained record and not a digital document which does not require signature. An order or endorsement required to be dated and duly signed by the officer who is recording the reasons being satisfied that the case is fit case for taking action u/s 153C. An order, without having

signature of the person, who recorded the satisfaction or issued the direction for taking action loses its relevance and to be treated as invalid. An order without signature is not an order for execution or for implementation. In the case of the assessee, there was no signature of the AO who recorded the reasons for issue notice and for direction for issue of notice u/s 153C. Therefore, it is to be construed that no reasons were recorded by the AO as required u/s 153C of the Act. As per section 153C it is mandatory on the part of the AO to record satisfaction for issue of notice u/s 153C."

3.14 Without prejudice, if reasons are dated 9.1.2017 are the valid reasons, then the said reasons were not provided to the Appellant (as what was provided to the Appellant was reasons dated 10.1.2017) and therefore, reassessment proceedings are bad in law and without jurisdiction. In this regard, reliance is placed on the following decisions:

S.No.	*Case law/proposition*	*Page No.*
1	*CIT v. IDBI Ltd. [2016] 76 taxmann.com 227 (Bombay)*	*1-4 of LPB IV*
2	*CIT v. Videsh Sanchar Nigam Ltd.[2012] 340 ITR 66 (Bombay)*	*5 of LPB IV*
3	*PCIT v. Jagat Talkies Distributors [2017] 85 taxmann.com 189 (Delhi)*	*6-12 of LPB IV*

3.15 As regards the third reason on pages 77-100 of the Revenue PB, it is submitted that the said reasons were recorded after seeking approval from the CIT(E) due to which even these reasons are invalid. It is submitted that the due process of law, as laid down in section 151 of the Act is as under:

"151. (1) No notice shall be issued under section 148 by an Assessing Officer, after the expiry of a period of four years from the end of the relevant assessment year, unless the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner is satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of such notice."

28. Shri Soparkar further submitted that process of law as laid down under section 151 of the Act is that the assessing officer should record the reasons which would be independently verified by the Commissioner and if he is satisfied with the reasons so recorded by the assessing officer he would hold it to be a fit case for issue of notice under section 148 of the Act. The sanction by the CIT (E) ought to be on definitive reasons and not tentative reasons. Further, recording of reasons after obtaining approval from the CIT (E) has never been contemplated in the law. It is the duty of the AO and AO alone to record the reasons. In the present case, the AO merely had a proposal for reopening based on 'draft'

reasons which he finalised only after the same was approved by CIT (E). Accordingly, he submitted that the reason so recorded after obtaining approval is also bad in law.

29. In support, Shri Soparkar relied upon the decision of **Hon'ble Calcutta High Court in the case of Asiatic Oxygen Ltd. vs. DCIT 372 ITR 421**. Further, it was held that in absence of reasons recorded, the commissioner could not have recorded satisfaction u/s 151. He further submitted that since the notice dated 10.1.2017 which was finally recorded and signed by the AO was after CIT(E) accorded its approval, the AO, by his own, has not formed any 'belief' in the present case that the income has escaped assessment. The said 'belief' is based on satisfaction borrowed from the CIT(E). It is settled law that reopening based on borrowed satisfaction is not permissible. Again in support of his contention, he relied upon the decision of **Hon'ble Delhi High Court in case of CIT vs. SPL's Siddhartha Ltd. 345 ITR 223** wherein Hon'ble Court has held that, *firstly*, satisfaction of one authority cannot be substituted by the satisfaction of other authority and *secondly*, it is a mandatory condition that the

satisfaction recorded should be independent and not borrowed or dictated satisfaction. He also referred to following decisions:-

S.No.	*Case Law*	*Page No.*
1	*PCIT v. Meenakshi Overseas (P) Ltd (395 ITR 677)(Del)*	*108-117 of LPB-V*
2	*CIT v. Shankardas B Pahajani (93 taxmann.com 248)(Bom HC)*	*122-124 of LPB-V*
3	*PCIT v. Shodiman Investments (P) Ltd (93 taxmann.com 153)(Bom HC)*	*125-129 of LPB-V*

30. Alternatively, he submitted that approval from CIT (E) u/s 151 was mechanically obtained. In support, he relied upon the following decisions:-

S.No.	*Case Law*	*Page No.*
1	*Signature Hotels Pvt. Ltd. Vs. ITO (338 ITR 51) (Del.)*	*62-67 of LPB-I*
2	*Adani Ports and SEZ Ltd Vs. ACIT (35 taxmann.com 338)(Guj.)*	*68-71 of LPB-I*
3	*CIT Vs. S. Goyanka Lime & Chemicals Ltd. (2015) 56 taxmann.com 390 (MP)*	*72-73 of LPB-I*
4	*CIT Vs. S. Goyanka Lime & Chemical Ltd. (2015) 64 taxmann.com 313 (SC)*	*74 of LPB-I*
5	*Shri Tushar R. Jagtap vs. ACIT (ITA Nos.725 to 728/PUN/2015)*	*75-98 of LPB-I*

31. Before us, Ld. Special Counsel on behalf of the revenue had submitted that the said reasons have been recorded in accordance with law. He has stated that the only grievance of the Appellant is that the reasons sent to Commissioner are not signed. However, this fact is not relevant and what is relevant is whether there is any material defect which is not there is present case. He stated that there aren't any two or three reasons and that all are copies of the same reason. He further stated that the reason that had gone for approval, though not signed, the covering letter and the proforma attached to the same was signed. He also stated that the reason was unsigned or signed as draft since the last para of the reason was incomplete. He further stated that this was done by the AO because this is the general practice in the tax department and for this, he has relied on an article dated April 27, 2018 referring to a standard operating procedure.

32. Rebutting on this point, Mr. Soparkar submitted that the action of the AO cannot be justified on the basis of general practice in the tax department and no such instance has been brought on record that same practice was followed by Income-tax

Department, *albeit* the question whether the reasons are valid or not needs to be decided based on the provisions of the Act and law in force and the same cannot be based on the general practice followed in the tax department. The general practice or any internal standard operating procedure cannot have any preference or relevance unless it has statutory recognition which is clearly not the case herein. Regarding reference to an online article to support his argument, he submitted that there was no evidentiary value whatsoever and it was applicable to a subsequent period and it has no standing for the year under consideration. Regarding the reasons initially mentioned as 'draft' because if approval does not come, reason would not become final, he submitted that the said statement itself shows the tentativeness and non-finality of the reasons sent for approval. Under the provisions of the Act, in a case where the Commissioner does not grant approval to the reasons recorded, it does not mean that the reasons itself disappear and that the belief which the AO had formed becomes non-existent. Where approval is not provided by the Commissioner, then the reopening would not take place, however, the action of the AO of recording the reasons would not efface or disappear as if it never

existed. Accordingly, he submitted that in the present case, admittedly the AO has finalized his opinion and recorded the reasons only after obtaining the approval from the CIT(E), which vitiates the entire process and makes the reopening bad-in-law.

33. Ld. Special Counsel for the Revenue has also stated that even though the reasons are not signed, however covering letter in the proforma in the same has been signed to which the ld. Sr. Counsel for the assessee submitted that the reasons recorded would necessarily require to be signed and unless the document is signed, the same is not reckoned as "recorded". Here the grievance of the appellant is not that the reasons sent to the CIT (E) is not signed but that the reasons are not recorded by the AO before seeking approval, because the language of section 148 (2) clearly states that AO shall record his reasons and section 151 requires Commissioner's sanction on the reasons so recorded. Here, in this case, no reasons have been recorded by the AO on which CIT(E) has granted his approval. No cognizance can be taken of an unsigned document while according his approval. A draft unsigned reason is in fact as good as no reason at all. Insofar as the contention of the Department that all the three

reasons are one and the same in all respects and accordingly, it does not matter whether it was signed or not since ultimately the same was signed by the AO. In this regard, he submitted that whether or not the reasons remain same or not is irrelevant, because fact of the matter is that the AO did not form any belief that any income has escaped assessment before the CIT (E)'s approval, and the belief was formed and reason was recorded only subsequently.

34. The next line of argument put forth by Shri Soparkar was that reasons recorded by the AO are sans any new tangible material coming on record to enable the formation of belief that income had escaped assessment as envisaged u/s 147 of the Act. He pointed out certain factual inaccuracy which, according to him, is incorrect which have been enumerated by him in the following paras:-

"3.36 The AO has recorded on page number 11 of the reasons for reopening dated January10, 2017 as follows:

"In order to ascertain factual position certain inquiries were conducted, which included calling for information/records from the office of the DCIT, Circle 6, Lucknow. Information received from AO revealed that Young Indian received 9,02,16,898

ordinary shares of AJL which forms almost 99% of the total share capital of AJL. However, a perusal of the balance sheet for the relevant financial year i.e. for the year ending 31 st march 2011 revealed that M/s. YI has not shown 9.02 crore shares of AJL in the Balance sheet and investments were disclosed at Nil value in schedule 4."

3.37 It is submitted that the above statement in the reasons is factually incorrect. The aforementioned information on the shares acquired along with the number of shares was duly reflected in Schedule 4 as also in Note 1 of Schedule 7 of the audited Balance Sheet of the Appellant for the year ended March 31, 2011 (Page 56 of the PB-I). The said Note read as under:

"In pursuit of its objects, the Company acquired loan of Rs. 90,21,68,980 by The Associated Journals Ltd. ("the said Company"), presently engaged in achieving a recast of its activities so as to have its main object congruent to the main object of the Company, for a consideration of Rs. 50 lacs. As a part of restructuring exercise of the said Company, the said loan was converted into 9,02,16,898 Ordinary shares of Rs. 10 each fully paid. Since said acquisition of treated as application on the objects of the Company (and accordingly, treated in the financial statements of the Company), the same has not been reflected as 26 AS investment in shares. Besides, even if the shares were to be treated as an asset ("investment"), having regard to the fact that the net worth of the said company is negative, recognizing the

entire cost as "diminution in value" would result in an equivalent charge to the Income & Expenditure Account."

3.38 As would be observed, notes to accounts in the financial statements of the Appellant for the year ended on March 31, 2011 gave complete details of the transaction of acquisition of a loan and conversion of same into equity shares, in respect of which the Ld. AO has sought to reopen the assessment of the Appellant. It is humbly submitted that there is no new information that the AO has come across for the purpose of reopening. The reasoning of the AO that the said transaction was revealed due to certain investigations/inquiries is misleading and erroneous. It is humbly submitted that if the foregoing note was not given in the financial statements of the Appellant, the said transaction may probably not have been picked up at all.

3.39 Therefore, the Appellant most humbly submits that there being no new tangible material before the AO to evidence the alleged escapement of income, re-opening is bad-in-law.

3.40 It is further submitted that even though the original assessment was made u/s. 143(1) of the Act, the law is now settled that even in such cases, the reopening cannot be done in absence of any new material. In this regard, reliance is placed on the following decisions:

3.41 Pr. CIT v. Tupperware India (P.) Ltd. [2016] (236 Taxman 494) (Pages 106-111 of LPB-I), wherein after discussing many judgments on this issue, it has been held that even in the case of

original assessment order having been passed u/s. 143(1), it is mandatory
for the AO to have in its possession, fresh tangible material before reopening of the case.

3.42 Similarly, in the case of CIT vs. Orient Craft Ltd. (354 ITR 536) (Del) (Pages 112 -120 of LPB-I), it was observed by Hon'ble Delhi High Court that since there was no new tangible material which came to possession of AO subsequent to issue of intimation, therefore, it was an arbitrary exercise of power conferred u/s. 147. Thus, reopening was held to be invalid on this ground itself.

Hence, it is clear that section 147 of the Act does not postulate conferment of power upon the Assessing Officer to initiate reassessment proceedings upon mere change of opinion."

3.43 In view of the foregoing, the Appellant prays that the reopening of assessment is bad-in-law.

3.44 The Ld. DR has stated that the reopening was based on new material as the Appellant had failed to disclosed that the consideration paid by the Appellant was only Rs. 50 lakhs. In this regard, it is submitted that the said statement of the Ld. DR is factually incorrect as the Appellant had made full disclosure of this transaction in its return of income. In AY 2011-12, physical returns were filed and the Appellant along with the return has filed even its financial statements, and Note 1 to the financial statements give complete detail of the transaction in question. (Please see pages 30 to 56 of the PB-1). As would be observed at

Page 56, in Note 1, it is clearly mentioned that the loan/shares were acquired for a consideration of Rs. 50 lakhs. Further, at page 54, Schedule 4, the investment in shares of AJL is disclosed at Nil. Further, at page 53, Rs.50 lakhs has been shown as expenditure towards Youth Commitment to ideal of democratic and secular society. Further, the loan of Rs. 1 crore taken by the Appellant is also disclosed at page 54. Accordingly, it is submitted that the entire transaction was disclosed by the Appellant and accordingly, in absence of any new material, the reopening done by the AO is bad in law."

35. Shri Soparkar further pointed out that reason recorded by the AO that income escaping assessment are based on certain premise which is factually incorrect which has been enumerated by him in the following manner:-

"3.47 With respect to the alleged benefit from acquisition of loan given to AJL.

- *It is stated that the financial statements of the Appellant for FY 2010-11, did not disclose the shares of AJL acquired by the Appellant (Page 172 of the PB-II).*

  The said statement gives false information since as stated earlier, the entire transaction of acquisition was disclosed in the notes to accounts of the financials of the Appellant for the said year. (Please see page 56 of the PB).

- *It is stated in the reasons that, business of publication of newspaper of AJL was closed w.e.f. 02.04.2008." (Page 178 of the PB-I).*

  The statement that the business ceased to exist is completely false and untrue. The newspaper publication business of AJL was only temporarily suspended and in fact, in the last couple of years, the said business had revived. The Appellant has provided the copies of the masthead of the newspapers recently published by it at pages 757-793 of the PB– II.

- *It is stated at several places that AJL is a real estate company. (For instance at Page 176, 178, 182, 13 of PB I).*

  This is a wrong statement. In view of the fact that the news paper business was under suspension, AJL had to survive and meet its expenses. This was being done by way of renting out and commercially exploiting its real estate assets, being its assets that have been used for publishing business for several decades. Moreover, this is a widely accepted normal business practice amongst newspaper companies. Such renting does not make AJL a "real estate company" as sought to be depicted by the ld. AO.

3.48 With respect to loan taken from Dotex:

- *It is stated in the reasons that, M/s. Young Indian made a provision for payment of interest of Rs.1,72,603/- on this loan in its Balance Sheet for the year ending on 31.03.2011. Apparently, no TDS has been applied on such payment. (Page 174 of the PB - I)*

This statement is factually incorrect. YI has duly deducted tax from the amount of interest. (Please see pages 250-252of the PB - I)

- *It is further stated that, "A perusal of the Return of Young Indian filed with ROC for F.Y. 2013-14 shows unsecured loan of Rs. 1 crore M/s. Dotex Merchandise Pvt. Ltd. is standing as it is and has not been repaid." (Page 174 of the PB- II)*

  This statement is also a half truth. The loan has been repaid in FY 2015-16, well before the date of the impugned Assessment Order. This is evident from the balance sheet of the company for the year ended March 31, 2016, which was part of the assessing officer's records when the reasons for reopening were recorded. (please see page 154 of PB-I for the Balance Sheet of YI as on March 31, 2016).

- *It is also stated that, "as per Note 6 of the Balance Sheet of Young Indian for the year ending on 31.03.2014, even provision for interest to be paid on unsecured loan has not been made for F.Y. 2013-14." (Page 174 of the PB - II).*

  This statement is incorrect as it can be seen from Note 12 that interest is duly accrued during the year. (Please see page 146 of PB-I). The AO has referred to the wrong Note which refers to 'interest accrued but not due' instead of considering Note 12 which provides the details on interest expense incurred during the year."

In support, he relied upon the following decisions :-

(i) *Hon'ble Madhya Pradesh High Court in CIT vs. Man Mohan Das (218 ITR 730) (pages126-127 of LPB-I)*

(ii) *Bhupindra Food and Malt Industries vs. CIT (229 ITR 496)(HP) (pages 128-129 of LPB-I),*

(iii) *Hon'ble Delhi High Court in Shipra Srivastava v. ACIT (184 Taxman 210) (pages 121-125 of LPB-I),*

36. Further, another two limbs of arguments of validity of section147 were also raised which are as under:-

"3.53 REOPENING UNDER SECTION 147 OF THE ACT CANNOT BE MADE FOR ROVING ENQUIRIES:
3.54 The Appellant humbly submits that in the garb of the reassessment proceedings, the AO has made roving enquiries in respect of its affairs. Attention is invited to the following judicial pronouncements to showcase that roving enquiry cannot be made under section 147:

- *The Hon'ble Delhi High Court in the case of Le Passage to India Tours & Travels (P.) Ltd. vs. Additional Commissioner of income-tax (232 Taxmann 277) (pages 130-133 of LPB-I) held that an assessment cannot be merely reopened to verify genuineness of expenses as that would amount to an impermissible fishing or roving enquiry without any tangible material to show escapement of income.*

- *The Punjab and Haryana High Court, in Vipan Khanna v. CIT (122 TAXMAN 1) (pages 134-140 of LPB-I) has held that letter issued by Assessing Officer calling for information on several other points tantamounted to making fishing enquiries on concluded matters, which was not permissible under law.*

- *Similar view has been held by the Delhi High Court in Shipra Srivastava v. ACIT (supra) and Madhya Pradesh High Court in Arjun Singh V. ADIT (246 ITR 363)(MP) (Pages 141-169 of LPB-I).*

3.55 REOPENING MERELY BASED ON AN INVESTIGATION REPORT IS BAD IN LAW:

3.56 From the perusal of reasons recorded, it is clear that the AO has merely referred to various findings from an investigation report to form a belief that income has escaped assessment. Further, the copy of said reports have not been provided to us. The Appellants requests that the same be made available to us.

3.57 In this regard, reliance is placed on the following decisions wherein it is held that reopening merely on information received from the investigation wing or other sources is invalid.

- *The Hon'ble Delhi High Court in the case of Sarthak Securities Pvt. Ltd. Vs. ITO (329 ITR 110) (Del.) (Pages 170-177 of LPB-I) has held that reopening is invalid in case where the AO has relied only on the information received from investigation wing or other sources and did not independently apply his mind to that information.*
- *Further, in the case of Signature Hotels Pvt. Ltd. Vs. ITO (338 ITR 51) (Del.) (Pages 62-67 of LPB-I), the Hon'ble Delhi High Court quashed the reopening of assessment on the ground that AO did not independently apply his mind to the information received from the Director of Income Tax (Inv.).*

- *The decision of Sarthak Securities & Signature Hotels (supra) has been followed in the case of Unique Metal Industries Vs. ITO (ITA No. 1372/Del/2015) (Del.) (Pages 178-215 of LPB-I) where the Hon'ble Delhi Tribunal has held that reopening of the assessment only on the basis of information without independent application of mind is invalid and liable to be quashed.*

- *Therefore, in view of the above judicial pronouncements, the reopening of assessment is bad in law and deserve to be annulled.*

3.58 In view of the foregoing grounds, the Appellant humbly prays that the reassessment conducted by the AO was bad in law and accordingly the assessment order passed under section 147 of the Act ought to be held as void ab initio."

Arguments on behalf of Revenue

37. Before us, ld. Special Counsel for the Revenue referred to last para of reasons which are appearing at page 76 of Revenue's paper book-1, reading as under: -

"In this case the four years but not more than six years have lapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs.1 lakh necessary sanction to issue notice u/s 148 of the Act has been obtained from the Commissioner of Income

Tax (Exemption), Delhi vide letter on F. No. _____ under amended provisions of section 151 of the Act w.e.f. 01.06.2015."

38. From the aforesaid paragraph of the AO, he pointed out that AO clearly contemplated the fact of sanction having been given by the competent authority in the reasons itself which would be communicated to the assessee. Barring this paragraph, there is absolutely not a word of difference between the reasons as submitted to the CIT (E) and as communicated to the appellant/assessee. He tried to justify the reasons including this paragraph that in earlier point of time, the A.O.s (as a matter of practice), did not record this paragraph in the reasons. However, objections came from certain quarters that there was no record to show that the competent authority gave approval before the issue of notice since this fact didn't get recorded in the reasons or in the notice. Furthermore, doubts were also raised on the date or the point of time when the approval was obtained. Thereafter, the A.O.s started incorporating the fact of CIT(E) having given the approval, also as a part of the reason, in order to avoid unnecessary doubts being created with respect to the sanction under Section 151 of the Act.

39. The Central Board of Direct Taxes ("CBDT") also issued a Circular/ Instruction No. 247/140/2017-A&PC1 dated 10.01.2018. This Circular/Instruction was in public domain and several articles were published analyzing the effect of this Circular/Instruction. One such article was also placed before us during the course of hearing. These instructions were issued to make it a uniform practice to include the fact of sanction having been given by the competent authority in the reason itself.

40. It was further submitted by him that the A.O. was careful enough to sign these reasons as a draft. However, these were draft only to the extent that a certain paragraph was added with necessary space left blank to incorporate the factum of approval. If the approval did not come for any reason, the entire exercise of recording the reasons would obviously be dropped. However, if the competent authority approved the proposal for reopening, the letter number and date of the sanction order would then be incorporated in the reasons and then the final reasons would be signed for being communicated to the Appellant.

41. He stated that the reasons were communicated by the A.O. together with the notice under Section 148 as a matter of

abundant caution. In this factual backdrop, it is strange for the Appellant to raise such arguments as to suggest that there were three reasons or that these reasons were tentative and the final reason was signed without any sanction under Section 151 of the Act, etc.

42. It is really unfortunate that the Appellant, who had taken a detailed inspection of the records of the A.O., much before raising these kinds of objections, had still made submissions before the Hon'ble Bench as if they were not aware of what was contained in the records.

43. It needs to be appreciated that reasons recorded by the A.O. were submitted to the CIT(E) under a proforma which was duly signed and which recorded in Column 11 that the reasons for reopening the assessment were 'as per Annexure enclosed'. The Annexure that was enclosed contained duly signed reasons, the only difference being that the signature was made with the observation that these were 'draft' as it contained a paragraph which dealt with the factum of sanction by the CIT(E). It is submitted that the validity of the reasons recorded under Section 148(2) has to be judged with reference to the reasons that are

communicated to the assessees. The reasons communicated to the Appellant along with the notice under Section 148 not only bears the signature of the A.O., but also the factum of sanction having been given by the competent authority. Therefore, all the requirements of Section 148 stand fulfilled and there is absolutely no defect in either the notice or the reasons recorded by the A.O.

44. The cases referred to by the Appellant, which hold that the reasons which do not contain the signature of the A.O. are bad in law, are wholly inapplicable to the present case. In this case, reasons as communicated to the CIT(E) bore the signature of the A.O. as also the reasons finally communicated to the Appellant. Therefore, it is not correct to challenge the notice on the ground that it lacks the signature of the A.O. There is no need to discuss individual cases which deal with different factual situation.

45. In so far as the contention of the Appellant that the approval has been given by the CIT(E) in a mechanical manner, he submitted that such bald allegations of the Appellant are really fallacious. The CIT(E) has not only recorded his approval, in the proforma, but he has also communicated in detail the

reasons as to why he was satisfied with the proposal of the A.O. Therefore, the submission of the Appellant that the sanction was given in a mechanical manner is wholly untenable.

46. Mr. Srivastava on the issue of challenge by the Appellant that the notice under Section 148 on the ground that: - (i) there is no tangible material for reopening the assessment; (ii) the findings given by the A.O. regarding loan etc. are erroneous; and (iii) the A.O. has reopened the assessment for the purposes of making roving enquiries; and submitted that the reasons recorded by the A.O. are extremely detailed and exhaustive and run into nearly 24 pages with detailed discussion on material and information. He submitted that, it needs to be appreciated that the A.O. has given in his reasons the mode and manner in which the Appellant devised a scheme to take over the properties of AJL, how the three entities which were under common control and management combined together to devise such schemes and how the Appellant got benefitted from such adventures. Without going into the merits of these issues, which is the subject matter of other grounds of appeal, it is sufficient to say that there was a strong prima facie reason to believe that income chargeable to tax

had escaped assessment. It was neither a case of any roving enquiry, nor of the reopening being based on insufficient material. Further, the A.O. did independently examine the facts in detail, conducted independent enquiries and arrived at the findings after due application of mind.

47. Mr. Srivastava further submitted that the reopening was valid and more so after the cancellation of registration was done by the CIT (E), the findings of CIT (E) already been affirmed by the Hon'ble Tribunal.

DECISION ON VALIDITY OF REOPENING U/S 147/148 AS RAISED IN GROUND NO.2

48. We have heard the rival contentions and also perused the relevant findings given in the impugned order as well as material referred to before us. In short, the ld. Senior Counsel for the appellant has challenged the reopening of the assessment on the ground that approval from the CIT(E) u/s 151 has been obtained prior to the recording of reasons on following three counts: *firstly*, first reasons were not signed; *secondly*, second reasons were merely a draft and hence was tentative; and *lastly*, the third reason is not the reason which was recorded by the AO on which

approval was given by the competent authority u/s 151 of the Act.

49. In the paper book filed by the Revenue, we find that there is a letter dated 09.01.2017 written by ACIT (E), Circle 1(1), New Delhi to CIT (E) sending proposal for reopening u/s 147 wherein he has enclosed the prescribed proforma for initiating the proceedings u/s 147/148 along with reasons running into 24 pages. The last paragraph of the said reasons mentioned as under :-

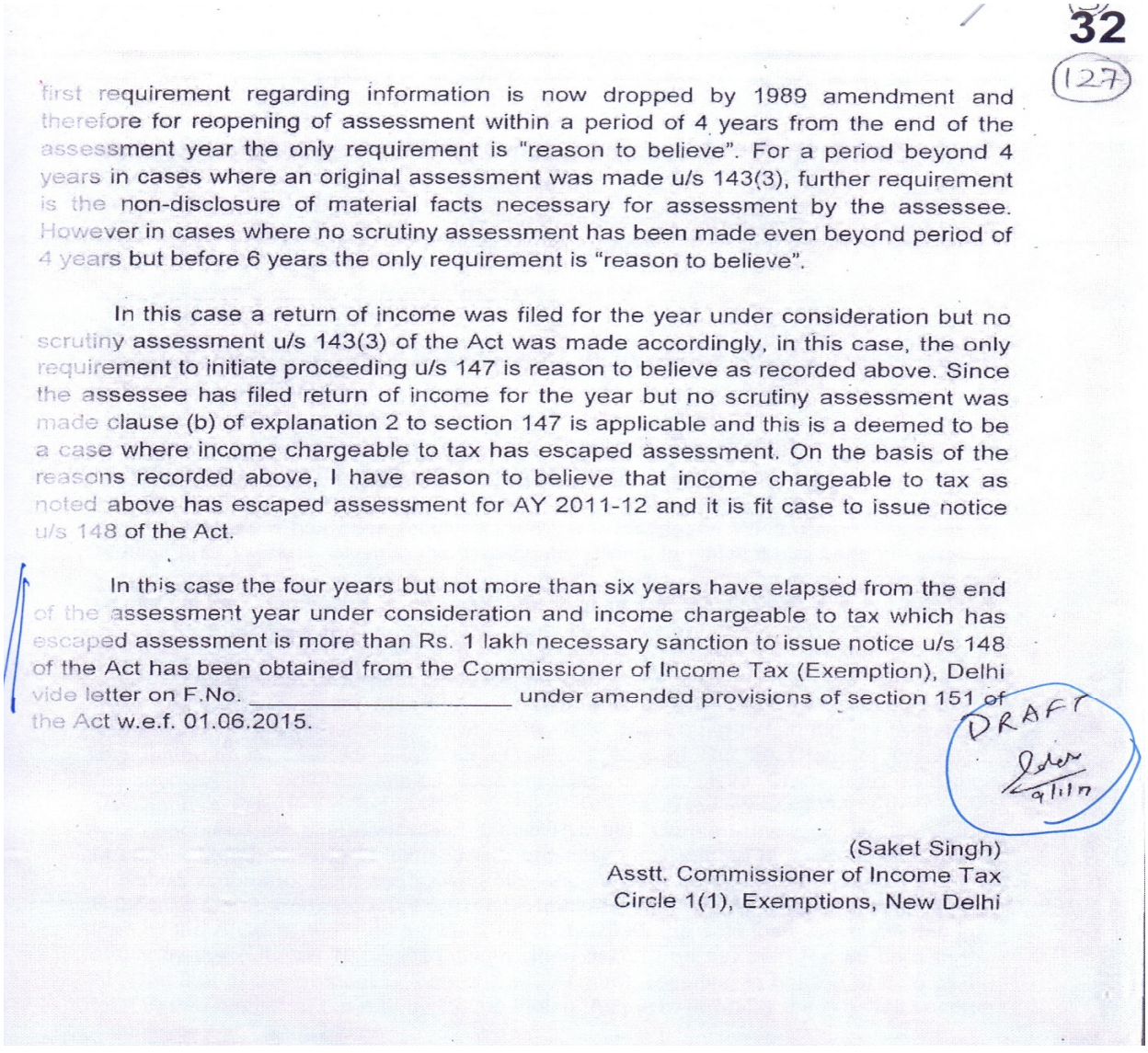
"In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs.1 lakh necessary sanction to issue notice u/s 148 of the Act has been obtained from the Commissioner of Income Tax (Exemption), Delhi vide letter on F.No._____ under amended provisions of section 151 of the Act w.e.f. 01.06.2015.

(Saket Singh)
Asstt. Commissioner of Income Tax
Circle 1 (1), Exemptions, New Delhi."

50. There is no signature of ACIT as it is enclosed with the letter signed by him dated 09.01.2017 sent through proper channel of JCIT. Thereafter, a prescribed form of reasons recorded and

sanction of approval form was sent to ld. CIT (E), who has granted approval on the reasons which was sent to him which is placed in the paper book from pages 45 to 76. However, from the perusal of the documents placed in the paper book pages 45 to 76, at page 46, we find that there is a letter dated 10.01.2017 wherein JCIT (E), Range 1, Delhi has written a letter to CIT (E) sending the proposal from AO dated 09.01.2017 for reopening the case of Young Indian u/s 147 along with the proforma and annexed with the letter of AO dated 09.01.2017. The prescribed form for recording of reasons contains the satisfaction of the JCIT on the reasons recorded by the ACIT stating that it is a fit case for reopening u/s 147, wherein JCIT has given very elaborate reasons agreeing with the reasons recorded by the AO; and then in Item 13, the Ld. CIT (E) has given his satisfaction observing that the reasons recorded by the AO as per annexure sent by him alongwith the format, is proper and gave his approval on being satisfied on the reasons recorded that it is a fit case for issue of notice u/s 148. Further, it is seen that approval has been granted by the Ld. CIT (E) on 10.01.2017 and along with it, there are detailed reasons given by him for granting approval and his satisfaction on the reasons recorded by the AO which is placed at

page 52 of the paper book. Pages 53 to 76 contain reasons recorded and at the last page, the AO has appended his signature and date 09.01.2017 mentioning it as a draft. Scanned copy of last page of said reasons is reproduced hereunder:-



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(127)

first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only requirement is "reason to believe". For a period beyond 4 years in cases where an original assessment was made u/s 143(3), further requirement is the non-disclosure of material facts necessary for assessment by the assessee. However in cases where no scrutiny assessment has been made even beyond period of 4 years but before 6 years the only requirement is "reason to believe".

In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe as recorded above. Since the assessee has filed return of income for the year but no scrutiny assessment was made clause (b) of explanation 2 to section 147 is applicable and this is a deemed to be a case where income chargeable to tax has escaped assessment. On the basis of the reasons recorded above, I have reason to believe that income chargeable to tax as noted above has escaped assessment for AY 2011-12 and it is fit case to issue notice u/s 148 of the Act.

In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lakh necessary sanction to issue notice u/s 148 of the Act has been obtained from the Commissioner of Income Tax (Exemption), Delhi vide letter on F.No. _____ under amended provisions of section 151 of the Act w.e.f. 01.06.2015.

DRAFT

(Saket Singh)
Asstt. Commissioner of Income Tax
Circle 1(1), Exemptions, New Delhi

51. Thereafter, the copy of reasons which were given to the appellant/assessee, scanned copy of last page of the reasons is as under :-

first requirement regarding information is now dropped by 1989 amendment and therefore for reopening of assessment within a period of 4 years from the end of the assessment year the only requirement is "reason to believe". For a period beyond 4 years in cases where an original assessment was made u/s 143(3), further requirement is the non-disclosure of material facts necessary for assessment by the assessee. However in cases where no scrutiny assessment has been made even beyond period of 4 years but before 6 years the only requirement is "reason to believe".

In this case a return of income was filed for the year under consideration but no scrutiny assessment u/s 143(3) of the Act was made accordingly, in this case, the only requirement to initiate proceeding u/s 147 is reason to believe as recorded above. Since the assessee has filed return of income for the year but no scrutiny assessment was made clause (b) of explanation 2 to section 147 is applicable and this is a deemed to be a case where income chargeable to tax has escaped assessment. On the basis of the reasons recorded above, I havereason to believe that income chargeable to tax as noted above has escaped assessment for AY 2011-12 and it is fit case to issue notice u/s 148 of the Act.

In this case the four years but not more than six years have elapsed from the end of the assessment year under consideration and income chargeable to tax which has escaped assessment is more than Rs. 1 lakh necessary sanction to issue notice u/s 148 of the Act has been obtained from theCommissioner of Income Tax (Exemption), Delhi vide letter on F.No. CIT(E)/u/s151(1)/2016-17/1809 dated 10.01.2017 under amended provisions of section 151 of the Act w.e.f. 01.06.2015.

Asstt. Commissioner of Income Tax (E) Circle-1(1), New Delhi

10/1/17

(Saket Singh)
Asstt. Commissioner of Income Tax
Circle 1(1), Exemptions, New Delhi

Asstt. Commissioner of Income Tax
(Exemptions), Circle-1(1)
Room No. 2418, 24th Floor, E-2,
Pratyaksh Kar Bhawan, Civic Centre,
J.L. Nehru Marg, New Delhi-110002

52. For reopening a case u/s 147, first and foremost condition is that the AO must have 'reason to believe' based on some tangible material or information that income chargeable to tax has escaped assessment for any assessment year. Once he has entertained his reasons to believe, then he has to serve a notice u/s 148 in accordance with the law requiring him to furnish return of income. But before issuing of notice u/s 148 he has to record his 'reasons to believe' in writing. But after reasons are recorded and before issuance of notice, AO has to get sanction or approval by the higher authorities as defined in section 151 and that authority after being satisfied with the reasons recorded submitted by the AO, a notice u/s 148 is issued to the assessee, which triggers the process of assessment and reassessment.

53. Here in this case, AO vide his letter dated 09.01.2017 had sent a proposal for reopening u/s 147 to the CIT (E). The proposal letter was sent along with 'reasons recorded' which was forwarded to CIT (E) vide letter dated 10.01.2017, through JCIT, Income-tax Range 1, Delhi who has signed his satisfaction on the reasons recorded by the AO. Not only that, in prescribed format of recording the reasons and sanctioning of approval, the JCIT

have given his detailed reasons about his satisfaction on the reasons recorded by the AO. Thereafter, CIT (E) again vide Annexure-1 has given very elaborate satisfaction on the reasons recorded and granted approval of issuance of notice u/s 148. Now from the perusal of the reasons annexed while seeking approval from the CIT (E), we find that the AO (ACIT, Circle 1(1), Delhi) as incorporated above, has appended his signature and put the date 09.01.2017 and has mentioned as '***draft'***. It has not been disputed by the appellant that the reasons which were sent for approval to the CIT (E) and the reasons which were supplied to the assessee are different, albeit they are verbatim the same except for mentioning of sanction letter number. The contention of the ld. Senior Counsel for the assessee before us is that, since AO while seeking approval of JCIT and CIT (E) has mentioned it as a '**draft'** (which is also evident from scanned copy incorporated above), therefore, in his opinion, it is unsigned and tentative reasons and, therefore, it is not a reasons recorded at all in the eyes of law because only duly signed reasons recorded can be sent for approval.

54. First of all, from the bare perusal of "reasons recorded" by the Assessing Officer, it seen that he has appended his signature on the 'reasons recorded' sent to the higher authorities which is final reasons from his side albeit he has mentioned before signing it "DRAFT". This word draft does not mean that either the 'reasons recorded' by the AO are tentative or was subject to any correction. Insofar as AO is concerned, he has sent his final 'reasons recorded' for seeking approval and has left the approval letter number blank on which immediately after getting the approval he has communicated to the assessee which is evident from the last page of the reasons communicated to the assessee as incorporated above.

55. We are unable to comprehend as to what is the infirmity either in the 'reasons recorded' by the Assessing Officer or the reasons which were sent for approval along with covering letter of the AO and prescribed proforma which are duly signed. It cannot be said that it is not a 'reasons' at all or it is unsigned 'reasons recorded'. It is not a case that the reasons recorded sent for approval are unsigned or there is no signature at all of the AO. He has clearly put his signature with the date which shows that

the reasons were recorded on 09.01.2017. Mentioning of the word 'draft' does not lead to inference that it is either unsigned or it is tentative. It is a draft sent to JCIT and CIT (E) for their approval which higher authorities have duly given on being satisfied with the reasons recorded by the AO.

56. Before us, ld. Special Counsel for the Revenue has submitted that now as a matter of practice, the Assessing Officers in the last paragraph mention about seeking of approval and sanction from the higher authorities. We do not find that, this practice be said to be against the provisions of law, in fact when reasons are communicated to the assessee, it should contain the entire detail and information as to what are the reasons recorded and; secondly, whether the reasons recorded have been duly approved and sanctioned by the higher authorities u/s 151 of the Act. Suppose in case, higher authorities did not deem fit or they are not satisfied with the 'reasons recorded' by the AO, they can disapprove the reasons and then reasons recorded are just mere paper kept in the file and entire proceedings is dropped. Ld. Special Counsel informed that the word 'draft' has been mentioned by the AO along with his signature which were sent

for approval, was only to complete the letter number of the approval giving factum of sanction by the CIT (E). In any case, the reasons communicated to the assessee along with notice u/s 148 which duly bears the signature of the AO which also gets the sanction/approval of the CIT (E) on such reasons, alone are to be taken into consideration for deciding or adjudicating the validity and legality of the proceedings. It is not a case here that there is no proper approval or sanction of the higher authorities u/s 151 or reasons have not been recorded by the AO before issuance of notice u/s 148 or there is any iota of change in the 'reasons recorded' which have been approved by the higher authorities and which was communicated to the assessee. All the judgments which have been cited and relied upon by the ld. Senior Counsel for the assessee are cases where mostly reasons recorded did not contain the signatures of the AO at all. On the contrary, in this case, reasons which was sent for approval to the Ld. CIT (E) clearly bore the signature of the AO and only thereafter JCIT and CIT (E) has given their approval in a very elaborate and speaking order. Thus, we are unable to subscribe to the contentions raised by the ld. Senior Counsel for the assessee before us that,

unsigned reasons by the AO were sent for approval before the CIT (E) and same is rejected.

57. The next line of argument of the ld. Sr. Counsel for the assessee is that, approval has been given by the ld. CIT (E) in a mechanical manner. Again, what is required under the law is that JCIT or CIT or any other authorities mentioned in section 151 has to be satisfied on the 'reasons recorded' by the AO that it is a fit case for issuance of notice u/s 148. The satisfaction of the CIT depends upon whether the reasons recorded are in accordance with law and AO had any reason to believe that any income chargeable to tax has escaped assessment. If the reason recorded itself has no substratum to stand on its own, i.e., not in accordance with law or on based on some incorrect facts and *dehors* the material on which reason to believe has been entertained, and then if the ld. JCIT or ld. CIT have merely granted approval without having considering the reasons, facts and information contained in the reasons, then it can be said that approval has been granted in a very mechanical manner. Here in this case, not only the JCIT but also the CIT (E) have recorded their approval in a very detailed manner. The approval /

satisfaction of the ld. CIT (E) for the sake of ready reference is reproduced as under: -

" I have carefully examined the proposal of the Assessing Officer (AO), and the reasons recorded by the Assessing Officer for initiating action u/s 147 of the Income Tax Act,1961 in the case of Young Indian for the A.Y.2011-12 and recommendation of JCIT.

It is seen that Young Indian (YI) purchased an interest free loan of Rs. 90 Crores (approx.) from Indian National Congress/ All India Congress Committee (AICC) alleged to have been given to MIs Associated Journal Limited by making payment of only Rs. 50 lakh to the AICC, in contravention to its objects. YI was founded in the month of Nov. 2010, just 23 days prior to assignment of the above loan, with a nominal capital of Rs. 5 Lakh. The Young Indian did not even have any funds of its own for purchase of alleged loan of Rs. 90 Crore of the AICC YI took an interest bearing loan of Rs 100 Crore from M/s Dotex Merchandise Private Limited of Kolkata.

A survey u/s 133A of the I. T. Act, conducted on M/s Dotex Merchandise Pvt. Ltd. revealed that M/s Dotex Merchandise Pvt. Limited was engaged in providing accommodation entries. Subsequent enquiries made in respect of loan transaction between YI and M/s Dotex Merchandise Pvt. Ltd. reinforces this finding. It has been revealed that the loan of Rs. 1 crore was given to MIs Young Indian, a newly incorporated company with a small capital base of only Rs. 5 lakh without any guarantee. M/s. Young Indian made a provision for payment of interest of Rs. 1,72,603 on this loan in its Balance sheet for the year

ending on 31.03.2011. Apparently no TDS has been applied on such payment. Perusal of Return of Young Indian filed with ROC for F.Y. 2013-14 shows unsecured 10C'ln of Rs. 1 crore M/s Dotex Merchandise Pvt. Ltd. is standing as it is and it has not been repaid. As per Balance sheet of Young Indian for the year ending on 31.03.2014, even provision for interest to be paid on unsecured loan has not been made for the F.Y.2013-14. All the facts mentioned above and in the note of the Assessing Officer shows unsecured loan of Rs. 1 cr. an accommodation entry which has neither been repaid nor any interest paid on it. No prudent businessman will give the loan to any unrelated party without expecting any return of such investment.

Immediately after the assignment of loan by the AICC to the Young Indian, on 16.12.2010, the said loan was converted into equity by the AJL, on 26.02.2011, resulting in holding of 99% of the total issued capital of the AJL by Young Indian.

AJL allotted the shares to Young Indian 'in lieu of recently purchased asset i.e., Rs. 90 Crore (purchased for a sum of Rs. 50 Lakhs} which has resulted in takeover of assets of the AJL, fair market value which would need to be ascertained.

AO has formed his belief that income amounting to Rs. 1 crore on account of unexplained cash credits and other income in the nature of benefit or perquisite, whether convertible in to money or not, arising from the business or exercise of a profession, on account of allotment of Shares of Associated Journal Limited, valuation of which is to be made, has escaped assessment in the hands of Young Indian.

I am satisfied, on the reasons recorded by the Assessing Officer, that it is a fit case for the issue of notice u/s 148.

Sd/-
(RAMESHWAR SINGH)
Commissioner of Income Tax (Exemptions)
New Delhi.
10.1.2017"

58. After considering the aforesaid satisfaction of the CIT (E) accompanied with the detailed reasons recorded by the AO as incorporated (supra), it cannot be held prima facie that there was no application of mind or that the approval has been given in a mechanical manner. Ld. CIT (E) has given his detailed reasons as to why he was satisfied with the proposal of the AO. Accordingly, the contention raised by the ld. Sr. Counsel is rejected. The judgments which have been relied upon by him clearly not applicable on the facts of the present case and, therefore, we do not find it imperative to discuss these case laws.

59. Ld. Sr. Counsel for the assessee has also challenged the notice u/s 148 on the ground that, *firstly*, there was no tangible material for reopening the assessment; *secondly*, the findings given by the AO regarding loan etc. are erroneous; and *lastly*, AO

has reopened the assessment only for the purpose of roving enquiries.

60. What is required to test the 'reasons recorded' by the Assessing Officer, which is the foundation for acquiring jurisdiction of reopening the case are that; *firstly*, was there any tangible material coming on record; and *secondly*, whether there was any prima facie 'reason to believe' that income chargeable to tax has escaped assessment. Here in this case, the AO in his 'reasons recorded' has given the entire chain of events and also gave details of information received through Tax Evasion Petition and then information received by Director of Investigation after detailed enquiry conducted by the Investigation Wing; Secondly, he has given sequence of events as to how the appellant company was formed and the manner in which the entire shares of AJL was acquired for a paltry sum of Rs.50,00,000/- by assigning of loan of Rs.90.21 crores by AICC to appellant company. He has also noted about the non-cooperation of the assessee and the other parties during the enquiry conducted by the Investigation Wing and also the summary of findings given by the Director of Investigation. Thereafter, he has applied his own mind and

analysed the entire material coming before him to come to his prima facie reason to believe.

61. Another objection which has been raised by the appellant before us is that there are certain erroneous observations in the reasons recorded with regard to alleged benefit from acquisition of loan given to AJL in respect of loan taken from Dotex wherein it has been stated that in the financial statement, AO has mentioned that in the financial statements for FY 2010-11, the appellant did not disclose the shares of AJL which was incorrect because entire transaction was noted in the notes to accounts and secondly, the observation that business of publication of newspaper of AJL was closed w.e.f. 02.04.2008 which fact is not correct as it is temporarily suspended. Insofar as this objection of the appellant is concerned, even though it has been mentioned in the financial statement that the appellant company has been allotted shares of AJL, however nowhere entire factum of acquisition of shares and the manner in which the whole transaction was undertaken has not been mentioned. Merely describing description of shares does not lead to inference that the manner in which these shares were acquired was also beyond

doubt. The reasons to believe of the AO were based on various circumstances in which transaction was undertaken and he has also described various steps to which entire process has undergone for acquiring shares. Thus, it cannot be said that there is completely false assumption of facts by the AO.

62. Insofar as whether publication of newspaper of AJL was closed w.e.f. 02.04.2008 or was temporarily suspended, is a matter of inferences which can be drawn from the facts and material on record. Here it is a matter of fact that, neither at the time of seeking registration not it has been found subsequently till the cancellation of registration by the CIT (E) in the year 2017, the publication business of AJL even had started. Whether it was a temporary suspension or publication of the newspaper was closed w.e.f. 02.04.2008, it is not a primary factor to quash the reasons recorded by the AO, because the fact of the matter was that there was no publication of newspaper for a substantial long time at least till the time of recording of the reasons. Though assessee had tried to demonstrate that certain process was initiated indicating to revive the publication business but there was no substantial restarting of publication of newspaper. Thus,

it cannot be held that AO has recorded any wrong finding of fact in the reasons recorded.

63. Insofar as the loan taken from the Dotex, it has been pointed out that AO in his reason recorded that Young Indian have made a provision for payment of interest of Rs.1,72,603/- on this loan in its balance sheet for the year ending 31.03.2011 and no TDS has been deducted on such payment. This fact was stated that it is factually incorrect as Young Indian has duly deducted tax on this amount. Second fact mentioned in the reasons recorded that from the perusal of return of Young Indian filed with ROC for FY 2013-14, it shows that unsecured loan of Rs.1 crore from Dotex is pending and has not been repaid which, according to the appellant, is not fully correct as the same was repaid in AY 2016-17. Here again, we do not find any wrong assumption of fact by the AO, because provisions were made for the interest and TDS may have been deducted but those informations have not been mentioned and not brought on record that TDS deducted was actually paid on the due date. Otherwise also, the main reason to believe in respect of loan taken from Dotex was that based on certain information and material that

the loan taken from Dotex itself was a doubtful credit entry based on certain survey operation carried out in the case of Dotex earlier. The AO has given elaborate reasons about the loan from the Dotex in the reasons to believe. Even if one fact that AO has observed that no TDS has been deduced that does not mean that entire limb of entertaining reasons to believe doubting the genuineness of the loan gets vitiated. Further, AO in the reasons recorded have noted that loan was to be repaid within one year and till FY 2013-14, the unsecured loan had not been repaid. It may have been repaid in subsequent year but that does not mean that the AO has recorded the wrong fact on perusal of the return filed with ROC for FY 2013-14, because in FY 2013-14 the loan was actually not repaid.

64. Now another point which AO noted is that as per Note 6 of balance sheet of Young Indian for the year ending 31.03.2014, even the provisions for interest of unsecured loan have not been made in FY 2013-14 which, according to the appellant, is not correct because Note No.12 shows that interest is duly accrued in the year and AO has wrongly referred to the wrong note which mentioned interest accrued but not due and he has not seen Note

no. 12. Again, this does not materially affect the reasons to believe by the AO even though interest may have accrued and mentioned in Note 12, but there is no incorrect assumption of fact which can materially demolish the reasons recorded by the AO as the entire basis of the AO was prima facie reasons to believe about doubting of genuineness of loan and the creditworthiness to this contention raised by the assessee is also not tenable.

65. We have also perused the annual report of the company and the information which was sought u/s 133 (6) of the parties to the transaction and also about the loan taken from Dotex which are as per the certificate and enquiry conducted on the said company, it was found that earlier it was involved in providing hawala entries. Whether this information can lead to any conclusive finding or not is not relevant but what is required at the time of recording the reasons and entertaining reasons to believe is, whether prima facie based on such information or material coming on record, AO had bonafide reasons to believe that income chargeable to tax has escaped assessment. At the time of recording the reasons, AO does not have to prove the

escapement of income only his prima facie reason to believe. From a bare perusal of AO's detailed reasons running into 24 pages, there is sufficient material to hold that AO had prima facie reasons to believe especially, the manner in which appellant has taken over the properties of AJL through whatever scheme and how the entity AICC, AJL and Young Indian had common control or management to device such alleged scheme and how the assessee has got benefit by getting the entire shareholding and underlying assets of AJL by merely paying paltry sum of Rs.50,00,000/-. This itself shows strong prima facie reasons to believe for any prudent person that there is definitely escapement of income. It is not a case that it was merely a pretext taken by the Assessing Officer for making roving and fishing enquiry without any basis or material on record. AO has duly applied his mind after incorporating various material and information coming on record and after independently examining the same, he has recorded the reasons. We do not find any infirmity or illegality either in the recording of the reasons or assuming jurisdiction or reopening the case u/s 147 or issuance of notice u/s 148. Thus, we do not find any substantial merit in the contention raised by the appellant before us nor do any of the

judgments cited and relied upon before us have any application on the present facts. We reiterate that the AO has to have only prima facie reasons to believe based on tangible material or information which, here in this case, there was sufficient material to entertain reasons to believe that entire transaction right from the incorporation of the appellant company till acquiring of 99.999% of shares of AJL and getting control of huge assets of AJL merely for a sum of Rs.50,00,000/-. At least, this factum itself is sufficient to clothe the AO in entertaining reasons to believe and acquiring the jurisdiction u/s 148. We further notice that very recently, Hon'ble Supreme Court in the case of DCIT (Central Circle) Vs M/s M R Shah Logistics Pvt Ltd order dtd 28th March 2022, held that reopening of the assessment u/s 147 is valid if there is tangible material for the same and the sufficiency of such material cannot be subject to judicial review. Accordingly, ground no.2 raised by the appellant is dismissed.

GROUNDS NO.3 & 4

66. In Ground No.3 appellant has challenged that the assessment order passed is in violation of principles of natural justice; and in ground no.4, the appellant has objected for non-

admission of additional evidences filed by the appellant before the ld. CIT (A) and admission of additional evidences filed before this Tribunal.

67. The contention and the objection of the appellant before us is that, AO has made sufficient observations and had drawn conclusion with regard to certain facts which are incorrect and are based on wrong assumptions without giving proper opportunity to rebut the said facts. Before us, Mr. Soparkar has given various such instances where AO did not give any proper opportunity or confronted the material before drawing any adverse inference. This has been highlighted in the following manner :-

"4.3 Reliance on Tax Evasion Petition, Suspicious Transaction Report and Survey/inspections reports without providing the copy of the same to the Appellant thereby denying the opportunity to the Appellant to rebut the same.

4.3.1 In the assessment order, the AO has relied on the following documents as the basis for various allegations made by him, without providing the same to the Appellant for its explanation hence, denying proper opportunity:

- *Tax Evasion Petition (Para 6 of the order)*
- *Report received from investigation wing of Income Tax Department (Para 6 of the order)*
- *Survey report u/s. 133A of Act of M/s Dotex Merchandise Pvt. Ltd. (Para 6 of the order)*
- *Suspicious Transaction Report (STR) vide reference No. 1000040468 of the Financial Intelligence Unit (FIU), Department of Revenue, Ministry of Finance, (Para 8.6 of the order).*

4.4 In respect of Dotex loan:

4.4.1 Statements/allegations/inferences made by the AO in the assessment order for which no show cause notice has been issued and which were made for the first time directly in the assessment order:

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Page 31 and 32	*Certain diagrammes are relied upon for showing Dotex as one of the hawala companies*	*Related document was never shared with YI to provide its submission. Further, no show-cause notice was issued mentioning this fact.*
Para 20.1 Para 20.2	*Various inferences have been drawn with respect to the documents submitted by YI during reassessment proceedings in relation to Dotex.*	*Said inferences were not put to YI for explanation. In the final show cause notice, only allegation is that only confirmation has been filed and that*

		in the confirmation filed, name and address of the person issuing it is not mentioned. (page 367 of PB). All other allegations mentioned in these paras of the order was never put before YI.
Para 8.11	*During the course of assessment proceedings the assessee had only filed a copy of confirmation of loan by M/s.Dotex Merchandise Pvt. Ltd. along with a claim that loan was taken through banking channel and it was claimed that these evidences were sufficient to discharge its onus u/s 68 of the Act.*	*The AO has made the said observation without considering Appellant's submission dated June 7, 2017 (Pg 244-253), June 13, 2017 (Pg 254-278), August 9, 2017 (Pg 340 – 351) and December 15, 2017 (Pg 370-378), wherein the Appellant had submitted various documents like loan agreement, TDS statements, bank statement, ledger, etc.*

4.4.2 Statements/allegations/inferences made in the assessment order for which no show cause notice has been issued or no/improper opportunity has been provided:

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Para 6, 7.4, 8.10,	*M/s. Dotex Merchandise Pvt. Ltd., Kolkata was*	*These are loose statements and no proof*

18	*incorporated by persons engaged in providing accommodation entries.* *A survey u/s 133A of the I.T. Act was conducted on M/s. Dotex Merchandise Pvt. Ltd. During survey, it was found that M/s. Dotex Merchandise Pvt. Limited was original incorporated by persons engaged in providing accommodation entries.*	*has been given by AO to support this. Survey report not has been shared with YI. Further, even the show cause notice does not specifically mention this aspect.*
Para 6.2 (page 9), Para 8.6, Para 10 (page 43), Para 11 (page 45)	*The Financial Intelligence Unit (FIU), Department of Revenue, Ministry of Finance, had reported loan transactions of Rs. 1 crore between assessee and M/s Dotex Merchandise (P) Ltd as Suspicious Transaction Report (STR) vide reference No. 1000040468.*	*The FIU report was not shared with YI. Further, no show cause notice was issued mentioning this fact.*
Para 8.10 (Pg 32), 20.1 (Pg 89)	*M/s. Young Indian had claimed taking loan of Rs.1 crore from M/s. Dotex on 15.02.2011 which has not been returned back till investigation against the assessee on this issue was*	*Details provided during reassessment clearly show that loan was repaid much earlier. Also interest is being paid regularly after deducting TDS. After details called*

	completed and no interest was paid on such loan till investigation had reached finality.	*for were provided, no show cause notice was issued alleging these facts, which could have been easily explained from the details already filed.*
Para 8.10 (Pg 32)	*M/s. Young Indian made a provision for payment of interest of Rs. 1,72,603 (less than agreed interest rate of 14% per annum) on this loan in its Balance Sheet for the year ending on 31.03.2011. No TDS has been made on such alleged payment during year under consideration. Perusal of Return of Young Indian filed with ROC for F.Y. 2013-14 has showed unsecured loan of Rs. 1 crore from M/s Dotex Merchandise Pvt. Ltd. was standing as it was not repaid. Non-return of alleged loan within stipulated period of one year and non- payment of interest @ 14% per annum were in contravention to the terms and conditions of the alleged loan. However, surprisingly, even after violation of terms and conditions of the agreement, no action was*	

	taken by the lender. In reality, the alleged loan of Rs. 1 crore was interest free loan till investigation started by the Income Tax Department in the year 2012. The paltry sum of TDS was made following enquiry by the Income Tax Department.	
Para 8.10 (Page 33)	*No reasonable explanation for not demanding return of the loan of Rs. 1 crore by Dotex and non-returning of the loan by YI within stipulated period of one year has comeforth.*	*In the reply dated June 7, 2017 (Page 244 of PB I) the Appellant has mentioned that the loan was renewed from time to time and was repaid on April 24, 2015. After his submission, the AO has not asked for any question during reassessment regarding the extension of loan.*
Para 8.10 (Page 33)	*Copies of bank A/c of companies controlled by above referred assessee had proved that these companies were engaged in business of accommodation entries typically contains deposits of cash and issue of cheque of*	*There is no specific reference to bank account of Dotex in the assessment order. Inference has been drawn by the AO from a general statement. No finding has been given*

	equivalent amount.	*for Dotex specifically and no show cause notice was issued by reference to any document in respect of such statements*

4.5 In respect of allegation Rs. 90.21 crore loan was a paper entry:

4.5.1 Statements/allegations/inferences made in the assessment order for which no show cause notice has been issued or no/improper opportunity has been provided:

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Para 8.2, para 15.1 to 15.9	*In absence of any evidence that the AICC had actually advanced loan of Rs. 90.21 crore to the AJL and keeping in view the fact that quantum of the loan was tailor made to allot 99% shares of the AJL to the assessee, I am of considered view that alleged loan of Rs. 90.21 crore was not actually a loan but was only a paper entry and an artificially inserted step as part of a*	*Elaborate discussion has been made in the order on why loan was bogus at para 15.1 to 15.9. No questionnaire has been issued to show cause that this loan is not a paper entry. In the final show-cause notice, the Appellant has not been asked to explain the reconciliation of the amount with the books of AJL or show-cause that*

	scheme of takeover of the AJL by the assessee for a song i.e. without making any payment.	*due to said reason it should not be treated as paper entry. Similarly, Notice dated 21.3.2017 does not specifically raise this query. Hence, YI had no opportunity to provide its explanation. Pointed question on AO's inference that AJL books did not show the loan was never raised through any show cause notice.*
Para 8.2	*Another dimension of this entry of unproven loan relate to a question whether a political party could even advance interest free loan to a real estate company under its stated object may be examined separately in the case of INC by concerned authority*	
Para 8.9 (page 28)	*Reference made to letter of AICC to AJL which has not been acknowledged by AJL*	*No show cause notice for explaining this.*

4.6 In respect of conclusion that the entire transaction was fraudulent transaction:

4.6.1 Statements/allegations/inferences made in the assessment order for which no show cause notice has been issued and which were made for the first time directly in the assessment order:

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Page 35, para 9(8)	*Allegation that provisions of section 81(1A) r.w.s. 67 of companies act not complied*	*No such allegation made in any show cause notice*

Para 8.7, page 27-28 of the order	*It was also mentioned in the notes to account that the main object of the AJL was in process of recasting so as to match to the object of the assessee company. The issue whether the object of the AJL which was engaged in the real estate business was actually recasted to match the object of the assessee company has also been examined and it was found that the object of the AJL was never recasted to match with the object of the assessee during, AY 2011-12 to 2016- 17.*	*This is a wrong statement. Details were submitted vide submission dated 21/6/17 (Page 279 – 287 of PB) from which it is clear that the objects of AJL were recasted to match with the Appellant in September 2011 itself.*

4.6.2 Statements/allegations/inferences made in the assessment order for which no show cause notice has been issued or no/improper opportunity has been provided:

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Page 37 para 9(13)	*In order to achieve the object of taking over nearly 100 percent shares of the AJL (more than 99% of shareholding) by the*	*No such allegation made in any show cause notice.* *Assessment order refers to certain shareholding*

	assessee, its directors, namely Shri Rahul Gandhi and Mrs. Priyanka Gandhi Vadhera also purchased additional 47,513 and 2,62,411 shares of the AJL through Rattan Deep Trust and Janhit Nidhi Trust respectively	*statements for arriving at this conclusion. The same was not presented to the Appellant for its explanation. Further, this statement is factually wrong since no additional shares were subscribed by the these trusts. AJL has always been a public company, with more than 1000 shareholders. The sample list of shareholders has been attached by AO as Exhibit 11 and 12 at pages 38 and 39 of the assessment order. The two main shareholders of AJL were Janhit Nidhi Trust (28.16%) and Rattan deep Trust (5.10%) held these shares since 1950s/70s.* *Further, these two trusts are public charitable trusts. Janhit Nidhi Trust was established in 1950s. Various*

		prestigious persons have been Trustees of the this trust from time to time. Janhit Nidhi Trust acquired 262411 (28.16%) prior to 1978 i.e. before PGV became trustee of the said trust. Though PGV was trustee in FY 2010-11 and FY 2011-12 along with Rameshwar Thakur, she resigned from said trusts as a trustee of this Trust in November 2013. Ratan Deep Trust is a public trust that was established in 1970s. Various prestigious persons have been Trustees of this trust from time to time. Ratan Deep Trust acquired 47513 (5.10%) during the period 1977 to 1978 i.e. before RG became trustee of the said trust. Though RG was trustee in FY 2010-11 and FY 2011-12

		along with Rameshwar Thakur, he resigned from said trusts as a trustee of this Trust in November 2013.
Para 8.4, 8.5	*It is alleged that loan of Rs. 90.21 crores was assigned for mere Rs. 50 crores even though AJL could repay the same for various stated reasons.*	*No show cause notice issued as to why loan was assigned for mere Rs. 50 lacs*
Para 8.9 page 30 of the order, Page 37 para9(10)	*However, perusal of the Balance Sheet of the assessee for the relevant Financial Year i.e. for the year ending 31 st March 2011 has revealed that the assessee had not disclosed value of 9.021 crore shares of the AJL in the Balance Sheet and investments were disclosed at NIL value in Schedule 4 (Refer Exhibit 23). However, the transaction was also incorrectly recorded in the P&L A/c of the assessee as expenditure on the object of the company (Refer Exhibit 4).*	*No show cause notice issued for this allegation.*
Para 16,	*Reference has been made*	*No show cause notice*

page 71 of the order.	*that YI has started enjoying using property of AJL since its registered office is at Herald House*	*provides any opportunity to explain this aspect.*

4.7 In respect of valuation of FMV of AJL properties:

4.7.1 Statements/allegations/inferences made in the assessment order for which no show cause notice has been issued and which were made for the first time directly in the assessment order :

Reference of order	*Statements/allegations/ inferences made in the order*	*Remarks*
Para 12.5	*Total FMV of AJL properties determined at Rs. 413.40 crores directly in the order.*	*In the final show cause notice, the FMV was stated to be Rs.359.56 crores and not Rs.413.40 crores. No show cause notice for this increase in FMV has been provided and the same is coming out directly from assessment order.*
Para 12.10	*The AO has increased the value of Mumbai Property from Rs. 79.10 crores as determined during assessment to Rs.132.94 crores*	*As regards valuation of Mumbai Property, the AO had ignored DVOs valuation and increased the value of the property from approx. Rs.*

		30 crores to Rs. 79.10 crores. YI challenged said valuation by the AO vide submission dated 27.11.2017. However, the AO further increased the value of said property from Rs.79.10 crores to Rs. 132.94 crores directly in the assessment order, without even providing any opportunity to YI to provide its submission in respect thereof.
Para 12.17	*It is evident from the valuation report that the DVO has rejected the claim on the ground that there was no evidence of encroachment. During the course of assessment proceedings, the assessee did not file any evidence in support of the objection.*	*DVO report also states that 'unauthorized encroachment appears to have taken place in the plot...' Page 416 of PB*
Para 12.12, 12.13, 12.15	*The Appellant had brought out errors and inconsistencies in the report of the DVO. The objections were raised before the*	*The responses of DVO was never provided to YI. YI came to know about these responses directly from assessment order*

	Appellant vide various letters. The AO directly dealt with these objections in the assessment order.	

68. Thereafter, reliance has been placed on various decisions as under :-

(i) *Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri [1954] 26 ITR 1 (SC)*

(ii) Dhakeshwari Cotton Mills v. CIT [1954](26 ITR 775)(SC)

(iii) Gargi Din Jwala Prasad v. CIT [1974] 96 ITR 97 (Allahabad)

(iv) Additional ITO v. Ponkunnam Traders [1976] 102 ITR 366 (Kerala)

69. Thus, it has been submitted that assessment has been made without sharing the documents relied upon by the AO to the assessee and without providing any opportunity to provide its rebuttal on the various allegations made by the AO.

70. It has been pointed out by Mr. Soparkar that in order to rebut the allegations made in the assessment order, the assessee had filed certain additional evidences before the ld. CIT (A) under Rule 46 of Income-tax Rules, 1962 which have also been filed before us running into 500 pages. It has been further pointed out that ld. CIT (A) had called for the remand report from the AO in

respect of merits as well as admissibility of these additional evidences. Even after calling for the remand report, ld. CIT (A) has denied the admission of additional evidences on the ground that adequate opportunity was available with the appellant to produce these evidences before the AO. Ld. CIT (A) has mentioned that in all 35 opportunities were granted by the AO during the reassessment proceedings starting from issuance of notice u/s 148 on 10.01.2017 and when the assessment proceedings were concluded on 27.12.2017. Ld. Sr. Counsel for the assessee submitted that even if we see the entire list of entries of giving various opportunities to assess the fact of the matter, only one show-cause notice was issued to the assessee on 08.12.2017. The other entry shows that dates and replies were filed before the Hon'ble High Court and they do not constitute the particulars provided to the assessee in person. Only one questionnaire dated 21.03.2017 was issued by the AO to which appellant had replied in full, however AO has made various incorrect inferences from the replies so filed without putting so inference to the appellant for his clarification. For instances, appellant provided all the documents and details of loan taken from Dotex in response to questionnaire dated 21.03.2017, however AO has made various

incorrect inferences which appellant came to know in the assessment order.

71. Further in respect of addition made u/s 28(iv) regarding the fair market value of property of AJL, AO has determined the value at Rs.413.40 crores approximately in the assessment order and even though in final show-cause notice, it was shown as Rs.359.56 crores and not Rs.413.40 crores.

72. Further even when the comments were sought on the DVO valuation report it was not indicated to the appellant at that stage that such value was proposed to be added as income of the appellant. Thus, appellant was not provided with proper opportunity to submit the documents during the assessment proceedings. Otherwise also, there are various judicial pronouncements whether, if the ld. CIT (A) called for remand report from the AO in respect of admissibility as well as merits of all the additional evidences filed by the appellant then such additional evidences ought to have been admitted. For this, he referred to following judgments :-

(i) Shahrukh Khan vs DCIT (13 SOT 61)(TMum);

(ii) Sh. Rizwan Saifi vs. ITO (I.T.A. No. 1860/Del/2010)

(iii) Urban Infra Nigam (1519/kol/2018) dated 28.2.2019.

73. Another important fact which has been pointed out by Shri Soparkar is that the ld. CIT (A) has not only called for remand report but also considered the additional evidences while deciding the merit of the case for which he has made various references of the additional evidences and also found in the remand report for adjudicating the issues on merits. This have been elaborated in the following manner before us :-

Sr.No.	Page No. of CIT (A) Order	Para No. of CIT (A) order	Additional evidences and remand report discussed by CIT (A)
1	Pg. 171 – 172	5.4.7-5.4.8	1. Ledger account of Loan given to AJL in the books of AICC (Pgs. 725-735 of FPB) 2. Statement of utilization of loan given to AJL (Pgs. 736-738 of FPB)
2	Pg. 173	5.4.10 –5.4.11	Order dated November 6, 2012 of the Election Commission of India (Pgs.709-712 of FPB)
3	Pg.173-174	5.4.12 – 5.4.12.1	Assessment order of Associated Journals Ltd. for AY 11- 12 (Pgs. 739-742 of FPB)

4	Pg. 174	5.4.15	Copies of the masthead of various newspapers published by AJL .(Pgs. 757-793)
5	Pg.179	5.4.24	1. Opinion of Registered Valuers, Kishore Karamsey & Co. dated July 28, 2018 for Mumbai property (Pgs. 798-803 of FPB). 2. Opinion of registered valuers, GAA Advisory dated September 6, 2018 for New Delhi property (Pgs. 895-925 of FPB) 3. Opinion of registered valuers, GAA Advisory dated September 6, 2018 for Patna property (Pgs. 926-947 of FPB) 4. Opinion of registered valuers, GAA Advisory dated September 6, 2018 for Panchkula property (Pgs. 948-966 of FPB) 5. Opinion of registered valuers, GAA Advisory dated September 6, 2018 for Lucknow property (Pgs. 967-996 of FPB)
6	Page 183-187	5.5.5-5.5.17	Various details submitted in respect of loan taken from M/s

			Dotex: 1. Annual accounts of RPG Lifesciences Ltd. for FY 2010-11 (Pgs. 498-554 of FPB) 2. Annual accounts of CEAT Ltd. for Financial Year 2010-11 (Pgs. 555-687 of FPB) 3. Balance Sheet of Dotex as at March 31, 2011 (Pgs. 688-708 of FPB) 4. Notarized copy of promissory Note issued by the Applicant to Dotex (Pg. 713 of FPB) 5. Notarized copy of various communications between the Applicant and Dotex extending the term of the loan from time to time (Pgs. 714 to 724 of FPB) 6. Dotex Merchandise Private Ltd. Letter to Young Indian dated August 7, 2013 with Envelope (Pgs. 804-805 of FPB).

74. Thus, these additional evidences have already been considered by the ld. CIT (A) while deciding the issues on merits and it would be gross injustice if they are not admitted before this Tribunal. He strongly relied upon the judgment of **Hon'ble Madras High Court in the case of R.S.S. Shanmugam Pillai & Sons vs. CIT 95 ITR 109** and also quoted paragraph of this judgment. He also relied upon various judgments wherein it has been laid down that CIT (A) can admit additional evidences if the same is crucial for the disposal of the appeal:-

(i) Smt. Prabhavati S. Shah vs. CIT (231 ITR 1) (Bom) (HC)

(ii) CIT VS. Virgin Securities and Credits (P.) Ltd. 332 ITR 396 (Del.)

(iii) CIT vs. K Ravindranathan Nair (265 ITR 217)(Ker.)

(iv) Jai Prakash Tyagi vs. ITO (72 taxmann.com 183) (Delhi, ITAT)

(v) ACIT vs. SMT. Prem Anand (I.T.A. No. 3514/DEL/2014)

(vi) Seagram Manufacturing Pvt. Ltd. Vs. ACIT (ITA NO. 4534/Del/2004) (Delhi Trib.)

75. Insofar as reliance placed by the ld. CIT (A) on the judgment of **Hon'ble Delhi High Court in the case of CIT vs. Manish**

Buildwell for rejecting the additional evidences, ld. Sr. Counsel submitted that reliance on the said judgment is completely misplaced, because in that case Hon'ble High Court held that it is mandatory for the ld. CIT (A) to call for the remand report on the additional evidences filed by the assessee. Here in this case, ld. CIT (A) has called for the remand report. Before this Tribunal, the appellant has filed an application dated 15.01.2021 under Rule 29 of the Income Tax (Appellate Tribunal) Rules, 1963 for admitting the same evidences which were placed before the ld. CIT (A). In support of such admissibility, catena of judgments has been referred to, including the judgment of **Hon'ble Delhi High Court in the case of H.L. Malhotra & Co. (P) Ltd. vs. DCIT 125 taxmann.com 70,** wherein it was held that the Tribunal has to dispose off additional evidence petition by way of an order before proceeding issues on merits. Similar issue has been taken in the case of **Jyotsna Suri vs. ITAT (2003) 128 taxman 33 (SC) and Maruti Udyog Ltd. vs. ITAT (2000) 244 ITR 303**.

76. The nature and relation of additional evidences of the appellant in two volumes of paper book running from pages 498 to 1370 have been filed before us. The discrepancy of the same

and the remarks given to every additional evidences filed before us has been explained in the following manner :-

Sr.No.	Description of document	Page Nos.	Remarks
	Copies of :		
1	Annual accounts of RPG Lifesciences Ltd. for Financial Year 2010-11	498-554	In the assessment order, the AO has alleged that the company was controlled by persons who were engaged in the activity of accommodating entries. At Para 8.10, Page 30 of the order, the AO has relied on some internal investigation report in relation to Dotex and stated that 'it is undisputed fact that Mr. Sunil Bhandari and Mr. Sunil Sanganeria were not only directors of MIs Dotex Merchandise Pvt. Ltd. but were directors of 50 other Kolkata based companies. Many of these companies have been found engaged in the business of providing
2	Annual accounts of CEAT Ltd. for Financial Year 2010-11	555-687	
3	Balance Sheet of Dotex as at March 31,2011	688-708	

			accommodation entries as notice during the course of survey by the Income Tax Department'. At page 33 of the order, he further states that the copies of bank account of companies controlled by above referred assessee had proved that these companies were engaged in business of accommodation entries typically contains deposit of cash and issue of cheque of equivalent amount. In neither the questionnaire dated March 21, 2017 (starting at Page 203 of PB I) nor the SCN starting at Page 366 of PB I), these facts have been put to the assessee for explanation. Further, these documents also have been provided to the assessee for explanation. The questionnaire asked the assessee to submit certain documents, all of which were

			submitted by the assessee. These very allegations are made directly in the assessment order. Accordingly, these documents are being submitted to controvert the said allegations.
4	Order dated November 6, 2012 filed of the Election Commission of India	709-712	Elaborate discussion has been made in the assessment order on why loan given by AICC to AJL of Ts. 90.21 crores was bogus (Pls refer Paras 15.1 to 15.9 and Para 8.2 of the assessment order). However, no questionnaire has been issued to the Appellant to show cause that this loan is not a paper entry. Please see notice dated March 21, 2017 at page 203 of the PB-1. Even the final SCN on Dec 8, 2017(Pg 366 to PB), does not mention various allegations based on which AO has the loan to be a paper entry. For ego pointed question on AO's

			inference that AJL books did not show the loan was never raised through any show cause notice, though extensive reliance has been placed on this alleged fact in the assessment order. Hence, YI had no opportunity to provide its explanation. Hence, this along with documents at Sr. No.7, and 9 are being submitted to controvert this argument of the AO that the loan was a paper entry.
5	Notarized copy of promissory Note issued by the Applicant to Dotex	713	This document is now filed pursuant to AO's remarks appearing in the assessment order (Para 20.1) that the promissory note was not filed during assessment proceedings. The Appellant had filed all the documents that were called for in questionnaire dated March 21, 2017. The

			documents submitted included all the main documents such agreement copy, bank statements, TDS documents etc. and yet, based on the allegation that promissory note was not submitted {which was not called for either in questionnaire or in SCN), it has been held by AO that assessee has not discharged its onus. Accordingly, the Appellant craves leave to now submit the promissory note.
6	Notarized copy of various communications between the Applicant and Dotex extending the term of the loan from time of time	714-724	The AO has alleged at Page 33 of the order that non-repayment of loan within one year amounted to violation of terms of loan. The Appellant had filed all the documents that were called for in questionnaire dated March 21, 2017. The AO never asked a query on why

			repayment did not happen within a year and therefore, extension letters were not submitted. However, since adverse view has been taken due to this reason, extension letters are now being submitted to show that there has not been any violation of terms of loan.
7	Notarized copy of ledger account of Loan given to AJL in the books of AICC together with relevant correspondence	725-735	Please refer the remark at Sr. No.4 above
8	Notarized copy of statement of utilization of loan given to AJL together with relevant correspondence	736-738	
9	Assessment	739-	

	order of Associated Journals Ltd. for AY 11-12	742	
10	Notarised copy of Form 20B (form for filing annual return by a company having a share capital with the registrar) filed by Young Indian with the ROC for FY 2012-13	743-756	At Para 3.3 of the remand report to pt additional evidence application (at Page 1027 of PB II, 3rd bullet point), the AO has alleged that the letters of the Appellant dated 20.04.2012 and 20.12.2012 sent to Dotex, which were signed by Shri. Suman Dubey are not genuine for the purported reason that Shri Suman Dubey was neither shareholder nor was holding any position in the Appellant after 31.03.2012. The said evidence is being submitted to substantiate that Shri. Suman Dubey was indeed a director of the Appellant for FY 2012-13.
11	Copies of the masthead of	757-793	The AO has at various places in the assessment order

	various newspapers published by AJL		alleged that AJL is a real estate company. The valuation of properties of AJL has also been done on this assumption. However, nothing of this sort is mentioned in the questionnaire dated March 21, 2017. Accordingly, this evidence along with evidence at Sr. No. 20 is being produced to show that AJL cannot be regarded as real estate company. This fact is crucial for the purpose of determining the method of valuation of shares of AJL.
12	AJL letter to S.K. Kapoor & Co. Auditor requesting 11UA valuation certificate	794	The Appellant has taken a plea before the AO, the CIT(A) as well as the Hon'ble ITAT that the provisions of section 56(2)(viia) cannot be ignored and that in presence of this specific provision, section 28(iv) cannot be invoked. Please refer page 381, para 5
13	Valuation of shares of AJL as per approach	795	

	under Rule 11UA pre issuance of shares to Young Indian		of the PB I for the reply filed before the AO, Ground No. V in GOA before CIT(A) and Ground No VI of GOA before Hon'ble ITAT. Further, it is also the contention of the Appellant that even for the purpose of section 28(iv), the valuation method to be adopted should be as specified in Rule 11UA. Accordingly, these evidences along with evidence at Sr. No. 21 and 22 have been filed by the Appellant.
14	Valuation of shares of AJL as per approach under Rule 11UA post issuance of shares to Young Indian	796	
15	S.K. Kapoor & Co., Auditor letter to AJL informing that 11UA valuation certificate will provide on August 8, 2018		
16	Opinion of Registered valuers, Kishore Karamsey & Co. dated July 28, 2018	798-803	The DVO Valuation reports are fraught with various errors. The same being technical documents, the assessee itself was not competent enough to fully

			analyse the same. Accordingly, based on its limited knowledge, it provided its reply and brought out various obvious errors. Even the said replies of the Appellant were ignored during assessment. Later through SCN Dated 8th December, 2017, the assessee was informed that this entire property valuation is proposed to be added to the income_of the assessee. Due to paucity of time, the Appellant could not engage technical experts to examine these reports. Further, for the Mumbai property, the AO has done the valuation directly in the assessment order without providing any opportunity to the Appellant. Now, the Appellant has engaged independent valuation experts to analyse the valuation done by the

			department and from their reports it is clear that the DVO/AO reports are not at all reliable and have many errors. Accordingly, it is submitted that these reports are very relevant for the issue under consideration. This evidence along with evidence at Sr. No. 23, 24, 25 and 26 are to support this contention of the assessee.
17	Dotex Merchandise Private Ltd. letter to Young Indian with Envelope	804-805	The AO has in his second remand report dated May 21, 2018, at Para 3.3 (Page 1027 of the PB II, second bullet point) alleged that the Appellant has not provided any proof that the correspondences between it and Dotex to extend the term of the loan was actually exchanged between the parties. This evidence is being provided to prove the fact of

			actual exchange of the letter which is clear from the envelope of the letter.
18	AJL letter dated February 15, 2017 to Deputy Director Town Planning, Mumbai	806	While valuing the Mumbai Property of AJL, the AO had ignored the valuation report of the DVO, and himself valued the property at Rs. 79.10 crores (please see Page 357 of PB I). Further, without even indicating to the assessee in any manner, in the assessment order, the AO suddenly increased this value to Rs.132.94 crores! (Pls refer pages 52 to 56 of the assessment order, para 12.8 onwards). At page 52 of the assessment order, it is noticed that the property zone for the Mumbai property has been taken as 29/167, whereas on appointing the independent valuer, it was realized that the said property belonged to the zone 29/166 and not 29/167,
19	Deputy Director Town Planning, Mumbai Letter to AJL dated February 27, 2017 in response to AJL letter	807	

			which significantly impacts the valuation of the property. Accordingly, this evidence is being submitted substantiate this fact.
20	Copies of various reports, photographs which substantiate that AJL is in Newspaper Business.	808-869	Please refer to comments at Sr. No. 11 above.
21	Valuation of shares of AJL as per Rule 11UA pre-issuance of shares along with the Audited Financial Statements	870-881	Please refer to comments at Sr. No. 12-15 above.
22	Valuation of shares of AJL as per Rule 11UA post-issuance of shares along	882-894	

	with the Audited Financial Statements		
23	Opinion of registered valuers, GAA Advisory dated September 6, 2018 bringing out various errors in the approach adopted by the AO/DVO in valuation of the immovable property owned by AJL in New Delhi	895-925	Please refer to comment at Sr. No. 16 above.
24	Opinion of registered valuers, GAA Advisory dated September 6, 2018 bringing out various	948-966	

	errors in the approach adopted by the AO/DVO in valuation of the immovable property owned by AJL in Patna		
25	Opinion of registered valuers, GAA Advisory dated September 6, 2018 bringing out various errors in the approach adopted by the AO/DVO in valuation of the immovable property owned by AJL in Punchkula	948-966	
26	Opinion of registered valuers, GAA	967-996	

	Advisory dated September 6, 2018 bringing out various errors in the approach adopted by the AO/DVO in valuation of the immovable property owned by AJL in New Lucknow		

77. Ld. Special Counsel for the Revenue objected for admission of the additional evidences and submitted that both under Rule 46 of Income-tax Rules, 1962 and Rule 29 of Income-tax (Appellate Tribunal) Rules, 1963 are in the nature of negative stipulations providing that party is not allowed to file any additional evidences barring under special exceptions. It is difficult to accept proposition that evidence which has not been inadmissible under Rule 46A by the ld. CIT (A) should be

admitted under Rule 29 of ITAT Rules on the same set of facts and arguments.

78. The primary argument of the Appellant is that principles of natural justice have not been followed and they did not get sufficient opportunity to file the evidence before the A.O. He submitted that only one show cause notice ("SCN") is issued in the entire proceedings and the A.O. did not ask for any of these details. In this regard, it is necessary to point out various correspondences exchanged during assessment proceedings:

- A very detailed questionnaire was issued on 21.03.2017 (Pg. 203, PB-I). Attention of Hon'ble Bench was drawn to Paras 5 to 9 to show in what great detail the questions were raised and evidence was sought.
- Pages 219, 236 and 239 of PB-I indicate the time sought by the Appellant, the fact of writ being filed in the High Court and getting dismissed and the reminder letters issued by AO.
- The Appellant filed partial replies on 07.06.2017 (Pg. 244, PB-I) and 13.06.2017 (Pg.254, PB-I). The AO shared copies of valuation reports of the DVOs and pointed out to the

Appellant their non-cooperation before different valuation authorities (Pg.356-358 of PB-I).

- Finally, after consideration of the available material on record, the AO gave final show cause notice asking why the additions to the total income be not made (Pg.366 of PB-I).
- The Appellant filed replies on 15.12.2018 and 18.12.2018 (Pg.370 and 379 of PB-I).

79. Mr. Srivastava submitted that there is a difference between issue of SCN before final assessment and the grant of opportunities to lead evidence. In this case, a detailed questionnaire having been issued as early as on 21.03.2017 and replies being entertained till December, 2017, there is no room for this suggestion that the Appellant did not have adequate opportunity. Even after issue of SCN on 08.12.2017, the Appellant did not prefer to lead any evidence till the assessment was made on 27.12.2017. It was nowhere suggested that any opportunity has been denied or there is any violation of principles of natural justice. This plea was also raised for the first time before CIT(A).

80. He submitted that the onus was on the Appellant to lead the evidence for the loan from Dotex, and issue of shares of AJL in the circumstances as narrated in the SCN. It was not for the A.O. to suggest what evidence would be necessary to establish the creditworthiness of lender and the genuineness of the transaction. Moreover, the non-cooperation before the DVOs is a matter of record.

81. It is relevant to note that there is a clear admission in the reply to the SCN that whatever evidence was relevant had already been filed. In fact, the registration of the Appellant under section 12A was cancelled for these very reasons on 26.10.2017.

82. The Appellant has relied upon certain decision of the Hon'ble ITAT such as Shahrukh Khan v. DCIT, (13 SOT 61), to contend that having called for the remand report on additional evidence, the CIT(A) could not have rejected the additional ground of appeal. It may be submitted that CIT(A) is mandated to call for a report under Rule 46A (3) before he/she uses such evidence. However, he/she has the inherent power to gather facts to ascertain whether or not the Appellant falls under any of the

exceptions of Rule 46A (lack of opportunity to lead evidence or being prevented to lead evidence).

83. Mr. Srivastava pointed out that the Revenue has submitted a copy of letter dated 16.03.2018 of the CIT(A) to the A.O., where he calls for remand report on two counts (one, on the admissibility of additional evidence and two, on the merits of the additional evidence).

84. He submitted that the report of the AO on merits falls under Rule 46A (3) but the report on the admissibility of the evidence is under inherent powers of inquiry by the CIT (A). The report on admissibility comes a stage prior to the report on merits of the evidence. The CIT (A) calls for the report independently on two points and the AO also submits his report independently on each point under separate heads. Hence, it cannot be urged that the decisions in the case of Shahrukh Khan v. DCIT, (13 SOT 61) etc. are applicable since the reports in those cases were ostensibly called for under Rule 46A (3) and not on the admissibility itself of the evidence.

85. An argument has been raised relying on the decision in the case of R.S.S. Shanmugam Pillai & Sons v. CIT, (1974) 95 ITR

109, rendered by the Hon'ble Madras High Court that the CIT(A) having relied on additional evidence while dealing with the merits of the case cannot hold the evidence as inadmissible. In this context, he submitted that the Appellant filed a detailed submission before Ld. CIT (A) which begins on Pg.1172 of PB-II (Part-B). Attention was specifically drawn to Pg.1240 onwards where additional evidence has been discussed. On Pg. 1275, a statement is made that all relevant documents have been filed.

86. Ld. CIT (A), while passing the order, though had dealt with the submissions of the Appellant before him based on additional evidences in the order but his observations on additional evidence while dealing with the additional evidence is in the nature of 'without prejudice' observation. The Ld. CIT(A) emphatically stated on every issue that the evidence has not been admitted and then goes on to discuss it.

Decision on additional evidences

87. At the time of hearing, when additional evidences were filed by the appellant in order to make submissions on the issues involved, we thought it appropriate that parties shall be allowed to argue the issues based on material available on record as well

as additional evidences and after hearing both the parties, it was decided that the relevancy of such additional evidences vis-à-vis the issues involved shall be discussed during the course of hearing and will be decided accordingly while adjudicating the issues raised before us in our final order. The relevant order sheet entry dated 06.12.2021 reads as under:-

"We have heard both the parties at length on the issue of admission of additional evidences containing 26 documents filed by the assessee. On the perusal of the documents filed, it seems that all these evidences were filed before the ld. CIT (A), on which remand report was also sought from the AO who has given his comments. However, ld. CIT (A) has rejected the said additional evidences and refused to admit the same. Accordingly, the assessee has filed same very evidences as additional evidences under Rule 29 of Income Tax (Appellate Tribunal) Rules along with the petition.

After considering the entire gamut of issues involved, we feel that the parties should be allowed to argue the issues based on material placed on record as well as additional evidences. After hearing both the parties, we propose that in our final order, we will decide the relevancy of such additional evidences vis-à-vis the issues involved. At this stage, we are permitting the appellant-assessee as well as the respondent-revenue to argue the appeal based on all

the 26 documents filed as additional evidences before us. The hearing will continue on 08.12.2021 in afternoon."

88. Further, again vide letter dated 01.02.2022, assessee filed another petition for additional evidences, available at page no.5 of paper book, which has been stated that these documents are not especially additional evidences, since these documents were referred to before the lower authorities and in fact, extracts from the same/relevant pages of the documents have also been reproduced in several pages of the orders passed by the lower authorities. Even the DVO and AO have referred to these documents for arriving at their conclusion which has neither been placed by the DVO and tax department. Therefore, this present application was moved. List of all these documents and the respective page numbers of the third set of additional paper book is as under :-

Sr. No.	*Description of document*	*Reference in existing record*	*Page no.*
1	*Copy of Perpetual Lease Deed dated 10.1.1967 for allotment of New Delhi property*	*Page 1377 of PB IV, Para 3*	*Pages 1481-1492 of PB V*
2	*Copy of Lease Deed dated April 18, 1988 for allotment of Patna Property*	*Page 1415 of PB IV*	*Pages 1493-1516 of PB V*
3	*Copy of re-allotment letter dated*	*Page 1439 of*	*Pages 1517-*

	28.9.2005 for allotment of Panchkula	*PB IV*	*1520 of PB V*
4	*Letters exchanged with Archaeological Survey of India for observations Lucknow property along with photographs of inauguration of the building on the said property*	*Relating to observations of registered valuer at page 1455, para 5*	*Pages 1521-1527 of PB V*
5	*Allotment letters for Mumbai Property*	*Relating to observations of registered valuer at page 801 of PB II*	*Pages 1528-1541 of PB V*
6	*Order dated May 30, 2017 of the Municipal Corporation of Greater Mumbai*	*Relating to observations of registered valuer at page 798-799 of PB-II*	*Pages 1542-1543 of PB V*
7	*Ready Reckoner rates of Mumbai for 2016*	*Public Documents*	*Pages 1544 of PB V*
8	*Ready Reckoner rates of Mumbai for 2013*	*Public Documents*	*Pages 1545 of PB V*

89. Though we have permitted the parties for arguing on all the evidences filed before the authorities below as well as additional evidences filed before us which were most of them were also filed before the ld. CIT (A) but has been rejected by her. However, some of the additional evidences filed before us has either no relevance or had no material impact on the issues involved. For

instances, documents pertaining to valuation report sought u/s 11UA which was only for the purpose of section 56 which is neither the case of the assessee nor the case of the Department, so documents mentioned at Sl.No.12 to 15, 21 & 22 as incorporated above in the list of additional evidences are not relevant. Secondly, newspaper reports appearing at sl.no.11 is also irrelevant as they are not admissible evidences. There is another evidence which is order of Election Commissioner appearing at sl.no.4 of the list, though has been referred before us may also not be relevant on the issues involved which is the order of Election Commissioner in the case of Indian National Congress. The other documents we shall try to deal in brief and take into consideration which are germane to the issues involved. Insofar as various objections and references filed with regard to valuation part, the appellant has filed specific objections before us which are based on and emanating from Registered Valuer's report, and the finding and observations of the AO and are otherwise relevant, we shall deal it comprehensively and then it may not be relevant to counter each and every part of valuer's report as same has been summarized by the appellant in the written submissions filed before us. So far as documents relating

to Dotex, annual accounts of RPG Lifesciences Ltd. etc. mentioned at sl.no.1, 2, 3, 5, 6, 7, 8 & 10, the same will be discussed and considered for deciding the issue. The assessment order of AJL for AY 2011-12 appearing at Sl.No.9 technically cannot be reckoned as additional evidences therefore, the same is also taken into cognizance. In any case, both the parties have made the detailed submissions and also filed their written submissions on all the points which was raised and argued before us on various dates of hearing. With these observations, we proceed to decide the issues as raised in grounds no.5, 6 & 12, grounds no.7, 8 & 9 and other grounds.

GROUNDS NO.5, 6 & 12

90. These grounds relate to, *firstly*, taxing of the fair market value of the properties owned by AJL u/s 28(iv) of the Act; *secondly*, whether the provisions of section 56(2)(viia) is applicable specifically dealing with the shares; and *lastly*, the treatment of the transaction of assigning of loan by the AICC to appellant company, whether was a fraudulent transaction or not.

91. As discussed in the earlier part of the order, the appellant company during the year under consideration had acquired loan

given by AICC to AJL of Rs.90.21 crores for a consideration of Rs.50,00,000/-. The said loan was converted into 9.021 crore equity shares of AJL which were allotted to YI. The case of the AO has been that in the year consideration, the appellant targeted takeover of AJL which resulted into several benefits to the appellant which were embodied in the business assets of AJL. According to the AO, the profits and gains from the business in the form of benefits to the appellant having value of Rs.413.41 crores had accrued to the appellant in terms of section 28 (iv) of the Act during the year under consideration. Assessing Officer has also categorically stated that it is not a case of hypothetical income but it is the quantification of benefit as derived to the appellant in the year under consideration from the business transaction of takeover of AJL and determined through process of valuation. The AO held that the benefit arose from an ***"advantage in the nature of trade"*** which translated into non-monetary benefits in the form of immovable properties of AJL which were together valued at Rs.413.41 crores. Assessing Officer was of the opinion that all the properties of AJL were commercial assets and that the nature of benefits flowing from these properties constituting commercial assets were revenue in

nature. Accordingly, he held that benefit from the adventure constituted profits and gains from the business within the meaning of section 28 (iv) and would thus be regarded as income chargeable to tax.

92. While arriving to his conclusion, AO has given elaborate sequence of events having nature of transaction in paras 9.1, 10 and 11 and has discussed and summarized entire legal provision in paras 16.1 to 16.10 and findings of the AO in para 17 to 17.7 of the order. For the sake of ready reference, certain excerpts from the order of assessment are reproduced hereunder:-

> *"16.1 It is amply clear from the above uncontroverted facts that sole purpose of transaction leading to acquisition of shares of the AJL was to derive several types of benefit from underlying business properties of the AJL. The impugned transaction was intended to maximize profit and to earn income as reflected in several benefits embodied in the business assets of the AJL by making paltry investment of Rs. 50 lacs to AICC and not to AJL that too through a fraudulent transaction which was facilitated by the common director of the assessee and target company i.e. the AJL. In this context, it would be appropriate to examine that sub-section (13) of section 2, clause (Ili) to sub-section (24) of section 2 and clause (iv) of section 28 of the Act. For the sake of convenience, the relevant provisions are extracted below:*

.....

16.4 Any adventure or concern in nature of trade, commerce or manufacture: The expression used "any adventure or concern in the nature of trade, commerce or manufacture" is allied to transaction that constitute trade or business but may not be trade or business itself. It is characterized by some of the essential features that make up trade or business but not by all of them. The Supreme Court in cases of Venkataswami Naidu & Co. vs. CIT 35 ITR 594 has set out various tests to determine whether a transaction comes within this expression or not and whether a particular activity amounts to such an adventure is a question which must be decided on its own facts and circumstances and no firm law or legal test is possible. In this context, the relevant part of the judgement of Hon'ble Supreme Court in case of Venkataswami Naidu & Co. vs. CIT (supra) is extracted below:

"This question has been the subject-matter of several judicial decisions; and in dealing with it all the judges appear to be agreed that no principle can be evolved which would govern the decision of all cases in which the character of the impugned transaction falls to be considered. When section 2, sub-section (4) refers to an adventure in the nature of trade it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterized by some of the essential features that make up trade or business but not by all of them; and so, even an

isolated transaction can satisfy the description of an adventure in the nature of trade. Sometimes it is said that a single plunge in the waters of trade may partake of the character of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction.

As we have already observed it is impossible to evolve any formula which can be applied in determining the character of isolated transactions which come before the courts in tax proceedings. It would besides be inexpedient to make any attempt to evolve such a rule or formula. Generally speaking, it would not be difficult to decide whether a given transaction is an adventure in the nature of trade or not. It is the cases on the border fine that cause difficulty."

16.5 Hon'ble Supreme Court in its later decision in case of CIT vs. Sutlej Cotton Mills Supply Agency ltd. (1975) 100 ITR 706 examining the term 'adventure in nature of trade' has held that it is not necessary to constitute trade there should be a series of transactions both of purchases and sales. The fact of a single transaction of sale or purchase outside the assessee's line of business may constitute an 'adventure in nature of trade'. Neither repetition nor continuity of similar transactions is necessary to constitute a transaction as adventure in the nature of trade. In this context, Hon'ble Apex Court has analysed its

earlier decision in case of Venkataswami Naidu & Co. vs. CIT (supra) as under:

*"The principles underlying the distinction between a capital sale and an adventure in the nature of trade were examined by this court in G. Venkatswami Naidu & Co. v. Commissioner of Income-tax**, where this court said that the character of a transaction cannot be determined solely on the application of any abstract rule, principle or test but must depend upon all the facts and circumstances of the case. Ultimately, it is a matter of first impression with the court whether a particular transaction is in the nature of trade or not. It has been said that a single plunge may be enough provided it is shown to the satisfaction of the court that the plunge is made in the waters of the trade; but mere purchase/ sale of shares-if that is all that is involved in the plunge- may fall short of anything in the nature of trade. Whether it Is in the nature of trade will depend on the facts and circumstances. "*

[Extracted from the judgement in case of CIT vs. Sutlej Cotton Mills Supply Agency Ltd.]

16.6 Whether meaning of term 'business' is wider than 'trade'? Hon'ble Orissa High Court in the case of CIT vs. M.P. Bazaz and other (1993) 200 ITR 131 examining the meaning of the word 'business' has analysed several decisions of Hon'ble Apex Court and has held that the word 'business' is a word of large and indefinite import. It is something which occupies the attention and labour of a person for the purpose of earning the profit. Section 2(13) uses the term 'include' which makes the

definition of 'business' extensive and broad. As discussed above, the word 'business' has more extensive meaning than the word 'trade'……..”

…..

16.8 The courts have also held that the term business is a word of very vide connotation any by no means determinate in its scope and has to be concerned with reference to each particular kind of activity and occupation of the person concerned. The frequency or repetition of activity though at times a decisive factor, is by no means, and infallible test and a transaction though repeated may not amount to a trade or an adventure in nature of trade. Conversely, a single transaction may constitute business under the definition of that word in section 2(13). It is not essential to constitute a trade that there should a series of transactions, both of purchase and of sale. In other words, neither repetition nor continuity of similar transactions is necessary to constitute a transaction and adventure in nature of trade. Hon'ble Supreme Court in case of Venkatswami Naidu & Co. vs. CFT, 35 ITR 594 has clarified that an isolated transaction can satisfy the description of an adventure in nature of trade; a single plunge in the waters of trade may partake of the character of a trade depending upon facts of that case. The courts have also clarified that an activity carried on under strict statutory control may nevertheless be business.

16.9 Whether benefit accrued to the assessee could be taxed as profit & gain of business & profession? Section 28 provides

that several categories of income shall be chargeable to income tax under the head profit and gain of business or profession which include profit and gain of any business or profession which was carried on by the assessee at any time during the previous year, any compensation or other payment subject to certain conditions, income derived by trade, professional or similar activities from specific services performed for its members, profit on sale of license granted, cash assistance, duty drawback in lieu of export, any profit on transfer of DEPB and DFRC, any interest, salary, interest, bonus, commission or remuneration due to or received by the partner of a firm and any sum whether received or receivable in cash or kind as stipulated under clause (va), (vi), (vii) and the value of any benefit or perquisite whether convertible into money or not, arising from the business or exercise of a profession as stipulated in clause (iv). In this case, the assessee has received quantifiable benefit arising from the business transaction, accordingly, it would be appropriate to examine the relevant provisions which is extracted below for the sake of clarity:

"28. The following income shall be chargeable to income-tax under the head 'Profits and gains of business or profession',-

xxxxxxxxxxxx

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession"

Clause (iv) was inserted in section 28 w.e.f. 01.04.1964 and a corresponding amendment made in section 2(24) to include the value of such benefit or perquisite in the definition of the term 'income'. It is pertinent to mention here that sub-section (24) of section 2 which defines the term 'income' has specifically included the value of any benefit or perquisite taxable under clause (iv) of section 28 as income under the Act. For the sake of clarity, the relevant provisions of section 2(24) of the Act are reproduced as under:

"(24) 'income' includes-

xxxxxxxxxxxx

(vd) the value of any benefit or perquisite taxable under clause (iv) of section 28;"

16.10 It is amply clear from above referred to legal analysis that Hon'ble High Courts and Supreme Court have laid down several tests to determine whether an activity or activities are in nature of business or not. These principles may be briefly summarized as under:

- *The word 'business' is of wide importance and in fiscal statutes, it must be construed in a broad rather a restricted sense. [Mazagaon Dock Ltd. vs. CIT (1958) 34 ITR 368, 376 (SC))*
- *'Business' is an activity capable of producing a profit which can be taxed. [CIT vs Lahore Electric Supply Co. Ltd. (1966) 60 ITR 1, 5 (SC)]*

- *The word 'business' is a word of large and indefinite importance. It is same thing which occupies the attention and labour of a person for purchase of earning profit.*
- *The word 'business' has more extensive meaning than the word 'trade'.*
- *The activity/ activities which constitute carrying on business need not necessarily consists of activities by way of trade, commerce or manufacture or activities in the exercise of a profession of vocation.*
- *The activity/ activities in order to constitute a business need not necessarily be concerned with several individual or concern.*
- *A single and isolated transaction outside the assessee's line of business has been held to be falling within definition of business as being 'adventure in nature of trade'. The question, therefore, whether a particular source of income is business or not must be decided according to our ordinary notion as to what a business is.*
- *Neither repetition nor continuity of similar transactions is necessary to constitute a transaction as adventure in nature of trade.*
- *The frequency or repetition of activity though at times a decisive factor, is by no means and infallible test and a transaction though repeated may net amount to a trade or an adventure in nature of trade. Conversely, a single transaction may constitute business under the definition of the word in section 2(14) of the Act.*

- *The value or benefit whether convertible in not money or not arising from the business or exercise of profession as stipulated in clause (iv) of section 28 is also profit and gains of business.*

Significant facts and circumstances of the case having bearing on characterization of benefit arising out of business transaction of taking over properties of the AJL through its takeover?

17. It is evident from the facts of the case that in this case, purchase of 99% shares of the AJL by the assessee was not an ordinary transaction of investment but the transaction involving several steps (as many as 9 steps) was an adventure in nature of trade. The transaction was part of a well devised scheme involving series of steps with the intention to earn significant benefit as embodied in business assets of the AJL. The scheme had included:

- *Change in key management personnel of the AJL by appointing founder of the assessee as Director of the AJL prior to incorporation of the assessee company.*
- *Business operation of the assessee at the business premises which was posh property of the AJL without even paying any rent for using the property.*
- *Transfer of non-existent loan of Rs. 90.21 crore at ridiculously low price of Rs. 50 lac by way of a fraudulent transaction and the impugned sale proceed was paid after a gap of more than 2 months after allotment of 99% shares of AJL through use of non-existent loan of Rs. 90.21 crore.*

- *The unexplained celerity at which share capital of the AJL was increased and shares were allotted to assessee company.*

17.1 The assessee undertook a series of steps over a period of time to be precise from 02.04.2008 to 01.03.2011 and these steps had culminated during the year under consideration to achieve a pre-meditated objective of taking over of the AJL in order to get several valuable benefits from business assets of the AJL having fair market value of Rs. 413.41crore as well as to derive the value from these properties. These intermediary steps on paper were artificially inserted in the well devised scheme led to take over of the AJL by allotment of 99% shares of the AJL without even getting the real estate properties transferred in the name of the assessee but the transaction resulted in accrual of all the benefits from value of the real estate business and properties to the assessee. The transactions were devised and carried out represented an adventure in the nature of trade and would squarely fall within the definition of the term 'business' as appearing in section 2{13} of the Act. This is evident from the following facts and circumstances:

- *The office bearers of AICC and AJL were common and some of these office bearers later on incorporated the assessee company and had become the members of the assessee by acquiring shares. As early as in the beginning of the year 2008 it was decided to close down the business of printing and publishing newspaper by the AJL with the oblique purpose to make commercial use of the business assets of the AJL*

(commercial property located in posh areas of Delhi, Patna, Panchkula, Mumbai, Lucknow) acquired by it from Central/ State Governments for publishing newspaper at ridiculously low price. The commercial use of these properties had enhanced its potential and value by way of enhanced fair market value. Since, acquisition of these properties to derive benefits embodied in these property by the assessee was only possible by way of purchase of these properties by making payment of hundreds of crore to the AJL alongwith payment of substantial capital gain tax by the AJL, a scheme was devised to obtain all the benefits embodied in these business assets of the AJL by way of allotment of 99% shares of the AJL leading to takeover of the AJL by the assessee and without disturbing legal ownership of the AJL over these very high value business assets and without paying any taxes on account of income in form of benefits.

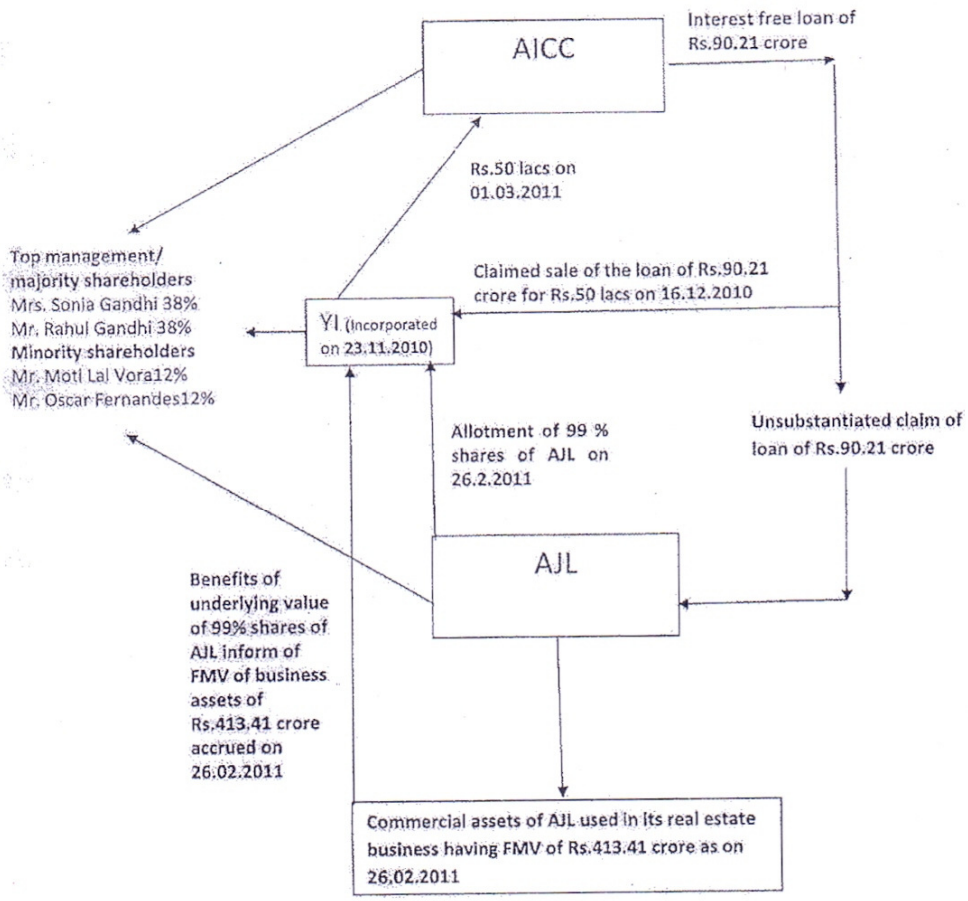
- *As a part of the scheme some of the office bearers of the AICC and founder member & director of the assessee were appointed as directors of the AJL starting from 17.06.2010 till 21.12.2010 so that they can prepare a ground work for easy takeover of AJL to achieve the ultimate target of obtaining of benefits embodied in these properties. This conclusion is based on appointment of Mr. Oscar Fernandes, Mr. Suman Dubey, Mr. Satyan Gangaram Pitroda prior to incorporation of the assessee and with the help of these persons and active support of Shri Motilal Vora who is an office bearer/ managing director/ director of all the three entities to the transaction also passed a*

board resolution for shifting the registered office of the AJL from Lucknow to Delhi on 01.09.2010 so that control over the real estate business and property of the AJL becomes easy for the assessee.

- *The most crucial part of the scheme revolves around assignment of non-existing loan of Rs.90.21 crore and that too for a paltry sum of Rs. 50 lacs to the assessee. As discussed above, this fraudulent transaction as several other dubious features including transfer of unproved loan of Rs. 90.21 crore at paltry sum of Rs. 50 lacs to the assessee at the time when it did not have even fund to pay paltry sum of Rs. 50 lacs, transfer of loan before the assignment deed for such alleged transfer, non-confirmation of such loan by the AJL receipt of so called consideration of Rs. 50 lacs after a gap of more than 3 months from the transaction, etc.*
- *The celerity at which the authorized capital of the AJL was increased from 10 lac shares to 10 crore shares and the allotment of more than 9 crore shares having face value of Rs. 90.21 crore without complying provisions of the Companies Act as discussed in above para 9{8} of this order is amazing particularly even when the share application forms were not properly filled up.*
- *The intention and undue haste in obtaining several benefits as embodied in business assets of the AJL by way of takeover of the AJL is evident from the fact that right from the day of*

incorporation of the assessee company, it was using one of the posh properties of the AJL i.e. Herald House as its registered office by acquiring a floor without any payment of rent. It is also evident from the report of the valuer as extracted earlier in this order that commercial properties of AJL were under custody and control of the assessee company and employees of the assessee company have prohibited entry of valuer in the premises.

Exhibit 21



Schematic diagram representing series of transactions leading to accrual of benefit of Rs.413.41 crore to the assessee during year under consideration.

It is amply clear from the analysis of above steps that even though the transaction of getting benefit from properties of the AJL by takeover of the AJL was one transaction, however, it has involved several steps, some real and some fraudulent, with the real and distinct intent of the transaction to obtain benefit from the impugned properties of the AJL and the right to enjoy benefit of the property from the day of incorporation of the assessee company during the year under consideration. The assessee has derived a distinct benefit from this adventure leading to allotment of 99% shares of the AJL. The nature of benefits may be summarized as under:

- *Benefit of underlying value of shares of the AJL.*
- *Benefit of right to enjoy the business assets of the AJL.*
- *Benefit of income from real estate business of the AJL.*
- *Benefit of rental income of several crores from letting out of business assets of the AJL.*

17.2 The one way to quantify value of such benefits as accrued to the assessee is to ascertain fair market value of the properties used in the real estate business as commercial assets. The fair market value of these business properties on date of takeover of their business properties will capture some of the benefits accrued to the assessee during year under consideration. As discussed above, the fair market value of these commercial assets used in real estate business is of Rs. 413.41crore which represents value of benefit accrued to the

assessee during year under consideration. Even though the benefit of Rs. 413.41crore is in the form of fair market value of immovable properties used as business assets, it does not alter the nature of income which is revenue in nature.

17.3 Since, the assessee has taken control and management of AJL by allotment of its 99% of shares AJL during year under consideration and the assessee had not carried out any activity during the year except for the transaction of taking over AJL which was in nature of adventure in trade, a" the benefits embodied in the business assets having fair market value of Rs. 413.41 crore has accrued to the assessee during year under consideration. The assessee has actually started enjoying business income by in-locking benefit accrued to it during year under consideration by occupying and using their business assets for real estate business and having full control over even entry and exit in the premises of the business assets.

Whether the assessee holds the share simpliciter or has the right to direct enjoyment of benefit arising from business assets of the AJL.

17.4 It has been contended by the assessee that it is a section 25 company and object of the company was to promote democratic values as laid down by Mahatma Gandhi and Pandit Nehru and holding property of the AJL was not the purpose of the assessee company in subscribing 99% of the shares of AJL. It is pertinent to mention here that the assessee company was granted registration u/s 12A by the Commission of Income Tax (Exemptions) subject to various conditions and

registration of the association u/s 25 of the Companies Act, 1956 was also subject to several conditions as discussed earlier in this order. Further, during the course of assessment proceedings it was revealed that the assessee company had not carried out any activities in furtherance of above referred to object. It is a matter of record that only expenditure incurred by the assessee company during year under consideration was to purchase a non-existent loan of Rs. 90.21 crore through a fraudulent transaction and in subsequent assessment years the only expenditure incurred by the assessee company was to create provision for interest expenditure allegedly meant to pay interest on loan of Rs. 1 crore taken from a hawala entry operator in Kolkata. For the sake of clarity, the nature of expenditure incurred by the assessee is tabulated in following table:

	AY 2011-12	*AY 2012-13*	*AY 2013-14*	*AY 2014-15*
Expenditure on object	-	-	-	-
Expenditure on purchase of non-existent loan of Rs.90.21 crore	*50,00,000*	-	-	-
Provision of interest on loan of Rs.1 crore taken from hawala entry operator located in Kolkata	*1,72,603*	*14,00,000*	*14,00,000*	*14,00,000*
Other expenses (professional fees, legal	*1,48,687*	*2,57,459*	*2,50,061*	*2,57,468*

expense, audit fee, preliminary expenses written off, etc.)				
Total	*53,21,390*	*16,57,459*	*16,50,061*	*16,57,468*

It is evident from the details of the above referred to expenditure as extracted from audited P&L A/c for the relevant years that the assessee had not incurred any expenditure on its object except for expenditure on purchase of non-existent loan of Rs. 90.21 crore leading to takeover of the AJL and provision of interest on alleged loan of Rs. 1 crore taken from hawala entry operator of Kolkata. The other expenditure is admittedly incurred on fee for auditor, preliminary expenditure, written off, etc. and this expenditure cannot be held to be for the purpose of the object of the company. In view of the above, the claim of the assessee that the assessee company was carrying out its stated object is factually incorrect and the assessee company as proved above had never engaged in the activities of promoting democratic values by incurring expenditure.

…….

It is evident from above findings that the assessee was not engaged in the activities as prescribed its object as well as u/s 25 of the Companies Act. It is a matter of record as discussed earlier that AJL after closing business of publishing of newspaper w.e.f. 02.04.2008 was engaged in real estate business. After the completion of the investigation and issue of a notice u/s 148 for the year under consideration the AJL has

claimed relaunching National Herald on 12.06.2017 (after a gap of six years from the impugned transaction) without even putting in place requisite infrastructure of publication of newspaper just to camouflage its real estate business and to create a legal facade. It is also proved beyond doubt that only activity during year under consideration was first to acquire AJL by way of allotment of 99% of the shares and the purpose was not to hold the shares but to enjoy the benefit of properties or business assets as explained earlier. Even in subsequent years, the only activities performed by the assessee company was to enjoy benefit of business assets of the AJL. In this factual backdrop and taking into a/c the celerity at which the 99% shares of AJL were acquired through a series of artificially inserted steps including fraudulent transactions, the argument that acquisition of shares of a company cannot be imputed to mean that the shareholder has acquired the business assets is wholly untenable. It is not the acquisition of shares simpliciter. In this case, the impugned transaction to transfer the enjoyment of several benefits embodied in the business assets of the AJL without getting the assets of the AJL transferred to the assessee.

Whether benefit accrued to the assessee in real terms?

17.5 It is evident from above discussion that during year under consideration that business transaction of the takeover of the AJL resulted in several benefits to the assessee embodied in the business assets of the AJL on the date of completion of business transaction during year under consideration.

Accordingly, the profits and gain from business in form of benefits to assessee having value of Rs.413.41 crore u/s 28(iv) has accrued to the assessee during year under consideration and is taxable as income from profit and gains from business. It is to clarify here that it is not a case of hypothetical income but in this case quantification of benefit as derived and accrued to the assessee during year under consideration from the business transaction of takeover of the AJL has already been determined and the assessee had already started enjoying the benefit by possessing and using these commercial assets during year under consideration.

Whether benefit accrued to assessee is in nature of Revenue?

17.6 The benefit of the "adventure in the nature of trade" translated into money terms in the form of fair market values of the properties of the AJL referred to above comes to Rs.413.41 crore.lt is pertinent to mention here that all the properties of the AJL were commercial assets of the real estate business of the AJL and substantial business income has been generated from commercial use of these properties by way of sale or let out of the property, accordingly, the nature of benefit flowing from these properties which do not represent capital assets but constitute commercial assets was revenue in nature. It is to clarify here that the business assets of the AJL have remained in the legal ownership of AJL only but enjoyment of several types of benefit embodied in these commercial assets stands transferred to the assessee. The decision with regard to mode, manner and extent of exploitation of these business assets of

the AJL rests with the assessee. Such benefit from the adventure constitutes profits and gains of the business within the meaning of section 28(iv) of the Act and would be regarded as income chargeable to tax under the provisions of the Act as the benefit in the form of fair market value of the properties of Rs. 413.41 crore arising to the assessee from the adventure in the nature of trade of takeover the assets of AJL by way of allotment of its 99% shares following several steps including a fraudulent transaction.

17.7 In view of above discussions, income of the assessee for the year under consideration u/s 28(iv) has been computed at Rs. 413.41 crore i.e. FMV of business assets of the AJL which best represents the value of several benefits arising to the assessee from the transaction.

(Addition of Rs.413.41 crore)"

ARGUMENTS ON BEHALF OF THE APPELLANT

93. The main contention of the appellant before us has been that appellant has acquired the shares of AJL with the intention to use it as launch pad for achieving its objects.

94. Before us, Shri Soparkar submitted that right from the stage of assignment of loan and conversion of the equity shares of AJL, an important fact was that objects of AJL were aligned with

the assessee company. The objects of the AJL were amended in September 2011 to include following objects:-

> ***"To inculcate in the mind of India's youth commitment to ideal of a democratic and secular society for its entire populace without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that may promote the foregoing objective in any manner whatsoever including, without limitation, participating in all democratic activities through open and transparent electoral process, so as to conform to the ideals of the founding fathers of India, Mahatma Gandhi and Pandit Jawaharlal Nehru."***

95. Not only that, in order to align with the charitable activities of the two companies, the Memorandum of Association of AJL was further amended in the year 2016 to provide that the profits of AJL cannot be distributed as dividend. All the transactions of assignment of the loan of AICC to the assessee and conversion of loan into the equity by AJL were disclosed in the audited financial statement of the appellant company for the year ending 31.03.2011. He further submitted that even prior to the inception of Young Indian, the objects of AJL were already aligned with INC wherein it is clearly stated that it shall be in the publication of

newspaper in accordance with the INC policy. In fact, even the objects of the appellant company and INC are also similar to spread the awareness of the democracy and secularism between the youth of the country. Since AJL was running into huge losses, the publication business was suspended and there was dip in the circulation of the newspaper due to various other factors and therefore, in the year 2008, the publication was temporarily suspended. During the difficult time, AICC had given loan over the period of time for a sum aggregating to Rs.90.21 crores to AJL from the period 2002 to 2011 and AJL utilized the amount advanced by AICC for meeting the expenses of running the publication including to pay employees salaries, VRS, PF, ESI, statutory dues & taxes and building & maintenance its newspaper offices. The appellant company in its annual accounts for FY 2010-11 has disclosed Rs.50,00,000/- paid to the AICC as application of income as the same was used for acquiring shares of AJL whose objects are being recasted to have its main objects of the appellant. It has claimed that in the income & expenditure account, amount of Rs.50,00,000/- was claimed as expenditure towards youth commitment to the ideal of democratic and secular society. In order to pay the said consideration of Rs.50,00,000/-

to AICC on account of assigning of loan, the appellant company arranged a loan of Rs.1 crore from Dotex.

96. Ld. Sr. Counsel for the assessee further pointed out that between years 2011 to 2016, the preparatory activities were undertaken to revive AJL and to start its publication. This revival factor has also been taken by the Tribunal in assessee's own case in the cancellation proceedings u/s 12A when the Tribunal has noted this fact in paras 68 and 37 which for the sake of ready reference is reproduced hereunder :-

> *"68. ...In so far as reliance placed by the ld. Special Counsel for the Revenue on the judgment of Single Judge of Hon'ble High Court in the case of Associate Journal Ltd. which was upheld by the Division Bench in LPA No. 10/2019, wherein there is an observation that only when relevant authorities initiated inspection, the AJL decided to resume his press activities so as to save the lease of the properties from being cancelled by the Government. In this regard, he submitted that way back on 23.01.2014; AJL had filed a letter to Registrar for News Papers of India, copy of which has been placed at page 267 of the paper book-1 filed by the assessee, which clearly indicated the intention to resume the newspaper activities. Such an allegation made by the ld. Special Counsel that the decision of printing was an afterthought gets demolished for the reason that this inspection of LDO had occurred only in September 2016. He*

also pointed out following dates and events occurred prior to first notice of inspection by the LDO:

- *On 15.10.2012, AJL applied for registration of establishment employing Contractor labour for construction of building for newspaper/press in Panchkula. See copy of the same at Page 523 to 525 of AE-PB II.*
- *On 31.10.2012, Registration Certificate issued by Dy. Labour Commissioner, Ambala in respect of construction of building for newspaper/press in Panchkula. See copy of the same at Page 526 to 528 of AE-PBII.*
- *AJL has sanctioned plans for construction of printing press at Panchkula property dated 26.11.2012 is at Page 529 to 532 of AE - PB II. The same clearly shows the area pertaining to Press is demarcated on those plans;*
- *AJL's plans for construction of printing press at Mumbai property was sanctioned by the relevant Authorities in 2013 and 2016. A copy of the 57 sanctioned plans is set out at page 533 to 538 of AE - PB II. The same clearly shows the area pertaining to Press is demarcated on those plans;*
- *On February 22, 2013, the Board of Directors of AJL noted in its meeting that the publication of National Herald would be considered on web-site. A copy of the said minutes is enclosed at page 539 of AE — PB II.*
- *On September 12, 2014, the internet/web domain name www.nationalherald.com was registered. The necessary registration proof is enclosed at page 540 of AE -PB II. (However, since the actual commencement took time, the said*

approval expired and a new approval of domain name was taken on 03.11.2016).

- *In the February 24, 2016 Board Meeting, the rough estimates of monthly expenditure for publishing the newspapers was discussed. The extracts from the minutes of the said meeting are enclosed at pg. 541 of AE -PB II.*
- *On July 10, 2016, Zee News writes a report titled "Eight years after it was shut down, Congress re-launch National Herald news paper". Please see at Pg. 542 of AE-PB II.*
- *In August 2016, the Editor-in-chief was appointed. In fact, the news report of Zee News (cited above) clearly cites AJL as informing in its July 10, 2016 news report, inter alia, "we are now close to finalising the editor's name for operations to start..."*
- *"37....He submitted that, in fact, the publication had later on re-commenced, which is evident from the following facts, placed in the paper book of additional evidences:*
- *On 23/01/2014, AJL wrote to the Registrar of Newspapers for India (RNI) informing it of its intent to restart publication of the newspapers. Please see page 267 of the AB - PB I;*
- *On 26/09/2016, a resolution was passed by the Board of Directors of AJL to resume the publications of newspapers. Please see page 266 of the AB -PB I;*
- *On 14/11/2016, AJL launched National Herald Website. Please see pages204 to 213 of the AB - PB I;*

- *On 15/11/2016, an agreement was entered between AJL and Press Trust of India for Wire News Services. Please see pages 245-249 of the AB - PB I;*
- *On 12/06/2017, AJL launched the Commemorative Edition of National Herald (Publication) in print in Bangalore. Please see pages 133-153 of the AB - PB I for the copies of various reports and photographs of said launch;*
- *On 23/06/2017, AJL obtained Registration Certificate for National Herald Newspaper from the Registrar Office of Newspapers for India, Ministry of Information and Broadcasting. Please see pages 239-240 of the AB - PB I;*
- *On 01/07/2017, AJL launched Commemorative Edition of National Herald (Publication) in print in New Delhi. Please see pages 154-185 of the AB – PB I for the copies of various reports and photographs of said launch;*
- *On 12/08/2017, AJL launched Qaumi Awaz Website in Urdu. Please see pages 215- 229 of the AB - PB I;*
- *On 29/08/2017, AJL launched Navjivan Website in Hindi. Please see pages 230-238 of the AB-PB I;*
- *On 24/11/2017, AJL obtained revised Registration Certificate for National Herald Newspaper from Registrar Office of Newspapers for India, Ministry of Information and Broadcasting. Please see page 241 of the AB-PB I;*
- *On 20/2/2018 and 11/01/2019, AJL obtained Registration Certificate of Sunday Navjivan with Registrar Office of Newspapers for India, Ministry of Information and Broadcasting. Please see pages 242-244 of the AB - PB I;*

- *On 10/12/2018, AJL launched Commemorative Edition of Navjivan newspapers (Publication) in print in Chandigarh. Please see pages 186-203 of the AB - PB I for the copies of various reports and photographs of said launch."*

97. Thus, Shri Soparkar tried to make out a case that shares of AJL were acquired by the appellant for the aforesaid purpose which was achieved by the appellant and AJL

98. Shri Soparkar in his counter argument to the submissions made on behalf of the Revenue that the aforesaid story or stated contention of the appellant is an after-thought just after investigation against the appellant had started, and that there are no documentary evidences to support that this was the intention of the appellant; and in fact, now it is well established in the cancellation proceedings u/s 12A that appellant has not done any activities of charitable apart from acquiring shares/properties of AJL. He submitted that, such an argument is not tenable for the reason that the preparatory activities of newspaper of AJL were commenced immediately after the acquisition of shares of AJL from 2012 onwards. Further, after 2016, the publication activity of AJL has been recognized. The investigation had started by first notice u/s 133(6) on 14.07.2015

but before that already steps were being taken to restart the publication of newspaper, therefore, this allegation is an after-thought and without any merits.

99. He referred to judgment of **Hon'ble Rajasthan High Court in the case of Indian Medical Trust vs. Pr.CIT (2009) 414 ITR 296** wherein Hon'ble Court held that where the acquisition of shares is in furtherance of its objects then the same is regarded as not genuine activities and in the said case, investment was made by the assessee in a TV channel was held to be genuine activity as it was in accordance with the objects of the assessee company. As regards the allegation that there are no document to support such intention, ld. Sr. Counsel submitted that it is clear from various documents on record as well as the facts noted in the ITAT decision in the cancellation of registration proceedings u/s 12AA and rather, there are no documentary evidences on record to support the Revenue's contention. As regards the allegation that appellant had not done any activities towards its objects apart from acquiring shares/properties of AJL, he referred to the decision of the Tribunal at para 44 and para 92 wherein the Tribunal has noted that additional evidences filed by

the assessee showing several presentation and photographs showing operations of the assessee and starting of publication through e-medium. Here, it could be relevant to state that the paragraphs quoted in the ITAT order specifically in paras 44 & 92 are the submissions of the assessee which has been noted and there is no categorical finding whether actual publication has started or not. Thereafter, ld. Sr. Counsel had made detailed submissions on the allegations made by the AO in his order and tried to counter all his allegations discussed him in his assessment order, which has also been highlighted by him in his written submissions in very elaborate manner which are been discussed hereunder:-

> *"5.31* ***Allegation 1:*** *The AO has alleged that the loan of Rs. 90.21 crores given by AICC to AJL was nonexistent, bogus loan and deliberately created as a step to acquire the shares of AJL by the Appellant. He states that the loan of Rs. 90.21 crore was not actually a loan but was only a paper entry and an artificially inserted step as part of a scheme of takeover of the AJL by the assessee for a song i.e. without making any payment (Para 8.2 of the assessment order). While arriving at this conclusion, he makes following observations:*
>
> *a. The Annual Reports of AJL for 2010 shows loan of Rs. 89.71 crore as on 31.3.2010 (which included unsecured loan of Rs.*

89.67 crores) and the nature of which was explained in schedule-X of the report, which records as under:

"Advances/ Security Deposits receipt from the parties in earlier years relating to construction activity on company's land at Lucknow and Mumbai has been grouped under "other liabilities" and "unsecured loans" and no provision of interest have been made on their own."

Based on foregoing note, the AO concluded that the loan of Rs. 90.21 crore from the AICC was not disclosed in the Annual Report of the AJL because as per the report, loan (including unsecured loan) only included advances and security deposits for construction activities from parties and from others and the claim of the AICC that total loan of Rs. 88.71 crore was advanced from only one party i.e. name of the AICC was not mentioned.

In this regard, it is humbly submitted that the foregoing conclusion of the AO based on the afore-quoted note in the Annual Accounts of AJL is totally illogical and irrational. As noted by the AO himself (at page 21 of the assessment order), AICC in its reply to notices issued to it had stated that as on March 31, 2010 it had advanced loan of Rs. 88.86 crores to AJL. Further, as noted by the AO, the annual reports of AJL for year ended March 31, 2010 showed total unsecured loan of Rs. 89.67 crores. (para 8.1 at page 20 of the assessment order). Hence, the total amount of unsecured 63 loan reported in the books of AJL was more than the amount of loan given by AICC to AJL as on that date. The AO has come to the conclusion that

AJL has not disclosed the loan given by AICC merely on the basis that the name of AICC is not separately mentioned in the Annual Accounts of AJL. It is submitted that there is no requirement under the Companies Act that the name of the lenders have to be separately mentioned on the face of the financial statements prepared by a company. The details of lenders appear in the ledger accounts maintained by the company and not on the face of the balance sheet. Accordingly, it is submitted that the reasoning given by the AO for concluding that the loan was not disclosed in the annual accounts of AJL is totally baseless. The AO has relied on the note in schedule X of the annual accounts of AJL, which states that the unsecured loan includes the amount taken in earlier years for its construction activities. Again, it is humbly submitted that said note in no manner results into conclusion that loan from AICC has not been disclosed by AJL. Indeed, the amount of unsecured loan disclosed in balance sheet of AJL exceeded the amount of loan given by AICC. Hence, said total amount of unsecured loan could have included the amount borrowed for construction activity. It fails any logical reasoning as to how said fact could result in the conclusion that the loan was not disclosed in the books of AJL. Further, if the AO had any doubt about the disclosure of the loan, he should have asked the Appellant to clarify the same. However, no such opportunity was provided to the Appellant. Accordingly, it is submitted that the foregoing reasoning given by the AO ought to be disregarded.

b. The AO has further observed that the amount of the unsecured loan of Rs. 88.86 crore or Rs. 90.21 crore did not tally with amount of unsecured loan as per balance sheet of the AJL.

It is again reiterated that the AO has merely tried to confuse the facts by making such statements. As noted by the AO himself, the annual reports of AJL for year ended March 31, 2010 showed total unsecured loan of Rs. 89.67 crores whereas the amount of loan given by AICC to AJL upto March 31, 2010 was Rs. 88.86 crores. Hence, the logical conclusion that arrives is that the unsecured loan of Rs. 89.67 crores included the loan taken from AICC. Indeed, if one sees the annual accounts of AJL for FY 2010-11, it would be observed that since the loan received from AICC was converted into equity shares, the amount of unsecured loan appearing in the balance sheet is Rs. 0.81 crores, which is the difference between Rs. 89.67 and Rs. 88.86 crores (Please see page 483 of PB I). Further, since AICC had loaned a sum of Rs. 1.35 crores in FY 2010-11, the question of aggregate sum of Rs. 90.21 crore appearing in annual accounts of AJL for FY 2009-10 cannot at all arise. Accordingly, it is submitted that the AO has merely made loose remarks in the assessment order without properly applying his mind. Further, if the AO had any doubt about the figures not tallying, he should have asked the Appellant to clarify the same. However, no such 64 opportunity was provided to the Appellant. Accordingly, it is submitted that the said reason given by the AO is totally incorrect.

c. The AO has further alleged that the quantum of loan of Rs. 90.21 crore was coincidentally just sufficient for allotment of 9.021 crore shares of the AJL to the assessee which accounted for 99% of share capital of the AJL which would allow complete takeover of the AJL by the assessee.

It is humbly submitted that again the foregoing reasoning of the AO is completely without any proof and incomprehensible. Firstly, it is submitted that the foregoing statement of the AO is without an iota of any proof of any nature and only a figment of his imagination. Secondly, even if it is assumed that the loan was a bogus entry with the intention to acquire '99%' shareholding in AJL, it defies any logic why an odd figure of Rs. 90.21 crores was made up by the Appellant so as to acquire 98.79% of AJL. The total share capital of AJL before and after conversion of the loan was Rs. 1.09 crores and Rs. 91.31 crores, respectively. There isn't any indication as to how this conclusion has been arrived by the AO except that he was under a preconceived notion that the entire transaction was sham and bogus. It is humbly submitted that such baseless remarks cannot be given any heed.

d. The AO further states that AICC in its reply to notices issued u/s. 133(6)/ 142(1) of the Act, did not provide any evidence to prove time period as well as mode of advancing the alleged loan of Rs. 90.21 crore to AJL. By referring to the replies given by AICC, the AO concludes that during the course of assessment proceedings, the assessee or AICC had not

furnished any evidence disclosing the date and mode of advancing loans totalling to Rs. 90.21 crore to the AJL.

It is humbly submitted that the proceedings between the income tax department and AICC cannot have any relevance in the assessment proceedings of the Appellant. It is submitted that the AO has not asked the Appellant to submit any evidence in respect of date and mode of advancing the loans. Indeed, since the said loan was not advanced by the Appellant, it could not even produce such evidences, since the same was not in its possession. Accordingly, it is submitted that if AICC did not, for any reason submit the evidences, the same cannot have the impact on the assessment of the Appellant. Besides, it is submitted that the fact the loan was actually given by the AICC to AJL is clear from the loan assignment deed submitted by the Appellant to the AO (Please see pages 550 to 556 of the PB-II). Also, AICC has in fact confirmed to the AO that the loan was given by it to AJL (please see AICC reply as reproduced at page 21 of the assessment order). However, despite these evidences, the AO chose to believe that the loan was only a paper entry and an artificial step created to acquire 99% shareholding in AJL.

5.32 Though the foregoing conclusion of the AO is unjustified, to further substantiate its point, the Appellant would like to point out the following:

5.32.1 In the year 2012, in respect of loan given by AICC to AJL, a petition was filed before the Election Commission of India by a political rival of AICC seeking derecognition of AICC

under section 16A of Election Symbols (Reservation and Allotment Order), 1968 on the ground that the party loaned more than Rs. 90 crores to AJL in violation of the guidelines and rules for registration as well as recognition of political parties. The Election Commission of India dismissed said petition holding that there is no direction or instruction of the Election Commission regulating the manner in which the party may spend the funds raised by them and that section 29B/C of the Representation of People Act, 1951 provide for the manner in which the political parties may raise funds and that there is no provision whatsoever in the Act prescribing the manner in which the political parties may use those funds. The copy of said order of the Election Commission is attached at page 709 of PB II. It is humbly submitted that the said order clearly validates the authenticity of the loan provided by AICC to AJL.

5.32.2 Further, to meet the foregoing baseless allegations of the AO, the Appellant has also approached both AICC and AJL (Page 725 and 736 of PB-II) and obtained the ledger details of AICC showing loan given to AJL since FY 2002-03, confirming the loan given by AICC to AJL (Page 726 to 735 of PB-II) and the details of utilisation of loan by AJL (Page 737 to 738 of PB-II). It is submitted that prior to the year 2002, AJL was going through financial distress and hence required funds for running the publications. National Herald and other publications of AJL, in accordance with the Objects of AJL, were being run in accordance with the policy and principles of the Indian National Congress. AICC started advancing loans to AJL to help them in

their financial hardship. AICC started advancing the said loan from 07.04.2002 in fractions of Rs. 2.0 lakhs to Rs. 12 crores apart from nominal amounts for meeting expenses. The said amounts over a period from the year 2002 to the year 2011 aggregated to Rs. 90,21,68,980/-. It is further pertinent to point out that Rs. 90,20,22,785/- of the amount advanced to AJL were by way of cheques. The said fact may be observed from a bare perusal of the extract of loan account of AJL in the books of AICC as attached above. AJL utilized the amounts advanced by AICC inter alia for meeting its expenses of running the publications including paying employees' salaries, VRS, PF, ESI, statutory dues and taxes and building and maintaining its newspaper offices as is clear from the usage details obtained from AJL, as mentioned above (Page 738 of PB II). Hence, it is apparent that the loans were given by AICC to AJL over a number of years since 2002 and it is not a one time transaction, which can be summarily disregarded as has been done by the AO.

5.32.3 Also, it may be kindly noted that the income tax department itself has in the assessment of AJL for AY 2011-12 examined the details of loan advanced by the AICC to AJL and in the assessment order mentioned that 'examination of details filed by the assessee reveals that in earlier years, AICC had given interest free loans in various transactions from time to time to the assessee company amounting to Rs. 90,21,68,980/-.' Further, it was held there that since the loan was discharged by conversion into equity shares and not by account paying

cheque, section 269T of the Act was contravened. The copy of said assessment order is attached at page 739 of PB-II.

5.33 In view of the foregoing evidence, the Appellant humbly submits that the first reason of the AO to make addition u/s. 28(iv) that the loan was a paper entry ought to be totally disregarded.

5.34 In fact, the allegation that the loan was non-existent does not survive now in view of stand taken by the Revenue in section 12AA cancellation proceedings and the reliance on Delhi High Court decision in LPA 10/2019 and CM No. 566 & 649/2019.

5.35 ***Allegation 2****: The loan of Rs. 90.21 crores could have been repaid by AJL and there was no reason to assign the same for Rs. 50 lacs. (Para 8.4 of assessment order)*

5.36 The AO has further alleged that there was no logic that loan of Rs. 90.21 crores was assigned to the Appellant for a consideration of Rs. 50 lacs. He alleges that the reason of the Appellant that AICC assigned the loan of Rs. 90.21 crore to the Appellant for a paltry sum of Rs. 50 Lacs because AICC was not sure if the AJL would be in position to return the loan is not correct.

5.37 In this regard, it is submitted that the logic for assignment of the loan by AICC to the Appellant for a sum of Rs. 50 lakhs has been explained in detail in the deed of assignment of loan, which is on record before the AO (Page 291 of PB-I). As would be observed from the recitals of the deed,

AICC has recognised therein that the Appellant is incorporated with the objects of inculcating in the mind of India's youth, commitment to the ideal of a democratic and secular society for its entire populace without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that may promote the foregoing activities. It further states that AICC endorses and supports the above objects of the Appellant, which AICC has steadfastly advocated. Hence, to support these objects and also keeping in mind that AJL is not presently in position to repay the loan, it has agreed to assign the loan for Rs. 50 lacs. In fact, para 2.1 of the deed states that the loan assigned to the Appellant for monetary consideration of Rs. 50 lakhs and for other good and valuable consideration as set out in Recital E. (Page 293 of PB I).

5.38 Accordingly, it is at the outset, submitted that the Appellant never claimed that AICC has assigned the loan to AJL solely because it thought it could never be repaid. The background behind this transaction has already been explained at the start of this submission.

5.39 Nevertheless, it is further submitted that the reasons given by AO to state that AJL was in the position to repay the loan are also not logical and lack rational thinking. The said reasons are as under:

a. The AO states that since AJL has several properties in prime locations worth several hundred crores, the only logical conclusion could be that AJL was financially sound enough to return the loan of Rs. 90.21 crores to the AICC.

In this regard, it is submitted that this conclusion of the AO that AJL was financially sound enough to repay the loan by virtue of owning several properties is factually incorrect. A bare perusal of the lease or allotment conditions of the properties of the company in Mumbai, Delhi, Panchkula and Patna (with the exception of the Lucknow property) clearly shows that these are leases or allotments with several restrictive covenants and are, therefore, not freely marketable properties. Thus, the assumption of the AO that the properties could defray the loan liability is incorrect. The detailed submission bringing out various restrictive covenants attached to the properties is explained the submission relating to valuation of the properties.

Moreover, even though AJL owned real estate properties, it was never the intention of the company to liquidate these assets, which were acquired by it for its publication business and which was temporarily suspended due to lack of funds to run the activity. The Company remained fully committed to fulfilling its objects of publishing newspapers and ending the temporary suspension of publication. This fact is further substantiated that the Company resumed newspaper publication and is running a healthy and active newspaper publishing business. The company was formed to undertake publication business to promote and adhere to policies and principles of Indian National Congress. Hence, even AICC never intended for AJL to liquidate and repay its loan. The publication business of AJL was only suspended due to operational issues. However, it was never the intention to liquidate the company.

Further, at that time period, these properties did not even fetch any substantial rent since they were not in the state to be let out. In fact, out of five properties of the 68 company, only properties at Lucknow and Delhi had old constructed buildings, which were rented out at nominal value. Properties at Panchkula and Mumbai were barren lands. Further, property at Patna was in adverse possession of jhuggi jhopdi.

Further, since the company had faced financial losses in its publication business and was troubled with labour issues, payment of their compensation, etc., the company had taken loans from AICC, who supported its objects. However, due to such high loans in its books and suspension of its business, it was difficult for the company to turn around and revive its financial position. As is clear from the balance sheet of the company for the year ended March 31, 2011, the reserves of the company were negative Rs. 72.5 crores. It was only after the loan of AICC was cleared by the foregoing transaction that the company was in the position to make a fresh start. It started renovation and construction of its properties so as to let them out and improve its financial position with the long-term view to first stabilise its financial position and then revive its publication business. It would be observed from the financial statements of the company for later years that even though some of the properties of the company have started fetching rent, still the reserves of the company are still in negative. As a year ended March 31, 2015, its reserves was negative Rs. 61 crores. It is submitted that for valuing the company, its practical

realities need to be considered and conclusions cannot be arrived at based on conjectures and surmises. Where the commercial and practical reality was that the properties were hit by restrictive covenants and that the company never intended to sell its real estate assets at that time, to ascribe value to them as if they could be sold and concluding that the company had substantial value lacks commercial substance. It is reiterated that the company has been trying to revive its financial position and its publication business.

In fact, in FY 2016-17, the company had already restarted its digital publication business and in the following financial year revived its traditional print newspaper business thus ending the brief "temporary suspension". Thus, this process has revived a financially distressed Company and today enabled it to be a healthy going concern newspaper and digital publishing business run in the public interest. The detailed submission on the aspect that the publication business has recommenced in provided later in this submission.

b. *The AO has also alleged that even though AICC thought that the loan was not repayable, in the Notes to Accounts of AJL for FY 2010-11, in para-1, it is mentioned that the management is of the view that the operation of the company have fair chances of turnaround. He then concludes that since AICC and AJL have common management, if they were of the view that operation of the company would start and the financial position would improve, then how could they think that loan could not be repaid.*

In this regard, it is again reiterated that what is mentioned in the loan assignment deed is that the loan could not be repaid at that time. Clearly, as stated earlier, the company always intended to revive its business and believed that the financial position of the company would turnaround. However, the same cannot happen overnight. The foregoing note referred to by the AO is the one where it is mentioned that the accounts of the company have been prepared on a going concern basis since it believes that its business would revive. This in fact supports the foregoing statement of the Appellant that the company never intended to liquidate and sell its assets.

Accordingly, it is submitted that the foregoing reasoning of the AO also lacks the understanding of the complete picture.

c. *The AO has further alleged that if AICC believed that its loan was not repayable, then why did it advance fresh loan of Rs. 1.35 crores to AJL in FY 2010-11.*

It is submitted that as stated earlier, AICC always supported the objects of AJL and the loan was advanced to support AJL. The said loan of Rs. 1.35 crores was advanced by AICC to support AJL (a portion of which was used to meet the statutory fees payable to ROC and another portion was used to pay to a former tenant pursuant to a court order). The loan was assigned to the Appellant, whose objects were also congruent to that of AJL.

5.40 In view of the foregoing, it is submitted that the said allegation of the AO does not hold any merit.

5.41 ***Allegation 3:*** *The Appellant had no means to pay even Rs. 50 lakhs (Para 8.3, 9(6) of the assessment order).*

5.42 The AO has further alleged at several places that at the time of assignment of loan, the Appellant did not have any money to make payment of the consideration of Rs. 50 Lacs.

5.43 In this regard, it is submitted that the foregoing observation of the AO is factually incorrect. As was submitted to the AO vide submissions dated June 7, 2017, the Appellant had on December 24, 2010 entered into an arrangement with Dotex, an RPG group company to take loan of Rs. 1 crore. In fact, a cheque dated December 24, 2010 of Rs. 1 crore was already handed over to the Appellant by Dotex on same day. The deed through which loan was provided and the fact that cheque was handed over is at page 246 of PB I. The same could not be encashed by the Appellant because the bank account of the company was not yet opened. As compared to this, the deed of assignment was entered into between the Appellant and AICC on December 28, 2010. Accordingly, it is submitted that the allegation of the AO that AICC assigned the loan to the Appellant even though the Appellant was not in the position to pay the consideration is incorrect. Besides, since the Appellant was a newly formed company in the year 2010-11, nonavailability of fund in the very beginning may not be so material, especially when the liability was ultimately discharged.

5.44 The AO alleges that during the course of assessment proceeding, the Appellant could not explain any plausible

reason for undue hurry in the sale of the loan of Rs. 90.21 crore to the Appellant on credit when it did not have sufficient fund to pay the consideration. The Appellant humbly submits that it had already arranged for a loan to pay the consideration and that the cheque was already issued to the Appellant by Dotex before the assignment of loan.

5.45 ***Allegation 4****: AJL business was closed in 2008 as a part to take over the assets of AJL*

5.46 In this regard, at the outset it is submitted that AJL's business was not closed in 2008 but was only temporarily suspended, which was necessary due to the huge financial losses faced the company, the labour troubles and strikes, etc. which have been discussed in detail above.

5.47 The said fact is also noted in the ITAT decision in Appellant's case in 12AA registration cancellation matter, wherein at Para 37 it is noted that the business of AJL was temporarily closed and that this fact was also reported by various newspapers. The relevant extract of para 37 of the order (Page 82 of Revenue PB I) is as under:

"The AJL started publishing newspapers, i.e., National Herald in English, Navjivan in Hindi and Qaumi Awaz in Urdu, which served as the voice of the freedom movement. It was also argued that from time to time, publication business of AJL was suspended and again it was revived. In the year 2008, since AJL started facing financial, operational and labour troubles, the company had to again temporarily suspend its publication

business. In support, events leading to temporary suspension of publication business in 2008 were also submitted. These were stated to on account of labour unrest and strikes, printing machinery had become obsolete and there was dip in the circulation of its newspapers and most of its buildings were sealed due to non-payment of labour dues. Not only that, a fire had broken out in its Lucknow premises, which destroyed the printing press. Owing to the said trouble and continuous losses, the publication was temporarily suspended. The publication business was temporarily suspended, is clear from the fact that on 31.03.2008, AJL informed United News of India (UNI) about the temporary suspension of publication business. Even third party newspapers had published that there was temporary suspension of publication business by AJL. Thus, there was no closure of business or business itself had ceased to exist, rather it was only a temporary suspension. He submitted that, in fact, the publication had later on re-commenced..” (emphasis supplied)

5.48 In fact, the fact that the publication activity was only temporarily suspended is proved beyond doubt as the publication activity was in fact restarted as demonstrated above. 5.49 Besides, the contention of the AO that business of AJL was closed in 2008 as a step to take over its assets by the Appellant is totally baseless as the Appellant was not even in picture during that year. It is undisputed that the Appellant was incorporated only in 2010. Hence, the entire basis of this allegation fails.

5.50 ***Allegation 5****: AJL is in real estate business (several places in the order).*

5.51 The AO has stated at several places that AJL was engaged in real estate business after closure of the publication business. In this regard, it is submitted that firstly the publication business was never closed. Because the publication business was running into losses and the company had suffered huge losses, the said business was only temporarily suspended and has since resumed. Secondly, even during the period of temporary suspension, AJL never engaged in any trade of its real estate properties. Some of these said properties were only given on rent, which is in accordance permitted usage of the properties under the lease deed/allotment letters under which same were allotted to AJL.

5.52 It is submitted that all along, a portion of the built-up properties were rented out by AJL since inception, which is a normal practice in the newspaper business, a capital intensive business, and which is permissible in standard newspaper leases and allotments of immoveable property for newspaper user. Accordingly, even after 2008, the renting activity of AJL continued, which was essential for it stabilise its financial position and be able to recommence resume newspaper and digital publication. As stated earlier, AJL had losses of about Rs. 72 crores as at March 31, 2011 (Page 470-497 of PB I). Hence, continuing to rent out the properties was a necessary step to enable it is stabilize its financial position so as to be able to restart its business activity. In fact, in the year 2016-17

and 2017-18, the digital and print publication activities of AJL respectively have recommenced and the company is fully committed to continue to conduct its publication activities to their fullest potential.

5.53 Hence, it is submitted that such renting does not make AJL a "real estate company" as sought to be depicted by the ld. AO.

5.54 In this regard, it is further submitted that the issue whether AJL is a real estate company or not is now settled by the decision of the Hon'ble Delhi Tribunal in Young Indian vs. CIT(E)[2019] 111 taxmann.com 235 (Delhi - Trib.) where at Para 105 (Page 108-109 of Revenue PB I), it has been held that the proposition that AJL is a real estate company may not be technically correct.

5.55 The Ld. DR has during the hearing stated that even though AJL may not be in 'real estate business', it cannot be denied that it was engaged in commercial activity of renting out its properties. In this regard, may we invite attention to Paras 39 to 42 of the ***ITAT decision in Young Indian vs. CIT(E)[2019] 111 taxmann.com 235 (Delhi - Trib.)*** *(Page where at Para 105 (Page 83-85 of Revenue PB I), where the genesis of the renting activity of AJL has been explained in detail and it has been demonstrated through various charts and documents that renting out of properties is part and parcel of newspaper business which is required to supplement to costs/loss associated with this industry. The said paras read as under:*

"The ld. counsel further submitted that the allegation of the ld. CIT (E) that AJL is Real Estate Company is absolutely incorrect. It was pointed out that in public interest, State Governments, as a policy, had allotted lands/buildings to various entities engaged in the newspaper business to partly use it for running newspaper business and partly to rent it out. The same is done by the Government to ensure independence of the press. The newspaper publishing business, being capital intensive in nature, is primarily a loss making business. In fact, the price at which newspapers are sold is very nominal so that it can reach to masses and generally, the cost of publishing a newspaper is higher than the price at which the same is sold. Therefore, in order to promote press and ensure its freedom, the Government allots lands/buildings to various entities engaged in the newspaper business so that they can recoup their losses from publication business and survive by commercially exploiting the said allotted lands/buildings by renting out the same. The lease deed allotting the said lands/buildings specifically permits the lessees to use the property for renting out. Indeed, said practice of renting out the properties by newspaper business is permissible in standard newspaper leases and allotments of immovable property for newspaper user. The aforesaid facts are matter of public knowledge and policy. In support, reliance was placed on the judgment of Hon'ble Supreme Court in the case of Govt. of AP v. Maharshi Publishers Pvt.

Ltd. (Civil appeal 7152-7157 of 2002), wherein Hon'ble Supreme Court has observed as under:

"Another contention urged before the Division Bench of the High Court and reiterated before us, is that there were no contracts signed by complying with the formalities under Article 299 of the Constitution and therefore, the Government was not obliged to honour its commitments. This contention has rightly been repelled by the Division Bench of the High Court by pointing out that the sale of the land was not a result of any commercial transaction by the State Government, but pursuant to its declared socio-economic policy reflected in the scheme of allotment of land to give incentives to Newspaper Concerns and Educational Institutions. The High Court rightly held that this was an executive act falling within the province of Article 162 and not within the ambit of Article 299 of the Constitution."

40. The ld. counsel also furnished the list of properties of major newspaper companies in India and list of properties allotted to AJL. All the newspapers companies have been partly renting out their properties to support their newspaper business. In support, list of tenants of various such companies in Delhi was also handed over to us at the time of hearing. Thus, it was submitted that practice of allotment of land to newspaper companies and such newspaper companies using the same for renting purpose is part and parcel of their publication business is not so uncommon. Therefore, if AJL has received rental income, it cannot be held

that it is from Real Estate business and if said logic is applied to all the newspaper companies, all of them shall be treated as Real Estate Companies. Highlighting the role of newspaper in the democracy, the ld. counsel submitted that press is one of the important pillars of democracy and its freedom is of paramount importance. Reliance was placed on the judgment of Hon'ble Supreme Court in the case of Indian Express Newspaper v. UOI AIR 1986 SC 515 wherein Hon'ble Supreme Court has held that Press is the 4th estate of the country and freedom of speech and expression should, therefore, be given paramount importance and generous support and the government should be more cautious while levying taxes on other matters concerning newspaper industry. Reliance was also placed on another decision of Hon'ble Supreme Court in the case of Bennett Coleman & Co. v. UOI AIR 1973 SC 106. Relying on these judgments, it was submitted by the Ld. Counsel that for the said freedom of press, lands were allotted to the companies and permission was granted to partly rent out the same and therefore, AJL cannot be regarded as engaged in the Real Estate business and it is part and parcel of publication business of AJL.

41. The ld. counsel further submitted that AJL had never purchased or sold any property after year 2008 as alleged by the ld. CIT (E). It was submitted that certain land parcels were allotted to AJL by the Government from time to time between the periods 1962 to 2005. In the year 1962, the Government of India allotted land to AJL situated at 5A,

Bahadur Shah Zafar Marg, New Delhi for the purpose of carrying out newspaper publication. As per terms of allotment, AJL was allowed to let out part of the building to be constructed on the same. In the year 1983, Government of Maharashtra allotted a property to AJL in Mumbai for the purpose of carrying out publication of daily newspapers and establishing a Nehru Library cum Research Institute. Similarly, allotment was made by the Government of Bihar in Patna and Government of Haryana in Panchkula. Apart from that, AJL also owns freehold land in Lucknow purchased in the year 1975. Thus, allotment of land by the Government for publication business cannot be held that AJL had acquired the properties for any kind of Real Estate Business. Certain Annexure were filed by the assessee to show that the construction of the Delhi property was completed in the year 1967 and the same has been given on rent since year 1990. It was pointed out the Patna property is an encroached land on which no construction activity has been undertaken ever. Property in Lucknow is a freehold land comprising of two parts, Nehru Bhawan and Nehru Manzil. Construction of Nehru Bhawan was completed in the year 1984 and newspaper activity was conducted there from. However, a fire broke out in the year 2002 destroying the printing press, after which the building was repaired in the FY 2007-08 and given on rent to a charitable organization. In case of Nehru Manzil, construction had started in the year 1988, but was never completed due to financial constraints. In case of

Panchkula property, the construction has been completed in 2013, from where newspaper activity is being conducted. In case of Mumbai property, the construction is still in process, which after completion would be used for newspaper activity, for establishing a Nehru Library cum Research Institute and be partly let out as per the permissible terms of allotment. Hence, it was submitted that CIT (E)'s observations that AJL started constructions after year 2008 is also untrue. It was submitted that there was temporary suspension of publication business in the year 2008, and to further strengthen and improve liquidity and to improve the financial position of the company, AJL substantially renovated two properties, namely Delhi and Lucknow, in order to earn higher rents from these immovable properties so as to be able to use the proceeds to resume newspaper and digital publication. It started renovation and construction of its properties so as to let them out and improve its financial position with the long- term view to first stabilize its financial position and then revive its publication business. Ld. Counsel pointed out that, in the years 2016-17 and 2017-18, the digital and print publication activities of AJL respectively have recommenced and the company is fully committed to continue to conduct its publication activities to their fullest potential. In FY 2016-17, the company had restarted its digital publication business and in the following financial year revived its traditional print newspaper business, thus ending the brief "temporary suspension". Thus, renting of the

properties has revived the financially distressed position of AJL and today it is a healthy going concern newspaper and digital publishing business run in the public interest. Thus, said activity cannot be said to be real estate business.

42. Regarding allegation of ld. CIT (E) that AJL had some properties which goes to show that it is a real estate company, for which reference was made by him to the notes on account of AJL as on 31.03.2009, wherein it was stated that the company has taken booking amount for sale of shops and floors from intended purchasers in Lucknow and has paid amount for buy-back of shops. Ld. Counsel submitted that the word "buy-back" has been loosely used in the said note because it represents repayment of the booking amount taken from the intended purchasers. In order to construct Nehru Manzil property at Lucknow, in the year 1988, AJL had raised fund by taking amounts in the form of booking amount towards shops that would have been sold in the constructed property. However, since AJL was unable to complete the construction due to financial constraints, it suspended the construction and gradually refunded the booking amount to the parties. Not a single property has been sold and all the properties remain in dilapidated conditions even today. In any case, the transaction, which has taken place in the year 1988, for which the booking amount was received, has no relevance for the period when the publication business was temporarily suspended. The fact that Lucknow property was never sold is also evident from the accounts of

AJL for various years. Thus, when the assessee has not earned income from any sale of property then it can never be treated as Real Estate Company since 2011-12. AJL never stated in its account or its ITR that its income is from Real Estate business."

5.56 In this regard, attached herewith is the list of certain properties of major newspaper companies in Delhi along with the list of the tenants for various such companies at page 1614-1616 of PB VI. Thus, it was submitted that practice of allotment of land to newspaper companies and such newspaper companies using the same for renting purpose is part and parcel of the publication activity and is not so uncommon.

5.57 It is accordingly submitted that the mere because AJL was renting out two of its properties does not mean that it was now engaged in the commercial renting business. The nature of activity of an assessee ought to be seen in the business realities of the assessee. In AJL's case, since the renting activity was part and parcel of the newspaper activity, the same cannot be looked upon as a separate commercial activity undertaken by AJL.

5.58 ***Allegation 6:*** *The objects of AJL was never recasted before 2016*

5.59 The AO has stated that though it was mentioned in the notes to account of the Appellant that the main object of the AJL was in process of recasting so as to match to the object of the Appellant, 'the issue whether the object of the AJL which was

engaged in the real estate business was actually recasted to match the object of the Appellant has also been examined and it was found that the object of the AJL was never recasted to match with the object of the assessee during, AY 2011-12 to 2016-17.'

5.60 It appears that the AO is confused between the two sets of amendment that had taken place in the MoA of AJL. As has been categorically pointed out by the Appellant to the AO vide submissions dated June 21, 2017 (page 279 to 287 of PB I), the main objects of AJL were amended in 2011 itself to include the following object in clause (u) and the copy of the Memorandum amended upto 13.9.2011 (relevant page at page 287 of PB I), was also submitted to the AO:

> *"To inculcate in the mind of India's youth commitment to ideal of a democratic and secular society for its entire populace without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that may promote the foregoing objective in any manner whatsoever including, without limitation, participating in all democratic activities through open and transparent electoral process, so as to conform to the ideals of the founding fathers of India, Mahatma Gandhi and Pandit Jawaharlal Nehru".*

5.61 Further, in 2016, the MoA of AJL was further amended to align its MoA to that of a not for profit company (Section 8 company). The said MoA is at Page 89 of the PB-I. Please refer Clauses V(i), (ii), (iii) and Clause X of the MoA AJL, which clearly show that the surplus, if any, in the company cannot be

distributed to the shareholders either as dividend or on winding up of the company.

5.62 It is accordingly submitted that the AO is incorrect in alleging that the objects of AJL was not aligned till 2016 which is substantiated from the documents on record.

5.63 During the hearing, the Ld. DR has further argued that the 2016 amendment is not relevant since after said amendment, actual licence u/s. 8 of the Companies Act was not obtained as AJL did not take any steps in respect thereof and that in any case, it is an event which is in the future as far as AY 2011-12 is concerned.

5.64 In this regard, it is submitted that after the 2016 amendment, all the necessary forms were filed before ROC by AJL for making it a section 8 company and therefore, all steps were taken by AJL. However, the same could not fructify due to certain technical problems. In this regard, reference is drawn to Para 81 of the decision in Young Indian vs. CIT(E)[2019] 111 taxmann.com 235 (Delhi - Trib.) (Page 99 of Revenue PB I), where it is noted as under:

> *"81. In so far as, the allegation of the ld. DR that AJL has not filed necessary forms with the ROC to take interest in converting into non-profit entity, reference was made to Form MGT-14 to allege that there is no SRN number mentioned on the said form and therefore, this is evidence created by the assessee. In this regard, he submitted that an extra ordinary meeting of shareholders of AJL was held on 21.01.2016 for*

which the notice was sent to all the shareholders on 19.12.2015. The meeting was, thereafter, convened and resolution was passed to convert the company into non-profit company. Form MGT-14 was filed with the ROC on 19.02.2016 under "SRN C79224572". Post filing of said form, on 25.02.2016 an email was received from MCA asking for re-submission with certain remarks and in response thereto said form was resubmitted on 10.03.2016 and along with said re-submitted form, the appellant enclosed the letter dated 10.03.2016 explaining why the remarks in the MCA's email have fallacies. Thereafter, nothing has been heard from ROC and there is still stalemate. In any case, once the amended MoA has been approved by the shareholders then the same was binding on all the shareholders, which is binding and effective on the company whether or not license is granted.

5.65 As regards the allegation that this amendment of MoA in 2016 is not relevant, it is submitted that the said amendment is very much relevant as it shows the intention of the Appellant and AJL and also, it is no one's contention that from 2011 to 2016, any dividend has been declared by AJL. In fact, till today, no dividend or any other benefit of any sought has been obtained by the Appellant or its promoters through AJL.

5.66 Further, in any case, there should be no disputed that the MoA of AJL was also amended in 2011 itself where the objects of AJL were amended to specifically included the same object as that of the Appellant.

5.67 ***Allegation 7****: Allotment of shares by AJL was in violation of the provisions of the Companies Act, 1956 as alleged by AO at Para 9(8), Page 35-36 of the order.*

5.68 At the outset, it is submitted that this is wholly irrelevant and unsubstantiated allegation because firstly, the Income-tax Act is not concerned with compliance of procedural requirements of another stature and secondly, if according to Revenue, for want of compliance of such procedural requirement, the allotment is illegal, the whole levy of tax on that basis must fail.

5.69 Further, these compliances are for AJL and not the Appellant. Hence, documents relating to the same were not with the Appellant. Accordingly, in absence of any specific requirement to submit the same by the AO, the Appellant had no reason to call for said documents and submit the same to the AO. Such presumptions of non-compliance based on mere vague allegations shows the mala fide of the AO in the matter. If required, the Appellant would be happy to arrange for said documents.

5.70 ***Allegation 8:*** *The acquisition of loan/shares was not disclosed in the Balance Sheet of the Appellant*

5.71 The AO has also alleged that the acquisition of the loan/shares of AJL was not disclosed in the Balance Sheet of the Appellant for the relevant Financial Year ended on March 31, 2011. He states that the same was camouflaged as expenditure on prescribed object of the Appellant. He

accordingly concludes that the reason for above referred accounting treatment was to hide the real transaction from regulatory authorities and Income Tax Department.

5.72 In this regard, it is submitted that the Appellant has in fact given full disclosure of the said transaction in its financial statements in its notes to accounts. Please see page 56 of PB-I. As would be observed therefrom, the said note clearly discloses the acquisition of loan by the Appellant for Rs. 50 lacs and conversion thereof into equity shares of AJL. It further provides the reason for showing Rs. 50 lacs as an expenditure instead of investments. In fact, the AO himself at various places in the assessment order refers to the said note. Accordingly, it is submitted that even this allegation of the AO and the conclusion drawn therefrom is unwarranted.

5.73 ***Allegation 9:*** *Loan taken by the Appellant from Dotex is a paper entry*

5.74 The AO has further alleged that the loan taken by the Appellant from Dotex was a paper entry. Appellant's reply to various observations of the AO is this regard is dealt with in Ground X. Based on the submissions, the Appellant humbly submits that even this allegation of the AO is completely untrue and it is proved beyond doubt that the Appellant had in fact taken loan of Rs. 1 Crore from Dotex, an RPG Group Company, through a normal and bonafide banking transaction. 7

5.75 ***Allegation 10:*** *In order to achieve object of taking over 100 percent shares of AJL Smt. Sonia Gandhi (SG), MP, Shri*

Rahul Gandhi (RG), and Smt. Priyanka Gandhi Vadhera (PGV) also purchased addition 47,513 and 2,62,411 shares of AJL through Rattan Deep Trust and Janhit Nidhi Trust, respectively (Page 6, Bullet 10 of assessment order and several other places)

5.76 In relation to the foregoing allegations, a clarification was also sought from the Hon'ble Tribunal as to whether the Appellant and AJL have same shareholders and directors.

5.77 In this regard, it is submitted that the directors of AJL and the Appellant were common, as is clear from the assessment order (Page 33 of AO order) as well as the CIT(A) order (page 175 of the order, para 5.4.18); however, the shareholders are not same. AJL has always been a public company, with more than 1000 shareholders. The sample list of shareholders has been attached by AO as Exhibit 11 and 12 at pages 38 and 39 of the assessment order. The two main shareholders of AJL were Janhit Nidhi Trust (28.16%) and Rattan deep Trust (5.10%). These two trusts are also public charitable trusts which held the shares of AJL since in 1950/70s. Janhit Nidhi Trust was established in 1950s. Various prestigious persons have been Trustees of the this trust from time to time. Janhit Nidhi Trust acquired 262411 (28.16%) prior to 1978 i.e. before PGV became trustee of the said trust. Though PGV was trustee in FY 2010-11 and FY 2011-12 along with Rameshwar Thakur, she resigned as a trustee of this Trust in November 2013. Ratan Deep Trust is also a public trust that was established in 1970s. Various prestigious persons have been Trustees of this

trust from time to time. Ratan Deep Trust acquired 47513 (5.10%) during the period 1977 to 1978 i.e. before RG became trustee of the said trust. Though RG was trustee in FY 2010-11 and FY 2011-12 along with Rameshwar Thakur, he resigned as a trustee of this Trust in November 2013. Even after change in the Trustees, these charitable trusts continue to hold the shares of AJL.

5.78 At page 42 of Assessment Order, the AO states the aforesaid Trusts 'acquired' shares in FY 2011-12. Similar finding is at pages 37, 39 and 45 of the assessment order. CIT(A) has also referred to this finding at page 177 of the CIT(A) order, 1st para of the page. However, the AO has simply relied on Annual ROC return filed by AJL of one year and not seen ROC returns of the preceding and the subsequent years. If one sees the same, it would be realised, there has not been any fresh acquisition of shares of AJL in any of these years. These are old shares of AJL held by the two public charitable trusts since decades and still continue to hold the same.

5.79 Hence, RG, SG and PGV have never held any shares in AJL in their individual capacity.

5.80 ***Allegation 11****: The steps undertaken for acquiring the shares of AJL are in illogical sequence of events and the conclusion is simple that Mrs. Sonia Gandhi and Mr. Rahul Gandhi along with their trustworthy associates have taken over the assets of AJL. (Para 3 – the Table and the para at the end of table at pages 5- 9 of the assessment order and several other places.)*

5.81 The AO also ultimately observed that there are various illogical steps undertaken such as payment of Rs. 50 lakhs happened after the conversion of loan, etc. and ultimately concluded that all these steps were taken so that Mrs. Sonia Gandhi and Mr. Rahul Gandhi along with their trustworthy associates could take over the assets of AJL.

5.82 In this regard, it is firstly submitted that there is nothing incorrect in the sequence of the events as referred to by the AO. It is not necessary that the Appellant should have immediately paid the consideration of Rs. 50 Lakhs to AICC on the date of assignment of loan itself. It is a normal practice to allow credit period for payment of dues. That by itself has no relevance to decide the genuineness of the transaction. As regards the allegation that the entry in the books was on 16.12.2010 even though the deed of assignment of the loan was 28.12.2020, it is submitted that the date of journal entry was 18.10.2010 and not 16.10.2010 as stated by the AO and the same was a mere clerical error.

5.83 The AO also states that the letter dated 28.12.2020 from Motilal Vora to the BOD of AJL informing about assignment of loan, was not acknowledged by AJL. (Para 8.5 of assessment order). In this regard, it would be appreciated that by conduct it is clear that AJL acknowledged the assignment and if there is no assignment then the whole controversy of addition under section 28(iv) becomes non-issue. Similarly, the AO has pointed out other such nuts and bolts issues and then ultimately, based on these observations, the conclusion he arrived at is that 'Mrs.

Sonia Gandhi and Mr. Rahul Gandhi along with their trustworthy associates have taken over the assets of AJL' and that this is a fraudulent transaction.

5.84 In this regard, as explained in detail above, the assignment of loan and conversion thereafter into equity shares of AJL followed by conversion of AJL into a non-profit organization are all different steps in the process of enabling the assessee to achieve its objectives of reaching out to the youths of India in pursuance of its charitable objectives through the platform of AJL by reviving AJL's publication activities. If one looks at this bigger picture, the quick succession of the events taking place can be appreciated. These are transactions outside the realm of business or trade. Viewed from this stand point, the issues raised by the ld. AO reduces to nullity.

5.85 Further, it is undisputed that the Appellant, even though its registration u/s. 12AA has cancelled (though the matter is presently sub-judice), it continues to be a charity as per its MoA and as per the licence u/s. 25 granted to it, which is still valid licence. In this regard, attention is invited to the Licence u/s. 25 of the Companies Act, 1956 issued to the Appellant, at page 59 of PB-I. As would be observed therefrom, the conditions provided in the licence itself provides that the income of the company can be used only for the objects of the company and cannot be distributed as dividend or in any other manner (Clause 2 of the licence). Further, as per clause 4, no member shall be appointed to any office under the company which is remunerated by the salary, fees, or in any other manner.

Further, as per clause 7 of the licence, the company cannot even alter its MoA and AoA, except with the prior approval of the Central Government. In fact, the conditions provided in the licence are also replicated in the MoA of the Appellant at clauses XII(1), (2), (3), (4) and (5) (page 65 of the PB-I). Also, clause V of the MoA too states that no change or alternation can be made to be MoA or AoA without prior approval of the Central Government. (page 64 of the PB-I).

5.86 Hence, it is submitted that even though as on today, the registration u/s. 12A stands cancelled, it is undisputed that the Appellant was and continues to a charitable organisation and all the restrictions applicable to a charitable company is applicable to it. When seen in this light, it would be realised that all the allegations made by the AO about common office bearers, ultimate benefit, etc. obtained by the promoters of the Appellant has no relevance at all, since at the end of the day, any income of the Appellant can be used for no other purpose except for its objects and it cannot be diverted for the benefit of any other person or for any ulterior purpose in any manner whatsoever. Even today, under no circumstance, the alleged benefit of assets of AJL can percolate to any members of the Appellant company. In fact, the AO has not even made any attempt to show that any personal benefit is being taken by the Appellant or any of its members or that the MoA of Appellant has ever been sought to be amended in so many years since 2011.

5.87 Besides, even the shareholders of AJL had passed a unanimous resolution on January 21, 2016 to get the company registered under section 8 of the Companies Act, 2013, the effect of which is that even AJL is prohibited from declaring dividend or distributing or paying any amount to its members. Please see the amended MOA of AJL at page 89 of PB-I.

5.88 Hence, the allegation of the AO that the alleged illogical steps makes the entire transaction a fraudulent transaction or an adventure in the nature of trade is incorrect.

5.89 ***Allegation 12:*** *Through all the foregoing allegations the AO has ultimately concluded that the Appellant has benefitted from the assets of AJL taken over by the Appellant. (Various places of the assessment order). Further, the Ld. DR has stated that the corporate veil of AJL has already been lifted by the Delhi High Court and therefore, benefit has arisen to the Appellant.*

5.90 The Appellant humbly submits that despite the elaborate discussion and accusations of the AO with respect to the transaction in question, there is no basis to arrive at the foregoing conclusion that by acquiring the loan from AICC and conversion thereof into shares of AJL, the Appellant has itself acquired the 'assets' of AJL. In the entire assessment order, the AO has not demonstrated any benefit which the Appellant has actually received by acquisition of shares of AJL. He has merely alleged that by acquiring the shares of AJL, the Appellant has taken over the assets of AJL. However, no facts have been put forward to prove the same except that the registered office of

the Appellant is at one of the rooms of various properties of AJL, for which no rent is being paid.

5.91 It is submitted that AJL has permitted the Appellant company to use a portion of one room on the ground floor of Herald House as its registered office vide letter dated 15.1.2011. Please see page 468-469 of PB-I for the request made by the Appellant and letter given by AJL, respectively. By merely allowing the Appellant to use a portion of a room in one of its properties as registered office, the Appellant cannot be said to become the owner/beneficiary of even that one room, let alone all the properties of AJL. It is submitted that the Appellant does not have any ownership rights in the room allowed to be used by it as its registered office. It cannot sell, sub-let, mortgage, lease, etc. said room. It is submitted that in the present case, the Appellant cannot by any manner be regarded to have any ownership interest therein. AJL has permitted the Appellant to use a small portion of the room without rent only because the Appellant is a charitable institute, furthering same objects as that of AJL. Besides, the said room is being used as the registered office of the Appellant, which is more of a post-office arrangement. The insignificance of the said arrangement is apparent from the fact that when the Land & Development officer visited the Delhi Office of AJL, it did not even find the Appellant's presence at the said place. In this regard, reference is drawn to the decision of the Delhi High Court in the case of AJL vs. Land & Development Office (LPA 10/2019 & CM Nos. 566/2019 & 649/2019), wherein at Para 7 (Pages 158-159 of

Revenue PB-II dated 17.01.2022), it is stated that the L&DO officer inspected the premises of Delhi Property of AJL and in its inspection report made the following notings:

"The floor wise report is as under:-

(A) Basement: The basement was lying more or less vacant. Some scrap materials and an old printing machine, not in working condition, were found lying there. However, front side mezzanine in Basement is being used by Akash Gift Gallery in an area of 84 sq.ft. This comes under misuse category.

(B) Ground Floor: The floor is rented out to Passport Seva Kendra. Apart from this, unauthorised pucca construction used as panel room in rear in an area measuring 1010.03 sq.ft.

(C) First Floor: The floor is rented out to Passport Seva Kendra.

(D) Second and Third Floor: The floors are rented out to Tata Consultancy Services.

(E) Fourth Floor: The floor is being used by the Lessee for its office. Photographs taken at the premises are also enclosed."

5.92 As would be observed, in the detailed floor by floor listing made by the L&DO, the presence of the Appellant was not even found at the Delhi Property of AJL.

5.93 The AO has also alleged that from the extract of the report of the DVO, extracted at page 49 of the order, it is clear that the properties of AJL were under custody and control of the Appellant and that the employees of the Appellant prohibited the DVO from entering the premises of AJL. It is submitted that

even this allegation of the AO is grossly incorrect. From the perusal of the said extract of the report of the DVO referred by the AO, it cannot at all be concluded that the Appellant was in custody or control of the properties of AJL. In fact, as is evident from the extract, the Appellant had in its reply dated 31.8.2017 intimated to the DVO that any attempt on the Appellant's part to allow DVO to entered the property of AJL may be viewed by the owner as an act of trespass. (Please see page 49 of the Assessment Order). The Appellant fails to understand that if AJL did not permit DVO to enter its properties, how would that lead to the conclusion that the Appellant was in control of the properties of AJL.

5.94 In any case, apart from the foregoing instance, the AO or the Revenue has not pointed out any instance of any benefit which the Appellant has derived by acquiring shares of AJL.

5.95 It is humbly submitted that by acquiring the shares of AJL, the Appellant has not acquired any right over the assets of AJL. In fact, by acquiring the shares of AJL, it was never intended to make any gain. Clearly, the Appellant being a section 25 company, any alleged gain which the company could have derived could never be distributed as dividend by the Appellant. Hence, there could be no motive to undertake such transaction to derive any benefit or gain. This is, indeed, fully borne out of the fact that the shareholders of AJL had passed a unanimous resolution on January 21, 2016 to get the company registered under section 8 of the Companies Act, 2013, the effect of which is that even AJL is prohibited from declaring

dividend or distributing or paying any amount to its members. Also, as discussed in detail in Ground VIII, the properties of AJL itself are subject to various restrictive covenants and the company is not allowed to sell or dispose off its assets, which were received with the purpose of utilization in publishing business.

5.96 It is submitted that with the foregoing restrictions on usage of assets of AJL, the conclusion arrived at by the AO that by acquiring shares of AJL, the Appellant has 84 acquired the assets of AJL is completely barbarous. In fact, if one looks at all these past years since acquisition of the shares of AJL, no benefit, monetary or otherwise has been received by the Appellant since its incorporation in November 2010 till date.

5.97 The rationale behind entering into the said transaction has already been explained in detail above. It is reiterated again that the Appellant is a Section 25 company founded on Gandhian and Nehruvian ideology and since the objects of AJL were similar, its shares were acquired by the Appellant to further its objects. The shares were not acquired for any commercial motive as alleged by the AO.

5.98 Besides, it is trite law that by acquiring the shares of a company, the shareholder does not become the owner of the assets of the company. In this regard, reliance is placed on the decision of the Supreme Court in Mrs. Bacha F. Guzdar vs. CIT (27 ITR 1)(SC)(Page 11-16 of LPB VII), wherein it has been held as under:

"a shareholder acquires a right to participate in the profits of the company may be readily conceded but it is not possible to accept the contention that the shareholder acquires any interest in the assets of the company. The use of the word "assets" in the passage quoted above cannot be exploited to warrant the inference that a shareholder, on investing money in the purchase of shares, becomes entitled to the assets of the company and has any share in the property of the company. A shareholder has got no interest in the property of the company though he has undoubtedly a right to participate in the profits if and when the company decides to divide them"

5.99 Similar view has also been held in the following decisions:

- *Rustom Cawasjee Cooper v. Union of India [1970] 1 SCC 248;*
- *Carew & Co. Limited vs. Union of India (46 CC 121) (SC).*

5.100 It is accordingly submitted by merely acquiring the shares of AJL, the Appellant has not become the owner of the assets of AJL.

5.101 The Appellant submits that regardless of various untrue and misconceived allegations levelled by the AO with regards to the manner of acquiring the shares of AJL by the Appellant, the ultimate conclusion that the Appellant has become the owner of the assets of AJL, or that it has taken over the assets of AJL is completely baseless, illogical and factually incorrect.

5.102 During the hearing, the Ld. DR has relied on the Delhi High Court decision in the case of The Associated Journals Limited vs. Land & Development Office (LPA 10/2019 & CM Nos. 566/2019 & 649/2019) (Page 154 of Revenue PB-II dated 17.01.2022) to state that the Delhi High Court has in the corollary proceedings lifted the corporate veil of AJL and held that the Delhi Property of AJL is transferred to the Appellant on acquisition of shares of AJL by the Appellant. By relying on this finding, the Ld. DR has contended that there can be no dispute that the benefit has arisen to the Appellant.

5.103 In this regard, the Appellant wishes to submit as under:

5.103.1 Firstly, the decision of the Delhi High Court is a matter of further challenge and interim protection has been granted to AJL. In view of the interim order of the SC, the HC decision cannot be relied upon. In this regard, reference is drawn to Para 67 of the ITAT decision in Young Indian v. CIT [2019] 111 taxmann.com 235 (Delhi - Trib.) (Page 94 of Revenue PB I) wherein the said contention of the Appellant has been noted in detail.

5.103.2 Further, the proceedings before the Delhi High Court cannot be regarded as a 'collateral proceedings' as contented by the Ld. DR. The two proceedings are not intertwined. The case before the Delhi High Court was in respect of alleged breach of lease deed for the Delhi Property of AJL (i.e. just one property of AJL) whereas in the present case, the issue is about addition under the Income-tax Act of fair market value of all the

properties of AJL on alleged ground that on acquisition of around 99% shareholding of AJL, the Appellant has become beneficial owner of AJL. Clearly, the two proceedings are in different contexts and accordingly, the same cannot be regarded as a collateral proceeding.

5.103.3 Also, in the matter before the Delhi High Court, heavy reliance has been placed by the respondent in that case on the present impugned order passed u/s. 148 which is the subject matter of challenge under this appeal. In this regard, reference is drawn to Para 34-35 of the Delhi High Court decision (page 179-182 of the Revenue PB II), the relevant extract of which reads as under:

"34. Learned Solicitor General invited our attention to certain facts which he pointed out are reflected in the proceedings held before this Court in certain tax matters involving shareholders of the appellant company and the Income Tax authorities and argued that a company named and styled Young India Ltd.…… …It was when all these transactions came to light that a notice was issued by the Income Tax Department to Young India and thereafter, notices to the individual shareholders of Young India with regard to re-opening of assessment of tax. Sh.Tushar Mehta argued that this Court should take note of these transactions, apply the principle of "lifting of the corporate veil" and then considered the question of as to who is the actual beneficiary of all these transactions, whether the premises in question still continues to be in the ownership of AJL and what is the effect of all these transactions."

As would be observed, the entire facts based on which the Respondent in that case has argued that the corporate veil should be lifted in based on the finding given by the AO in the present matter. After placing heavy reliance on this order, it has been before the Delhi High Court that the corporate veil of AJL should be lifted. It is submitted that now if while deciding the present appeal, reliance is placed on the finding in the Delhi High Court, without appreciating the facts under which the shares were acquired by the Appellant (which has been demonstrated in detail above), it would amount to deciding the validity of the present impugned order by relying on the impugned order itself, which would amount to gross injustice to the Appellant. It should not happen that the Appellant does not get the chance to give its view and place its facts on record and get justice. It is accordingly submitted that the finding of Delhi High Court cannot be referred to in the present case and the facts need to be decided afresh based on the documents on record. This is circuitous in nature amounting to deciding the merits of findings of AO based on his findings itself. This is not permissible in law. In fact, various findings of the AO are completely incorrect and baseless as already pointed out.":

5.103.4 Further, in the case before the Delhi High Court, the Court was concerned with the language of clause III(13) of the lease deed for the Delhi Property, and it was in the context of the word 'transfer' used in this clause that the Delhi High Court has lifted the corporate veil of AJL. The whole argument of lifting the corporate veil in the case before the Hon'ble High

Court is to buttress the point that by acquiring the shares of AJL, the Appellant has acquired the properties of AJL and such acquisition amounts to "transfer" of the property by AJL, though not by way of sale or mortgage or gift, but "otherwise". This is interpretation of clause III(13) of the lease deed. However, for the language in the said lease deed, the question of invoking the principles of lifting of corporate veil would not have arisen even before the Hon'ble High Court. The issue in the present case is under the provisions of Income tax Act, 1961 and there is no similar language in the Act as in the lease deed interpreted by the Hon'ble High Court. Accordingly, it is submitted that the reliance on the Delhi High Court order for arguing lifting of corporate veil is completely misplaced. It is submitted that same test cannot be applied for Income-tax act for lifting of corporate veil, since even after this assessment both entities are being treated as separate entities and AJL continues to be taxed on its income. Under the Income Tax Act, lifting of veil can be done only in respect of cases where there is tax evasion and not case like this and it is no one allegation that the Appellant has carried out any tax evasion.

5.103.5 Besides, the Income-tax Department till today has never lifted the corporate veil of AJL for any of the income-tax matters. For the same, the relevant questions are:

i. as to who is being taxed under the provisions of the Income tax Act, 1961 on the rental income, AJL or the Appellant;

ii. to who is being granted depreciation on the buildings in computation of income under the provisions of Income tax Act, 1961, AJL or the Appellant;

iii. to who could be charged to tax on capital gains if the property is sold (though it is not permissible under the provisions of the lease); AJL or the Appellant?

The answer to all these questions he submitted is obvious, viz. "AJL" and not the Appellant. Under such circumstances, the proposition argued by the Ld. DR that Appellant and AJL are one and the same and that by acquiring the shares of AJL, the Appellant has acquired the properties of AJL is unstateable for income tax purposes. Even today, both assessees are assessed separately. AJL's income/loss for any of the years has not been clubbed in the hands of the Appellant. If the arguments of the Id DR are right, then, every case of 99% or 100% subsidiary will have to be a case of lifting of corporate veil! Wherever there are common, directors or shareholders would be a case of lifting of corporate veil! Wherever the acquisition of shares by the holding company has happened at a price that is considered below market price by the tax Department would be a case of lifting of corporate veil. Besides, as noted in Para 83 of the Delhi ITAT decision in 12AA cancellation matter of the Appellant (Page 100 of the Revenue PB I), the AJL board as on 31.3.17 has following directors who are NOT in any way connected with YI: -

- *Mr. Deepender Singh Hooda;*
- *Mr. Dipakbhai Ratilal Babaria.*

5.103.6 Also, if indeed, corporate veil is lifted for the income-tax purpose, then the question which arises is as to whether say tomorrow, the Delhi High Court decision relied by the Ld. DR is upheld by the Supreme Court and the lease of Delhi Property of AJL stands cancelled, would the tax department at that stage allow the loss of the Rs 432 crores to the Appellant which is being sought to be taxed in the hands of the Appellant today as its business income?

5.103.7 Similarly, in future, if AJL sells all its properties, would the fair market value of the assets sought to be taxed today in the hands of the Appellant be allowed as cost of acquisition. If the answer is no, it would amount to double taxation of the market value of the properties which is clearly not permissible in law.

5.103.8 Similarly, say tomorrow AJL makes preferential issue of shares to another person as a result of which the Appellant ceases to be a majority shareholder in AJL, then at that stage, the so called benefit obtained by the Appellant would cease to exist. What would be the tax treatment of the alleged benefit which is already sought to be taxed in the hands of the Appellant at this stage.

5.103.9 Also, say, if the Appellant were to allot all the shares to a third party, then if that stage who would pay tax on the alleged 'benefit', YI, AJL or the third party since in that case, YI would become a step down subsidiary of the third party.

5.103.10 Besides, even if corporate veil is lifted, the Department has not shown how the Appellant has 'benefitted' from it. Only one instance of using an office in Herald House, New Delhi as registered office has been cited. Detailed discussion in respect thereof is already provided at paras 5.90 to 5.92 of this submission. In 2011, Panchkula and Mumbai were unconstructed open piece of land. Patna was 100% encroached by juggi-jhopdi. In Lucknow, Nehru Bhawan was given on rent to a charitable eye hospital and Nehru Manzil is a half constructed dilapidated building. Hence, how was YI benefitting from these properties?

5.103.11 The premise of the Revenue is that the Appellant has become owner of these properties which have been acquired for a paltry consideration of Rs. 50 lakhs. In this regard, it is submitted that bargain purchase of an asset can never be taxed as benefit u/s. 28(iv). If this is accepted, then every case of bargain purchase by a trader would become taxable in his hands at the stage of purchase itself. This is against the settled legal position.

5.103.12 Benefit if any which can be taxed u/s 28(iv) is only the value of usufruct from the property and not the capital value of the property itself. Hence, if at all, the rent benefit for a portion of one room used by the Appellant as registered office can be taxed u/s. 28(iv) and not the capital value of all the assets of AJL in law.

5.103.13 Lastly, if corporate veil is indeed lifted, then lifting of Veil needs to be taken to its logical conclusion. If corporate veil

is lifted and all the transaction between YI and AJL needs to be ignored. Then what is being said is that instead of shares the Appellant has acquired the assets of AJL for Rs. 50 lacs. Even in that case, it still remains a case of bargain purchase of real estate and cannot be taxed u/s. 28(iv) / Section 56.

5.104 Accordingly, the Appellant submits that regardless of various untrue and misconceived allegations levelled by the AO with regards to the manner of acquiring the shares of AJL by the Appellant, the ultimate conclusion that the Appellant has become the owner of the assets of AJL, or that it has taken over the assets of AJL is completely baseless, illogical and factually incorrect. In any case, the action of the AO of taxing the fair market value of all the assets of AJL in the hands of the Appellant as benefit u/s. 28(iv) without even demonstrating the benefit is not acceptable in law.

5.105 Legal Propositions:

5.106 In light of the foregoing, various legal submissions of the Appellant are as under:

5.107 Section 28(iv) of the Act reads as under :

"28. Profits and gains of business or profession

.....

(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession;

....."

5.108 As would be observed, the various limbs of section 28(iv) are (i) there should be 'business', (ii) there should be 'benefit', (iii) a benefit or perquisite should 'arise' (iv) such benefit or perquisite should 'arise from' business, (v) the benefit or perquisite may be convertible into money or not; and (vi) such benefit or perquisite must have value. It is submitted that in the present case there is neither any business nor any benefit arisen to the Appellant.

5.109 Section 28(iv) applies only to benefit arising out of 'business' which is not existent in the present case.

5.110 The AO has failed to appreciate that the Appellant is a section 25 company. It is not engaged in any business whatsoever. Further, the Appellant is not involved in the business of investment in shares or in immovable properties.

5.111 From the perusal of section 28(iv) reproduced above, it is evident that the section seeks to bring to tax as part of profits and gains of business, the value of any benefit or perquisites arising in the course of business, whether convertible into money or not. It is submitted that since no business is carried on by the Appellant, it cannot be the source of alleged benefit, if any, and accordingly, section 28(iv) of the Act has no application in Appellant's case.

5.112 In this regard, the Appellant places reliance on the following decisions:

5.113 CIT v. Elscope Ltd (313 ITR 293)(Guj) (Page 49-55 of LPB VII) – In that case, the assessee had acquired four running

businesses and paid discounted price for the same. The undertaking acquired included the liability to pay some amount to four investment companies in five annual equal instalments and the assessee-company reworked terms of agreement by mutual consent and commuted liabilities by applying discounting rate of 12 per cent on outstanding amount and credited difference to its capital reserve. The stand of the Revenue was there was a business or an adventure in the nature of trading towards purchase of industrial undertaking and the difference being profits arising on reduction of liabilities was taxable as business income. The High Court, however, rejected the argument of the Revenue by holding as under:

> *"The stand of the revenue that there was business or an adventure in nature of trading towards purchase and sale of industrial undertakings loses sight of this basic issue, namely, that the transaction in question had its genesis in shares issued and outstanding call monies payable for shares issued. Hence, in any view of the matter, even provisions of section 28(iv) of the Act cannot be pressed into service by the revenue in the present case. [Para 13] For invoking section 28(iv) of the Act the pre-requisite conditions are : (a) the benefit / perquisite must arise from the business of an assessee; (b) there must be a nexus or connection between the business of an assessee and the benefit/perquisite sought to be taxed. In the present case, both the conditions are absent. [Para 15] In the aforesaid facts and circumstances of the case, the Tribunal was*

justified in holding that the profits arising on reduction of liabilities was not trading profits liable to be taxed as business income. [Para 16]" (emphasis provided)

5.114 CIT v. STADS Ltd. (373 ITR 313)(Mad.)(Page 56- of LPB VII): In this case too, the assessee had acquired assets at price less than actual cost. The surplus was treated as amalgamation reserve. Revenue wanted to treat that reserve as business income. However, the High Court rejected the argument of the Revenue and held as under:

"11. A plain reading of the above-said provision makes it clear that the amount reflected in the balance sheet of the assessee under the head 'reserves and surplus' cannot be treated as a benefit or perquisite arising from business or exercise of profession. The difference amount post amalgamation was the amalgamation reserve and it could not be said that it is out of normal transaction of the business. The present transaction is capital in nature arose on account of amalgamation of four companies. Hence, we have no hesitation to hold that the manner in which the Revenue wants to treat this amount is not in consonance with Section 28(iv) of the Income Tax Act.

5.115 Similar view has also been taken in Mahindra & Mahindra Ltd. v. CIT (261 ITR 501)(Bom.) affirmed in (404 ITR 1) (SC) (Page 56 of LPB VII).

5.116 It is humbly submitted that the Appellant is not in business of acquisition of loan/shares, hence, the question of

benefit arising in the course of any business, let alone arising directly from a business does not arise. In the present case, the subject shares were received pursuant to the conversion of loan into shares and not in lieu of any business transaction carried on between the Appellant and AJL. The receipt of shares arose on account of a non-business related one-off transaction. In view of the same, the aforesaid receipt of shares was not liable to tax under the head "business income" and, accordingly, the action of the AO in bringing to tax income in relation to receipt of above shares is not sustainable on facts and in law.

5.117 Further, the transaction of the Appellant can also not be regarded as an 'adventure in the nature of trade' for it to fall u/s. 28(iv). The argument of the Revenue is that the Appellant had through series of steps acquired assets/shares of AJL at less than fair market value which is an adventure in the nature of trade. However, it is settled law that a discounted purchase by itself cannot amount to an adventure in the nature of trade.

5.118 In this regard, reliance is placed on the decision of the Supreme Court in the case of Janki Ram Bahadur Ram v. CIT (57 ITR 21)(SC)(Page 60-66 of LPB VII) wherein it is held that mere discounted purchase cannot mean that the assessee was involved in any adventure in the nature of trade to attract the provisions of section 28 of the Act. The relevant extract of the decision is as under:

"A large number of cases were cited at the Bar in support of the respective contentions of the Commissioner and the assessee. Passages from judgments in the same case were often cited

claiming support for the respective contentions. No useful purpose would be served by entering upon a detailed analysis and review of the observations made in the light of the relevant facts, for no single fact has decisive significance, and the question whether a transaction is an adventure in the nature of trade must depend upon the collective effect of all the relevant materials brought on the record. But general criteria indicating that certain facts have dominant significance in the context of other facts have been adopted in the decided cases. If, for instance, a transaction is related to the business which is normally carried on by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is purchased and sub-divided, altered, treated or repaired and sold, or is converted into a different commodity and then sold. Magnitude of the transaction of purchase, the nature of the commodity, subsequent dealings and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture : for instance, a man who purchases a large quantity of aeroplane linen and sells it in different lots, and, for the purpose of selling starts an advertising campaign, rents offices, engages an advertising manager, a linen expert and a staff of clerks, maintains account books normally used by a trader, and passes receipts and payments in connection with the linen through a separate banking account: Martin v. Lowry [1926] 11 Tax Cas. 297: a person who carries on a money-lending

business purchases very cheaply a vast quantity of toilet paper and within a short time thereafter sells the whole consignment at a considerable profit:

.....

Purchase of the property by the appellant was an isolated transaction not related to the business of the appellant. ---- Granting that the appellant made a profitable bargain when he purchased the property, and granting further that the appellant had when he purchased it a desire to sell the property, if a favourable offer was forthcoming, these could not without other circumstances justify an inference that the appellant intended by purchasing the property to start a venture in the nature of trade.

...

...The property purchased was not such that an inference that a venture in the nature of trade must have been intended by the appellant in respect thereof may be raised."

5.119 Indeed, if a discounted purchase is regarded as a business adventure resulting in benefit, then in case of every businessman purchasing a stock-in-trade at less than fair market value would be treated as business income in his hands at the time of purchase itself. Clearly interpretations which result in such unintended consequences cannot be upheld.

5.120 Accordingly, it is submitted that since the Appellant is not in the business of acquisition of shares/loan, section 28 itself does not apply to it and accordingly, the question of applying section 28(iv) does not arise.

5.121 The Ld. DR has argued that the activity of the Appellant is an 'adventure in the nature of trade' and accordingly, covered u/s. 28(iv). He refers to the chronology of steps undertaken for acquisition of shares of AJL and says that the manner in which through series of steps under a 'scheme' the Appellant has acquired shares of AJL with the 'intention' to acquire assets of AJL which makes it an adventure in the nature of trade.

5.122 He says that the characteristics such as 'scheme' and 'intention' make the transaction an adventure in the nature of trade. In support of his contention, he has referred to the following decisions:

- *CIT v. Kasturi Estate (P.) Ltd., (1966) 62 ITR 578 (Mad) – Para 11 (Pages 7-8 of Revenue PB-II)*
- *G. Venkataswami Naidu and Co. v. CIT, (1959) 35 ITR 594 (SC)- Para 16 (Page 55 of Revenue PB-II)*
- *Khan Bahadur Ahmed Alladin & Sons v. CIT, (1968) 68 ITR 573 (SC)- Para 6 (Page 72-74 of Revenue PB-II)*
- *P.M. Mohammed Meerakhan v. CIT, (1969) 73 ITR 735 (SC)- Para 6 (Page 83 of Revenue PB-II)*

5.123 In this regard, it is submitted that it is true, as is clear from the facts stated above, that the various steps taken by the Appellant were to acquire the shares of AJL, however, that by itself does not mean that every 'scheme' undertaken is a scheme in the nature of adventure in the nature of trade. The Ld. DR himself has stated that that an 'adventure' a

commercial or financial risk – a pecuniary venture. However, when the Appellant itself is a section 25 company, the MoA subsequently has been aligned to that of a section 8 company, no dividend has ever been received by the Appellant, AJL at that time was into huge losses, then which commercial venture is the Ld. DR referring to. As stated in clear terms, the intention for acquiring AJL is to use it as a launchpad for achieving its objects. The intention has never been to sell or make any gain from the said shares/assets. In the past so many years, Appellant has demonstrated through various examples how its intention is being achieved and the department has not been able to provide any significant instance demonstrating their allegation that the intention of the Appellant was to take over assets of AJL. It is accordingly submitted that not every 'scheme' or 'design' becomes an adventure in the nature of trade. In fact, in all the foregoing decisions relied upon by the Ld. DR, the Courts was dealing with the taxability of gain which are arisen to the assessee on 'sale' and it is in that context that the courts have decided as to what constitutes adventure in the nature of trade.

5.124 In the case of CIT v. Kasturi Estate (P.) Ltd., (1966) 62 ITR 578 (Mad), the facts (Page 4 of the Revenue PB II) are stated as under:

> *"The assessee, which is a private limited company, received in the accounting year, ended June 30, 1958, corresponding to the assessment year 1959-60, a surplus of Rs. 27,568 on sale of certain plots of land. This sum was charged to income-*

tax on the view that the sales constituted a venture in the nature of trade."

As would be observed, this was a case where the assessee had sold plot of land. Further, even in Para 11 of the decision (Page 8 of Revenue PB II), which was referred by the Ld. DR, it is stated that "A purchase and sale of land may be of that character but not necessarily so. If a person is systematically engaged in a series of transactions of purchase and sale of lands with a view to make profit out of them, that may indicate that he is occupied in a trading activity."

Similarly, at Para 13 of the decision (Page 9 of Revenue PB II), on the conditions which must be present is mentioned to be 'the activities which led to the maturing of the assets to be sold".

5.125 Similarly, in G. Venkataswami Naidu and Co. v. CIT, (1959) 35 ITR 594 (SC), the facts (Page 48 of the Revenue PB II) are stated as under:

"The appellant is a firm acting as managing agents of the Janardana Mills Ltd., Coimbatore. It purchased four contiguous plots of land admeasuring 5 acres 26 cents under four sale deeds executed on October 25, 1941, November 15, 1941, June 29, 1942, and November 19, 1942, respectively for a total consideration of Rs 8712-15-6. After about five years these properties were sold by the appellant in two lots to the Janardana Mills Ltd. The first lot was sold on September 1, 1947, and the second on November 10, 1947, the total consideration for the two sales being Rs 52,600.

These two sales realised for the appellant a sum of Rs 43,887-0-6 in excess of the purchase price."

Hence, even in this case, the determinative factor was the sale made by the assessee. That determined what was the intention of the assessee. However, in the Appellant's case, there has not been any sale since last 10 years.

Besides, the Ld. DR has referred to Para 29 of the order (Page 64 of the Revenue PB II), to contend that that the conduct prior to purchase is relevant for determining whether there is an adventure in the nature of trade is such conduct shows design and purpose. However, every design/purpose, every scheme cannot mean it is an adventure in the nature of trade. In that case, it is stated that 'the appellant was the managing agent of the Janardana Mills and it was first thought that purchasing the plots in its own name and selling them to the mills may invite criticism and so the first purchase was made by the appellant in the name of its benamidar V.G. Raja. Apparently the appellant changed its mind and took the subsequent sale deeds in its own name. The conduct of the appellant in regard to these plots subsequent to their purchase clearly shows that it was not interested in obtaining any return from them.'

Hence, it was this design which was referred to by the Court. However, in the Appellant's case, what is the design. The allegation is that the Appellant has taken over the assets of AJL. Now, in the year under consideration, even if AJL had handed over the properties to the Appellant without any consideration, there would not have been any tax implication in

the hands of Appellant. There was no provision in the Act in the year under consideration where even pure gift of immovable properties to a company could be taxed in the hands of the company. It is submitted that a sum total of zero cannot become an income through any permutation and combination. The term 'design' cannot be read to mean that merely because there was some purpose it becomes design. The intention of the Appellant is amply clear from the documents as well as its conducts. The Appellant has not even touched any of the properties since the acquisition of shares.

5.126 Next decision relied by the Ld. DR is the case in Khan Bahadur Ahmed Alladin & Sons v. CIT, (1968) 68 ITR 573 (SC). Even in this case, the Court was concerned with taxability of actual gain earned on sale transaction and not theoretical gain as is sought to taxed in this case. The relevant extract of the decision is as under:

> *"What is the line which separates the two classes of cases may be difficult to define, and each case must be considered according to its facts; the question to be determined being — Is the sum of gain that has been made a mere enhancement of value by realising a security or is it a gain made in the operation of business in carrying out a scheme for profit making?" …….. For instance, if a transaction is related to the business which is normally carried on by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is*

purchased and sub-divided, altered, treated or repaired and sold or is converted into a different commodity and then sold."

5.127 Similarly even the decision in P.M. Mohammed Meerakhan v. CIT, (1969) 73 ITR 735 (SC) relied by the Ld. DR, the court was concerned with the case of sale of a large piece of land.

5.128 It is accordingly submitted that contention of the Ld. DR that the transaction in question is an adventure in the nature of trade is not sustainable in law. This holds true whether the transaction is regarded as acquisition of shares of AJL or as acquisition of assets of AJL. Indeed, as stated earlier, the Supreme Court has clearly held in Janki Ram Bahadur Ram v. CIT (57 ITR 21)(SC)(Page 60-66 of LPB VII) that mere discounted purchase of an asset cannot mean that the assessee was involved in adventure in the nature of trade.

5.129 The Ld. DR has further stated that when shares of AJL were allotted in lieu of the loan taken over by Appellant it amounted to exchange of assets and accordingly, the transaction was adventure in the nature of trade. In this regard, it is submitted that there is a fundamental fallacy in the premise of Ld. DR's argument that the Appellant has exchanged the loan for shares/assets of AJL. The Appellant has not exchanged the loan for shares but has been allotted shares against the loan i.e. in satisfaction of the loan. For an exchange, there should be two assets held by two persons which is bartered by them. If Mr. A holds asset X and Mr. B holds asset

Y and both takeover each other assets, only then would it constitute exchange. Clearly, shares allotted by a company is not the asset of the company but its liability. Further, before shares are allotted, they don't even exist. Shares come into existence only after allotment. Hence, when company allots shares, it is not exchanging shares against the consideration. AJL never had the shares as an asset for it to transfer in exchange of loan. Further, even the loan is not being transferred by the Appellant to AJL. It is converted into shares. Hence, clearly, there is no exchange in the present case. At this stage, what is happening is that for a sum of money shares are being allotted. In this regard, reliance is placed by the Appellant on the decision of the Supreme Court in Khoday Distilleries Ltd. vs. CIT (307 ITR 312)(SC) (Page 31-39 of LPB VIII) wherein it is held as under:

> *"7. At the outset, we may state that none of the above arguments have been considered by the High Court in its impugned judgment. In the case of Sri Gopal Jalan & Co. (supra) a question arose as to the meaning of the word "allotment". It was held that in Company Law the word "allotment" means appropriation out of previously unappropriated capital of a company, of a certain number of shares, to a person and till such allotment, the shares do not exist as such. It is only on allotment that the shares come into existence and in every case the words "allotment of shares" have been used to indicate the creation of shares by*

appropriation out of the unappropriated share capital to a particular person.

8. In our view, the judgment of this Court in Sri Gopal Jalan & Co.'s case (supra) squarely applies to the present case. There is a vital difference between "creation" and "transfer" of shares. As stated hereinabove, the words "allotment of shares" have been used to indicate the creation of shares by appropriation out of the unappropriated share capital to a particular person. A share is a chose in action. A chose in action implies existence of some person entitled to the rights in action in contradistinction from rights in possession. There is a difference between issue of a share to a subscriber and the purchase of a share from an existing shareholder. The first case is that of creation whereas the second case is that of transfer of chose in action. In this case, when twenty shareholders did not subscribe to the rights issue, the appellant allotted them to the seven investment companies, such allotment was not transfer. In the circumstances, section 4(1)(a) was not applicable as held by the Tribunal."

5.130 It is accordingly submitted that the premise of the Ld. DR that the Appellant exchanged its loan against shares is fundamentally fallacious. The shares of AJL has been allotted to the Appellant at par and considering the huge losses in the company they were allotted at the right price.

5.131 Further, the next contention of the Ld. DR is that even a solitary transaction can be regarded as an adventure in the nature of trade. It is submitted that it is true that even a single

transaction could be a business transaction, however, what is important is the purpose for which the transaction is undertaken. In the current case, it is clear from the facts that the intention is not to enter into any trade or any business. The intention has been clearly spelt out right from the annual accounts of the Appellant for the year under consideration itself that the said acquisition was for the purpose of objects of the Appellant. It is proved from the facts on record and also the conduct of the Appellant. Further, even if it is assumed that the intention was to acquire assets of AJL for small consideration, even in that case, this is a mere case of acquisition/purchase of shares/assets and such a transaction cannot be taxed as a business transaction under any provision of law. There is no real income at all which has been earned by the Appellant.

5.132 It is accordingly, submitted that section 28(iv) has no role in the present case in absence of any business/adventure in the nature of trade.

5.133 Section 28(iv), there should be a 'benefit' which should 'arise' to the assessee.

5.134 As per the Revenue, by acquiring the shares of AJL, the Appellant has earned the benefit in the form of assets of AJL and accordingly, the alleged fair market value of all the assets of AJL is taxed as benefit in the hands of the Appellant u/s. 28(iv).

5.135 In this regard, the Appellant humbly submits as under:

5.136 Firstly, what Appellant has acquired is only shares of AJL and not the assets of AJL as alleged by the AO.

5.137 The rationale behind entering into the said transaction has already been explained at Para I of this submission. It is reiterated again that the Appellant is a Section 25 company founded on Gandhian and Nehruvian ideology and since the objects of AJL were similar, its shares were acquired by the Appellant to further its objects. The shares were not acquired for any commercial motive as alleged by the AO. Besides, it is trite law that by acquiring the shares of a company, the shareholder does not become the owner of the assets of the company as has been held in the following decisions:

- *Rustom Cawasjee Cooper v. Union of India [1970] 1 SCC 248;*
- *Carew & Co. Limited vs. Union of India (46 CC 121) (SC).*
- *Mrs. Bacha F. Guzdar vs. CIT (27 ITR 1)(SC)(Page 11-16 of LPB VII)*

5.138 It is accordingly submitted by merely acquiring the shares of AJL, the Appellant has not become the owner of the assets of AJL.

5.139 Without prejudice to the above, even if the Appellant is regarded as the owner of assets of AJL, the benefit, if any, is only in the capital field and cannot be covered under Section 28(iv).

5.140 It is submitted that by acquiring shares of AJL even if it is held that the Appellant has acquired the assets of AJL at a discounted price which is a benefit to the Appellant, it is

submitted that the said alleged benefit arising from acquiring assets is a benefit which is in capital field and accordingly, the same cannot be brought to tax. It is submitted that the Appellant has no intention of selling the shares at any profit in future. The purpose of acquisition of these shares has been duly disclosed in the note no. 1 to the audited annual accounts for the year ended March 31, 2011. The said note is self-explanatory and clearly sets out the purpose of spending money towards these shares which is towards pursuing the objects of the Appellant. Accordingly, it is submitted that since the acquisition of shares is in the capital field, the transaction is of a capital nature and hence, the question of charging tax u/s. 28 does not arise. It is a settled legal position that even if there is a gain (in this case, there is none) section 28 of the Act does not apply to receipts of capital nature. In this regard, reliance is placed on the following decisions:

5.141 Mahindra & Mahindra Ltd. Vs. CIT (2003) (261 ITR 501) (Bom) (Page 17-25 of LPB VII), wherein at Para 7, it is held as benefit in capital field is not taxable u/s. 28(iv). The relevant extract is as under:

> *'in this case we are concerned with purchase consideration relating to capital asset. The Toolings were in the nature of dies. The assessee was a manufacturer of heavy vehicles and jeeps. It required these dies for expansion. Therefore, the import was that of plant and machinery. The consideration paid was for such import. In the circumstances, Section 28(iv) is not attracted.,*

5.142 The foregoing decision is affirmed by the Supreme Court in (404 ITR 1)(Pages 26-32 of LPB VII). Similar view has been taken in the following decisions:

- *CIT v. Jindal Equipments Leasing & Consultancy Services Ltd. (325 ITR 87)(Delhi)(Page 33 – 36 of LPB VII);*
- *CIT V. Seshasayee Bros. (P.) Ltd. (222 ITR 818)(MAD.); (Page 33 – 36 of LPB VII);*
- *ITO v. Shreyans Investments (P.) Ltd. [2013](141 ITD 672)(Kol.)(Page 33 – 36 of LPB VII).*

5.143 Accordingly, the Appellant submits that the alleged benefit, if any, being in a capital field is not taxable u/s. 28(iv).

5.144 Without prejudice to the above, there is no benefit or perquisite within the meaning of section 28(iv) which has been proved by the Revenue.

5.145 In the present case, though the AO has tried to tax the market value of assets of AJL in the hands of the Appellant by stating that it is the benefit to the assessee, the AO has not given any factual information as what benefit has the Appellant enjoyed and how it has arisen to the assessee.

5.146 The detailed submission in respect to the same is provided in reply to Allegation No. 11 above.

5.147 It is accordingly submitted that in the present case, there is no benefit/gain whatsoever that has arisen to the Appellant. Indeed, there can be no tax at the time of purchase even in case of a running business. If purchase gives rise to income u/s. 28(iv), then every case of a purchase at a discount

over the listed price or market price would give 100 rise to income irrespective of the sale of the goods purchased. This would be a mockery of the tax law. Tax is payable on real income. A hypothetical income cannot be taxed u/s. 28(iv) even in case of a running business. In the present case, therefore, in the absence of any benefit, and in view of the fact that the transaction is of a mere purchase or acquisition of shares of AJL, the question of taxing u/s. 28(iv) does not arise.

5.148 Without prejudice to the above, for applying the provisions of Section 28(iv), the benefit should 'arise' to the assessee. A mere acquisition of shares/assets does not give any benefit which 'arises' to the assessee. The benefit, if any, would arise only when the shares/assets are sold. That stage has not arisen.

5.149 As would be observed from the language of section 28(iv) is 'benefit arising from business'.

5.150 In this regard, attention is invited to ÷the decision of the Andhra Pradesh High Court in the case of CIT vs. K.N.B. Investments P Ltd. (52 taxmann.com 103)(Pages 73-76 of LPB VII) wherein it is held that section 28(iv) can apply only when a benefit has 'arisen' to the assessee. The Court explained the difference between 'accrual' and 'arisen' and concluded that since the legislature has used the word 'arising' and not 'accruing or arising' in section 28(iv), only such benefit which has already arisen to the assessee would be covered in that section. The relevant extract of the decision is reproduced below:

"11. The second aspect is as to whether the benefit has, in fact, accrued at all to the respondent. There exists a distinction between the "accrual of income", on the one hand, and "arising of income", on the other. While accrual is almost notional in nature, the other is factual. It is too well known that in its complex nature, the Act covers not only the "income" that, in fact, has arisen, but also the one that has accrued.

12. When Parliament has consciously chosen to restrict the taxation of benefit only when it has arisen, it is not permissible to tax the benefits by treating them as "accruals". A close scrutiny of the concept of "arising of income" discloses that, it, in fact, must flow into the assets of the assessee, during previous year, and thereby, it became taxable in the financial year. The Income-tax Officer was not even able to show, much less demonstrate, that the income in the form of "benefit" has arisen to the respondents at all. The sole basis for levying income tax on the amount was on the assumption that in case the shares are sold, they would have yielded the differential price and that, in turn, can be treated as "income". Even if the exercise contemplated by the Income-tax Officer is taken as permissible in law, at the most, it amounts to "accrual" and not "arising" of income. Here again, the Tribunal has explained the subtle distinction between the two, in a perfect manner and arrived at the correct conclusion. (underlined for emphasis)

5.151 As would be observed, the Hon'ble Court has categorically held that on mere acquisition of shares on discount, no benefit can be said to 'arise' to the assessee,

which would arise only when the shares are sold. It is humbly submitted that even in the present case, even assuming without accepting that the Appellant is in business of purchasing shares, no benefit can be said to have 'arisen' to the Appellant. Indeed, as stated earlier, no benefit of any nature can at all be demonstrated to have arisen to the Appellant since acquisition of shares of AJL. Further, even MoA of AJL has been amended (though at a later point in time) which prohibits it to distribute its assets/money as dividend to its shareholders. It is submitted that with such restriction, the question of Appellant being able to enjoy any property/asset of AJL does not arise. Accordingly, the Appellant humbly submits that the addition u/s. 28(iv) is bad in law and ought to be deleted.

5.152 Reliance is also placed on the decision of the Supreme Court in the case of CIT vs. Excel Industries Ltd. (38 taxmann.com 100) (Page 77-83 of LPB VII) where the Apex Court has explained the scope of section 28(iv) and held that only real income can be taxed in that section and future benefit, which may or may not arise is not taxable under section 28(iv). In that case, the assessee who was admittedly in business had received DEPB entitlements/licenses from its export business. The Tax Department sought to tax said entitlements as benefit arising from business. On appeal, the Court held that even though the DEPB entitlement was received by the assessee, its value/benefit would arise to the assessee only when the assessee actually imports goods using such entitlements. It further held that until such imports, the benefit from the

entitlements is only hypothetical in nature which cannot be brought to tax under the Act.

"It is now well settled that income tax cannot be levied on hypothetical income… Insofar as the present case is concerned, even if it is assumed that the assessee was entitled to the benefits under the advance licences as well as under the duty entitlement pass book, there was no corresponding liability on the customs authorities to pass on the benefit of duty free imports to the assessee until the goods are actually imported and made available for clearance. The benefits represent, at best, a hypothetical income which may or may not materialise and its money value is therefore not the income of the assessee….Applying the three tests laid down by various decisions of this Court, namely, whether the income accrued to the assessee is real or hypothetical; whether there is a corresponding liability of the other party to pass on the benefits of duty free import to the assessee even without any imports having been made; and the probability or improbability of realisation of the benefits by the assessee considered from a realistic and practical point of view (the assessee may not have made imports), it is quite clear that in fact no real income but only hypothetical income had accrued to the assessee and section 28(iv) would be inapplicable to the facts and circumstances of the case."

5.153 Similarly, in CIT v. Spunpipe and Construction Co. Ltd. (55 ITR 68)(GUJ.)(pages 67-72 of LPB VII) it is held that mere discounted purchase couldn't result in any income. In that case,

the assessee-company purchased a factory owned by another company as a going concern and the price paid by assessee for assets was lesser than their book value. The Court held that the difference between the book value and price paid cannot be taxed as income in the hands of the assessee as it is not a benefit. The relevant extract of the same is as under:

> *"On the question as framed, it is clear that the difference between the book value of any part of the assets acquired by the assessee and the price paid by the assessee for the same cannot be regarded as revenue profit derived by the assessee. As a matter of fact it is not possible to say that any profit at all is made by the assessee from the purchase of any of the assets. At the highest, what can be said is that assets worth a particular amount are purchased by the assessee for a smaller amount but that does not represent the profit of the assessee. It is, therefore, not right to regard the difference between the value of the assets and the price paid for the same as revenue profit liable to be added to the assessable income of the assessee. The question as framed, however, does not really bring out the point decided by the Tribunal. The word "surplus" is not a correct expression. What is referred to by the Tribunal as surplus is, as we have, already pointed out, the difference between the book value of the assets and the price paid by the assessee for the same. We will, therefore, reframe the question as under:*
>
> *"Whether, on the facts and in the circumstances of the case, the difference between the book value of the assets of the*

factory acquired by the assessee company as a running concern and the price paid for the same was assessable in whole or in part as revenue profits derived by it during the previous year relevant to the assessment year 1955-56"?

Our answer to the question as refrained will be in the negative. The Commissioner will pay to the assessee the costs of the reference. There will be no order on the application."

5.154 Similar view has also been held in CIT vs. Krishnaram Baldeo Bank (P.) Ltd (144 ITR 600)(MP)(Page 84-88 of LPB VII).

5.155 It is submitted that applying the aforesaid principle to the facts of the Appellant's case, the alleged benefit on acquisition of the shares/assets of AJL (if any) is only hypothetical in nature until the same is actually sold by the Appellant. Indeed, at the time of sale, said benefit may or may not remain depending on the financial position of AJL at the time of sale. However, there can be no benefit at the time of purchase. For instance, say a dealer in gold purchases gold at less than market value. Would the legislature tax him today or at the time the gold is sold? Surely the answer is at the time when gold is sold. In that case, how is the Appellant being taxed at this stage of acquiring shares/assets of AJL.

5.156 Accordingly, it is submitted that the question of taxing the benefit under section 28(iv) at the time of acquisition of shares does not arise.

5.157 The Ld. DR, at the time of the hearing has tried to distinguish these decisions by stating that the presumption of Appellant that what is acquired is shares of AJL is false. He states that the argument of the Appellant is based on the premise that Revenue's case is that the Appellant has acquired shares of AJL at lower consideration. He stated that this is a wrong presumption, since the case of the Revenue is that the Appellant has acquired assets of AJL through adventure in the nature of trade.

5.158 In this regard, it is submitted that the ratio of the decisions relied by the Appellant was squarely apply even where it is stated that what the Appellant has acquired is the assets of AJL and not the shares. In either case, the law remains the same that acquiring assets at lower consideration does not result in taxable income unless it is specifically covered under any provision of law. Section 28(iv), from its language is amply clear, that it does not tax notional income but income/benefit which has actually 'arisen'.

5.159 It is accordingly submitted that these decisions are very much relevant for the issue under consideration. Besides, the basic argument of the Revenue is that there was series of steps and the corporate veil is lifted. Said stand of the department in itself is self contradictory. At one hand, if corporate veil is lifted, one would have to ignore all the intermediary transactions and the effect of the transaction would need to be considered which as per Revenue is that assets of AJL have been acquired for Rs. 50 lakhs. If on the other hand, the series of transaction have to

be considered for reaching to the conclusion that benefit is derived, then the transactions ought be looked at the way it is and corporate veil cannot be lifted. The Ld. DR at one breadth says that there are series of transaction and in another second, he says to ignore the form since corporate veil is lifted. It is humbly submitted that the Revenue cannot have both positions. Further, as per the Ld. DR, the Appellant is being taxed because it has derived benefit. Though it is not demonstrated what is the benefit, the benefit, if any could only be the income arising from the property and not the capital value of the property. Hence, the benefit, if at all, would be the rent received by AJL when it comes to the Appellant.

5.160 The Ld. DR has relied on the decisions of Supreme Court in State of Gujarat v. Essar Oil, (2012) 3 SCC 522 (Page113-136 of Revenue PB II) for the meaning of 'benefit'. In this regard, it is submitted that the said decision has been rendered in the context of restitution of 'unjust benefit/unjust enrichment' and no relevance under the Incometax Act. For the purpose of Act, it is settled that a bargain acquisition cannot be regarded as benefit as held in aforestated decisions. Even if the judgement is held to be applicable, in the facts of the case, the only benefit the Appellant availed off was use of part of one small room of Delhi Property, without any rent; a benefit which would not exceed more than a few thousand rupees.

5.161 Further, the Ld. DR has relied on the decision of the Delhi High Court in the case of The Associated Journals Limited vs. Land & Development Office (LPA 10/2019 & CM Nos.

566/2019 & 649/2019) (Page 154 of Revenue PB-II dated 17.01.2022) to state that the Delhi High Court has in the corollary proceedings lifted the corporate veil of AJL and therefore, benefit has arisen to the Appellant. The detailed submission in respect of the same is covered in Appellant's reply to Allegation 12 above.

5.162 It is accordingly submitted that in absence of any benefit which has arisen to the Appellant, there cannot be any taxation in the hands of the Appellant u/s. 28(iv) of the Act.

5.163 Alternatively, even if it is assumed that the shares of AJL so acquired by the Appellant are its business assets and should be regarded as its stock-in-trade, even in that case, it is submitted that no profit can said to have arisen to the Appellant by mere valuation of said shares. It is a settled accounting principle that stock-in- trade has to be recorded in the books at their cost or market value, whichever is lower. It is not permissible to notionally increase the valuation of stock-in-trade and bring the difference to tax as business income.

5.164 In this regard, reliance is placed on the decision of the Supreme Court in Chainrup Sampatram v. CIT (24 ITR 481)(SC)(Pages 89-93 of LPB VII) wherein it is categorically held that valuation of closing stock cannot be the source of any profit. The relevant extract of the decision reads as under:

"Again, it is a misconception to think that any profit "arises out of the valuation of the closing stock" and the situs of its arising or accrual is where the valuation is made. As already stated,

valuation of unsold stock at the close of an accounting period is a necessary part of the process of determining the 105 trading results of that period, and can in no sense be regarded as the "source" of such profits. Nor can the place where such valuation is made be regarded as the situs of their accrual. The source of the profits and gains of a business is indubitably the business, and the place of their accrual is where the business is carried on. As such profits can be correctly ascertained according to the method adopted by an assessee only after bringing into the trading account his closing stock wherever it may exist, the whole of the profits must be taken to accrue or arise at the place of carrying on the business. On the finding of the Income-tax authorities that the 582 bars of silver lying at Bikaner had not been really sold but remained part of the unsold stock of the firm's business at the end of the accounting year, the whole of the profits of that year must be taken to have accrued or arisen at Calcutta where the business was carried on, no part of that business having admittedly been transacted at Bikaner. We agree with the High Court that the question referred should be answered in the affirmative though on different grounds. The appeal is accordingly dismissed with costs."

5.165 Similarly, in CIT vs. Hindustan Zinc Limited (291 ITR 391)(SC) (Pages 94-98 of LPB VII), it is held that as under:

"8. In the case of Chainrup Sampatram v. CIT [1953] 24 ITR 481 (SC), it has been held by this Court that valuation of unsold stock at the close of the accounting period was a necessary part of the process of determining the trading results of that period.

It cannot be regarded as a source of profits. Profits can be correctly ascertained only after bringing into the trading account the closing stock wherever it may exist. It was further held that the true purpose of crediting the value of unsold stock is to balance the cost of the goods entered on the other side of the account at the time of their purchase, so that on cancelling out of the entries relating to the same stock from both sides of the account would leave only the transactions in which actual sales in the course of the year have taken place and thereby showing the profit or loss actually realized on the years trading. The entry for stock which appears in a trading account is merely intended to cancel the charge for the goods purchased which have not been sold which should necessarily represent the cost of the goods. If it is more or less than the cost, then the effect is to state the profit on the goods actually sold. From this doctrine there is one exception, namely, the adoption of market value at the date of making up of accounts, if that value is less than the cost. This is in anticipation of the loss that may be made on the goods in the following year. While anticipated loss is taken into account, anticipated profit in the shape of appreciated value of the closing stock is not brought into the account as no prudent trader would care to show increased profits before actual realization. This theory that the closing stock is to be valued at cost or market price whichever is the lower, is now generally accepted as an established rule of commercial practice and accountancy.

9. To the same effect is the judgment of this Court in the case of CIT v. British Paints India Ltd. [1991] 188 ITR 44. In the said judgment it has been held that it is a well-recognized principle of commercial accounting to enter in the profit and loss account the value of the stock-in-trade at the beginning and at the end of the accounting year at cost on market price, whichever is the lower. Where the market value has fallen before the date of valuation and where the market value of the article on that date is less than its actual cost, the assessee is entitled to value the articles at market value and thus anticipate the loss which he may incur at the time of the sale of the goods. It was further held that the correct principle of accounting is to enter the stock in the books of account at cost unless the value is required to be reduced by reason of the fall in the market value of the goods below the original cost. Ordinarily, therefore, the goods should not be written down below the cost price except where there is an actual or anticipated loss. On the other hand, if the fall in the price is only such as it would reduce merely the prospective profit, there would be no justification to discard the initial valuation at cost."

5.166 It is accordingly submitted that even if the case of the Revenue is accepted that the assets of AJL has been acquired by the Appellant through an adventure in the nature of trade, the said asset so acquired being a business asset of the Appellant would be valued at cost or market value whichever is lower and accordingly, it is not permissible in law to tax the market value of the assets of AJL at this stage in the hands of

the Appellant. If at all, they can be taxed at the time of their sale.

5.167 When there is specific provision under the Act [Section 56(2)(viia)] for taxing the bargain acquisition of shares, then the general provision cannot be applied merely because the specific provision is not made applicable to the relevant assessee. If charge is exhausted under one head of income, it cannot be brought to charge under any other head of income:

5.168 Section 56(2)(viia) was inserted in the statute by the Finance Act, 2010 with effect from 1.6.2010. The text of the section as was inserted reads as under:

> *"(viia) where a firm or a company not being a company in which the public are substantially interested, receives, in any previous year, from any person or persons, on or after the 1st day of June, 2010, any property, being shares of a company not being a company in which the public are substantially interested,—*
>
> *(i) without consideration, the aggregate fair market value of which exceeds fifty thousand rupees, the whole of the aggregate fair market value of such property;*
>
> *(ii) for a consideration which is less than the aggregate fair market value of the property by an amount exceeding fifty thousand rupees, the aggregate fair market value of such property as exceeds such consideration :*
>
> *Provided that this clause shall not apply to any such property received by way of a transaction not regarded as transfer*

under clause (via) or clause (vic) or clause (vicb) or clause (vid) or clause (vii) of section 47.

Explanation.—For the purposes of this clause, "fair market value" of a property, being shares of a company not being a company in which the public are substantially interested, shall have the meaning assigned to it in the Explanation to clause (vii);"

5.169 As would be observed, the said section is specifically inserted in the statute to tax receipt of shares by a company for a consideration which is less than its fair market value. Hence, even if acquisition of shares is considered to have resulted in any benefit to the Appellant, the only section under the Act, which could have been applied is section 56(2)(viia), which specifically provides for taxation of difference between the fair market value of shares computed in accordance with Rule 11UA and the consideration paid for acquisition of shares as 'income from other sources'. However, this section is only applicable to a company in which public are not substantially interested. The Appellant being a section 25 company is regarded as a company in which public are substantially interested under section 2(18)(aa) of the Act and is therefore, not taxable under this section.

5.170 Now, assuming that the Appellant was a company in which public are not substantially interested, in that case, the transaction under question would have been hit by section 56(2)(viia). The Appellant is not hit by said section because it is a section 25 company. In such a case, can Revenue then say

you are covered u/s. 28(iv). If Revenue is right, then section 28(iv) would cover every assessee entering into similar transaction, whether a substantially interested company or not which would render the provisions of section 56(2)(viia) otiose. Clearly, such interpretations which render any provision of the Act ineffective cannot be adopted. Infact, section 56(2)(viia) has been replaced by section 56(2)(x) in 2017, where even a section 25 company is covered. Hence, if an identical transaction was to take place after 2017, then clearly the Appellant would have been brought to tax u/s. 56(2)(x) and not section 28(iv)! Further, section 56(2)(viia) is an anti-abuse provision which have been made applicable to only closely held companies. Now, the income sought to be taxed under this section is taxed in the hands of the Appellant u/s. 28(iv), which is a company in which public are substantially interested, it would result in treating the Appellant worse than closely held companies, which is again not impermissible in law.

5.171 It is accordingly, submitted that the stand of the Revenue of taxing something which is already covered under one section by triggering another section, because the charge in the first section fails is fallacious. Besides, it is settled law that when charge is created in one section, then if that charge is exhausted, the same income cannot be brought to tax under any other section.

5.172 In this regard, reliance is placed on the following decisions:

5.173 CIT vs. Smt. T.P. Sidhwa (133 ITR 840)(Bom)(Page 99-110 of LPB VII) wherein it is held that when a charge is exhausted under a particular head of income, it cannot be brought to charge under any other heads of income. In that case, the assessee had earned rental income, which was chargeable as income from house property. However, due to computation mechanism provided in the Act, no income was chargeable to tax under that section. The tax department therefore sought to tax the rental income under income from other sources. In that context, the High Court held that:

"Having thus ascertained the classification of the head of income as "Income from house property" , the rental income received by the assessee must fall under the third head in section 6. The next step was to see whether it could be brought to tax under the corresponding computing section, i.e., section 9. Obviously, the impugned rental income could not be brought to tax under the computing section 9 since the assessee was not the owner during the relevant period. But merely because it could not be brought to tax under the computing section under the head "Income from house property", it would not be permissible to make the income chargeable to tax under section 12, i.e., under the residuary head of income."

....Once the nature of the income is classified under a particular head; then only one has to look to the corresponding computing section for the purpose of chargeability to tax. Any income from property, which cannot

be brought to tax under the computing section 9, will not necessarily fall under the residuary head because if this is done, it may lead to absurd result. For example, it would result in the same property being taxed twice, since while the income from property received by the assessee who was not the owner would be chargeable to tax under section 12, the owner of the property would also be liable to pay tax on income under section 9 in respect of the bona fide annual value of property."

5.174 Similar view has also been taken in the following decisions:

- *CIT vs. D. P. Sandu Bros. Chembur (P) Ltd. (273 ITR 1)(SC) (Pages 111-116 of LPB VII)*
- *Girish Bansal vs. UOI (384 ITR 161)(Del)(Pages 117-126 of LPB VII).*

5.175 Now, when the Legislature has, in its wisdom, covered the transactions of bargain purchase within the ambit of section 56(2)(vii), that by itself means that the said transaction is not covered under any other section of the Act. Otherwise, there was would have been no reason to enact the said section. Indeed, the case laws relied by the Appellant above [in the case of Spunpipe, K.N.B. Investment, Excel Industries (supra)] above makes it amply clear that bargain purchase by itself does not give right to any taxable income. Hence, but for the specific provisions of section 56, it is submitted that the income sought to be taxed in this case is not taxable at all and the action of

the Department taxing the same by invoking section 28(iv) even though the charge u/s. 56 fails results in gross injustice to the Appellant.

5.176 The Ld. DR has during the hearing argued that section 56 is a residual taxing provision and is applicable only when income is not taxable under any other section of the Act. According to him, since the transaction is taxable u/s. 28(iv), there is no need to go to section 56.

5.177 In this regard, kind attention is invited to sub-section (1) of section 56 which reads as under:

> *"56. (1) Income of every kind which is not to be excluded from the total income under this Act shall be chargeable to income-tax under the head "Income from other sources", if it is not chargeable to income-tax under any of the heads specified in section 14, items A to E."*

5.178 As would be observed, the said sections seeks to tax only such income, which is not included in any other head of income. Therefore, the moment an item is prescribed u/s. 56, it necessary follows that it does not fall under any other head of section 14. The fact that this transaction was covered u/s. 56(2)(vii) in so far as non-charity entities are concerned, and now under section 56(2)(x) for everyone, it clearly shows that such transaction is not covered, inter alia, u/s. 28(iv). Therefore, it is submitted that invoking section 28(iv) in this case is fundamentally fallacious.

5.179 Indeed, if such transactions were covered u/s. 28(iv), then why was legislature required to incorporate it in section 56(2)(vii)/(viia)/(x). The fact that such transactions are covered under these sections itself shows that the transaction is not covered under any other head. Further, if what the Ld. DR is saying is accepted, then in that case, every assessee would be subject to tax u/s. 28(iv) at the time of a discounted purchase and section 56(2)(vii)/(x) will become otise. Please consider the following: Suppose AICC had not charged anything from the Appellant and the loan was gifted to it, there would not have been any tax liability in the hands of Appellant. Further, suppose AJL had handed over all assets to the Appellant for nothing or for Rs. 50 lakhs, even then how would it be taxable but for section 56. It is humbly submitted that the sum total of all non-taxable transactions cannot result in a taxable transaction.

5.180 Alternatively, the assets/shares are to be valued even for section 28(iv) by the formula prescribed under Rule 11UA as it is a prescribed method of valuing shares under the Income Tax Act. In absence of any specific method of valuation prescribed u/s. 28(iv), reference ought to be made to the next closed valuation method prescribed, which in the present case is Rule 11UA prescribed u/s. 56(2)(vii)/(viia).

5.181 For the said proposition, the Appellant places reliance on the following decisions, wherein in the context of the Estate Duty Law, it was held that in absence of any prescribed mode of valuation, the rules of valuation prescribed under the Wealth

Tax law have to be applied even though the same are not prescribed strictly for the estate duty law.

i. CED vs. J. Krishna Murthy (96 ITR 87)(Mys)(Pages 127-131 of LPB VII): wherein it is held as under:

> *"There is no rule made under the Act providing for the manner of valuation of unquoted shares. In the absence of rules, valuation for purposes of the Act has got to be made in accordance with well recognised methods of valuation followed in India. The method of valuation prescribed by rule 1D of the Wealth-tax Rules, 1957, being the only statutorily recognised method of valuation of unquoted equity shares in this country, it would not be wrong to adopt that method of valuation for purposes of estate duty also, though the rule as such is inapplicable. The rule can be looked into only for the purposes of knowing the manner of break-up method of valuation which is one of the recognised methods of valuation.*
>
> *ii. Similar view has been held in the following decisions:*
>
> *i. CED vs. R. M. Subhadvala (192 ITR 389) (Bom)(Pages 132-133 of LPB VII);*
>
> *ii. Jehangir Mahomedli Chagla vs. ACED (155 ITR 637)(Bom)(Pages 134-139 of LPB VII);*
>
> *iii. Madhusudan Dwarkadas Vora vs. Superintendent of Stamps (141 ITR 802)(Bom)(Pages 140-142 of LPB VII);*

iv. CED vs. G. K. Swaroop (275 ITR 137)(Guj). (Pages 143-145 of LPB VII)

5.182 It is accordingly submitted that even if acquisition of shares is considered to have resulted in any benefit to the Appellant, the valuation of such benefit ought to be done in accordance with Rule 11UA since it is only prescribed rule of valuation of shares under the Act. The Appellant has submitted the Rule 11UA valuation of the shares of AJL both pre-issuance of the shares as well as post issuance of shares by AJL. The same is at Pages 870-881 and pages 882-894 of PB-II, respectively. As would be observed therefrom, the Rule 11UA value of the shares of AJL pre-issuance of shares is a negative value (Page 870 of PB II) and post-issuance of shares is merely Rs. 2 per share (Page 882 of PB II).

5.183 The Ld. DR has argued that since section 56(2)(vii) ipso facto does not apply, the question of applying Rule 11UA for valuation is redundant. In this respect, it is submitted that it is true that section 56(2)(vii) is not applicable in the present case and Rule 11UA has been prescribed for the purpose of the said section. However, it may be appreciated that in the foregoing decisions, Courts have held that for valuation under estate duty law, in absence of any prescribed mode of valuation, the rules of valuation prescribed under the Wealth Tax law have to be applied even though the same are not prescribed strictly for the estate duty law. The ratio emanating from these decisions is that where there is no specific mode prescribed, then one should follow the closest rule prescribed. Now, Rule 11UA has been prescribed under the Income-tax Act itself for valuation of assets under various sections such as 56(2)(vii)/56(2)(x)/50CA.

Hence, considering the foregoing ratio, in absence of any method prescribed for section 28(iv), it is submitted that even for this section Rule 11UA valuation method should certainly be considered.

5.184 Lastly, only real income can be taxed:

5.185 It is submitted that in the transaction under question, the Appellant has not earned any real income. The department has sought to tax a benefit which according to it the Appellant would derive from the assets of AJL. However, as stated earlier, no benefit has been shown to have actually received by the Appellant. The benefit if any could arise to the Appellant only when the assets/shares are actually sold. What is the income which the Appellant has earned? Where is the income which is being enjoyed by the Appellant? Even if it is true that the shares or the assets of AJL are very valuable assets. Has the Appellant really earned any income out of such asset? Can a appreciation in the value of assets held by a person be taxed in his hands unless the same is actually earned/realised by the assets. The perceived appreciation in value today could very well be wiped in future. It is only when such appreciation is realised/encashed that it could result in any income to an assessee. It is accordingly submitted that there is really no income which the Appellant has earned in the present case.

5.186 In this regard, reliance is placed on the following decisions wherein it is categorically held that only real income can be brought to tax.

i. E.D. Sassoon & Co. Ltd. vs. CIT (26 ITR 27)(SC)(Pages 146-179 of LPB VII);

ii. Godhra Electricity vs. CIT (225 ITR 746)(SC)(Pages 180-188 of LPB VII);

iii. CIT vs. Excel Industries (358 ITR 295)(SC)(Pages 77-83 of LPB VII);

iv. CIT vs. Balbir Singh Maini (398 ITR 531)(SC)(Pages 189-202 of LPB VII).

5.187 The Ld. DR during the hearing has stated that since section 28(iv) is covered within the definition of income u/s. 2(24) of the Act, this argument does not survive. In this regard, it is stated that surely section 28(iv) is covered within the definition of 'income'. But the question is what is covered u/s. 28(iv). Can a notional income be taxed u/s. 28(iv). Unlike certain deeming sections such as section 56(2)(vii)/(viia), section 50C etc. which provides for taxation of notional income by deeming the fair market value to be the consideration in place of the actual consideration, section 28(iv) does not seek to tax any notional income. It taxes only such benefits which 'arise' to the assessee. Hence, this section does not seek to tax a notional income which is being sought to be done in the present case.

5.188 It is accordingly, reiterated that in the facts of the case and as per the law in force, the Appellant has not earned any income at this stage; there is no taxation event and accordingly, the addition made by the Revenue ought to be deleted.

5.189 The Ld. DR has argued that the transaction in question is doubtful in nature and has illegal/invalid steps, and therefore should attract taxation. It is submitted that the Appellant being a section 25 company, there is no public policy involved in the present case since whatever be the income of the Appellant can be used only for charity. Its income cannot be distributed as dividend or be given to its members in any manner. Hence, it is submitted that the Appellant has not done anything immoral. In fact, the department has not even been able to demonstrate any immoral act of the Appellant in relation to the assets of AJL. In any case, even if all the facts are assumed to be against the Appellant and it is assumed that the Appellant has indeed acquired the assets of AJL through a malicious scheme and that the transactions are doubtful in nature or invalid, even in that case, a transaction of acquiring assets by a section 25 company at less than market value was not taxable under the scheme of the Act relevant for AY 2011-12 and accordingly, even in such a case, the addition made by the AO ought to be deleted. In this regard, reliance is placed on the decision in the case of Dr. T.A. Quereshi vs. CIT(287 ITR 547)(SC)(Pages 40-43 of LPB VIII) wherein the Supreme Court has held that taxation of a transaction needs to be decided based on the tax laws and not based on morality. The relevant extract of the decision is as under:

> *"In our opinion, the High Court has adopted an emotional and moral approach rather than a legal approach. We fully agree with the High Court that the assessee was committing a*

highly immoral act in illegally manufacturing and selling heroin. However, cases are to be decided by Court on legal principles and not on one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out."

5.190 In view of the foregoing, the Appellant humbly submits that the addition u/s. 28(iv) ought to be deleted."

ARGUMENTS ON BEHALF OF THE REVENUE

100. On the other hand, ld. Special Counsel on behalf of the Revenue, Mr. Srivastava contended that, before examining the merits of the findings of the A.O., it would be appropriate to place on record the legal framework in this regard. The profits and gains of business or the benefits arising from the conduct of such business are chargeable to tax under Section 28 (read with Sections 4 and 5). Section 28 seeks to bring to tax income arising from business or profession with all its dimensions. The expression 'business' is defined under Section 2(13) to mean as under-

"(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."

101. He submitted that the definition so given of the word 'business' is inclusive in nature. The word 'business' has a very wide connotation and its contours are not limited by this definition. Even otherwise, the definition itself contains the expression that apart from trade, commerce or manufacture per se, the word business would also include adventure in the nature of trade or commerce. This expression in the definition poses the question as to what is the scope of the 23 expressions 'adventure' and 'in the nature of'. These expressions have not been defined in the statute. However, in the light of case laws, it would mean a pecuniary venture. The expression 'in the nature of trade, commerce or manufacture' would certainly not mean trade or commerce per se. But any activity which has some trappings of a trade, commerce or manufacture would fall into the ambit of the expression 'in the nature of trade or commerce'. Attention was drawn to the definition of 'adventure' as appearing in the following: -

a	*P. Ramnatha Aiyar's Advanced Law Lexicon* *(Page 2 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*Commercial or financial risk; A pecuniary venture.*
b	*Smith Barry v. Cordy, (1946) 28 TC 250, 258 (CA)*	*Adventure, in its dictionary meaning implies "a pecuniary risk, a venture, a speculation, a commercial enterprise etc.*

102. Attention was also drawn to the scope to the definition of 'business' as also to the expression 'in the nature of' in different judicial precedents as under:-

a	*CIT v. Kasturi Estate (P.) Ltd., (1966) 62 ITR 578 (Mad)* *(Pages 4-11 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*11. The word "business" is defined by section 2(4) of the Income-tax Act, 1922, as including, inter alia, trade, commerce, or any adventure or concern in the nature of trade or commerce. "Trade", in the context of the definition, is a wider concept than an adventure in the nature of trade. An adventure in the nature of trade cannot, therefore, by itself be described as trade, but should obviously imply in itself some at least of the elements of trade. A transaction to be an adventure in the nature of trade should be a plunge in the waters of trade.*
b	*Estate Investment Co. Ltd. v. CIT,*	*22. The word "business" as defined in s. 2(4) of the*

	(1980) 121 ITR 580,591 *(Pages 22-40 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*Indian I.T. Act, 1922, "includes any trade, commerce, or manufacture or any adventure of trade, commerce or manufacture". When s. 2(4) refers to an adventure in the nature of trade, it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade.*

103. He submitted that, from a careful perusal of the judicial precedents the following propositions emerge: -

Whether or not a transaction would constitute an adventure in the nature of trade would depend upon various facts and circumstances surrounding that transaction:-*a*	*G. Venkataswami Naidu and Co. v. CIT, (1959) 35 ITR 594 (SC)* *The Hon'ble SC had occasion to consider the peculiar facts of a transaction which was devised as a scheme to earn profits.* *(Pages 48-65 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*29. What then are the relevant facts in the present case? The property purchased and resold is land and it must be conceded in favour of the appellant that land is generally the subject-matter of investment. It is contended by Mr Viswanatha Sastri that the four purchases made by the appellant represent nothing more than an investment and if by resale some profit was realised that cannot impress the transaction with the character of an adventure in the nature of trade. The appellant, however, is a firm and it was not a part of its ordinary business to make investment in lands. Besides, when the first purchase was made it is difficult to treat it as a matter of investment. The property was a small piece of 28¼ cents and it could yield no return whatever to the purchaser. It is clear that this purchase was the first step taken by the appellant in*

		execution of a well-considered plan to acquire open plots near the mills and the whole basis for the plan was to sell the said lands to the mills at a profit. Just as the conduct of the purchaser subsequent to the purchase of a commodity in improving or converting it so as to make it more readily resaleable is a relevant factor in determining the character of the transaction, so would his conduct prior to the purchase be relevant if it shows a design and a purpose. As and when plots adjoining the mills were available for sale, the appellant carried out his plan and consolidated his holding of the said plots. The appellant is the managing agent of the Janardana Mills and probably it was first thought that purchasing the plots in its own name and selling them to the mills may invite criticism and so the first purchase was made by the appellant in the name of its

		benamidar V.G. Raja. Apparently the appellant changed its mind and took the subsequent sale deeds in its own name. The conduct of the appellant in regard to these plots subsequent to their purchase clearly shows that it was not interested in obtaining any return from them. No doubt the appellant sought to explain its purpose on the ground that it wanted to build tenements for the employees of the mills; but it had taken no steps in that behalf for the whole of the period during which the plots remained in its possession. Besides, it would not be easy to assume in the case of a firm like the appellant that the acquisition of the open plots could involve any pride of possession to the purchaser. It is really not one transaction of purchase and resale. It is a series of four transactions undertaken by the appellant in pursuance of a scheme

		and it was after the appellant had consolidated its holdings that at a convenient time it sold the lands to the Janardana Mills in two lots. When the tribunal found that, as the managing agent of the mills, the appellant was in a position to influence the mills to purchase its properties its view cannot be challenged as unreasonable. If the property had been purchased by the appellant as a matter of investment it would have tried either to cultivate the land, or to build on it; but the appellant did neither and just allowed the property to remain unutilized except for the net rent of Rs 80 per annum which it received from the house on one of the plots. The reason given by the appellant for the purchase of the properties by the mills has been rejected by the Tribunal; and so when the mills purchased the properties it is not shown that

		the sale was occasioned by any special necessity at the time. In the circumstances of the case the tribunal was obviously right in inferring that the appellant knew that it would be able to sell the lands to the mills whenever it thought it profitable so to do. Thus the appellant purchased the four plots during two years with the sole intention to sell them to the mills at a profit and this intention raises a strong presumption in favour of the view taken by the Tribunal. In regard to the other relevant facts and circumstances in the case, none of them offsets or rebutts the presumption arising from the initial intention; on the other hand, most of them corroborate the said presumption. We must, therefore, hold that the High Court was right in taking the view that, on the facts and circumstances proved in this case, the transaction in question is an adventure in

		the nature of trade.
b	*Janki Ram Bahadur Ram v. Commissioner of Income-tax, 1965 AIR 1898* *(Pages 66-70 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*10. A large number of cases were cited at the Bar in support of the respective contentions of the Commissioner and the assessee. Passages from judgments in the same case were often cited claiming support for the respective contentions. No useful purpose would be served by entering upon a detailed analysis and review of the*

		observations made in the light of the relevant facts, for no single fact has decisive significance, and the question whether a transaction is an adventure in the nature of trade must depend upon the collective effect of all the relevant materials brought on the record. But general criteria indicating that certain facts have dominant significance in the context of other facts have been adopted in the decided cases. If, for instance, a transaction is related to the business which is normally carried on by the assessee, though not directly part of it, an intention to launch upon an adventure in the nature of trade may readily be inferred. A similar inference would arise where a commodity is purchased and sub-divided, altered, treated or repaired and sold, or is converted into a different commodity and then sold. Magnitude of the transaction of purchase, the nature of the

		commodity, subsequent dealings and the manner of disposal may be such that the transaction may be stamped with the character of a trading venture: for instance, a man who purchases a large quantity of aeroplane linen and sells it in different lots, and for the purpose of selling starts an advertising campaign, rents offices, engages an advertising manager, a linen expert and a staff of clerks, maintains account books normally used by a trader, and passes receipts and payments in connection with the linen through a separate banking account: Martin v. Lowry; a person who carries on a money-lending business purchases very cheaply a vast quantity of toilet paper and within a short time thereafter sells the whole consignment at a considerable profit: Rutledge v.Commissioners of Inland Revenue; a person even

		though he has no special knowledge of the trade in wines and spirits, purchases a large quantity of whisky sells it without taking delivery of it at a considerable profit: Commissioners of Inland Revenue v. Fraser may be presumed having regard to the nature of the commodity and extent of the transaction coupled with the other circumstances, to be carrying on an adventure in the nature of trade. These are cases of commercial commodities...
c	*P.M. Mohammed Meerakhan v. CIT, (1969) 73 ITR 735 (SC) (Pages 78-85 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*6. As we have already said it is not possible to evolve any single legal test or formula which can be applied in determining whether a transaction is an ad venture in the nature of trade or not. The answer to the question must necessarily depend in each case on the total impression and effect of all relevant factors and circumstances proved therein and which*

		determine the character of the transaction...

- An isolated transaction can constitute an adventure in the nature of trade and it need not necessarily be the same activity which the assessee is carrying on as a regular business:-

a	*G. Venkataswami Naidu and Co. v. CIT, (1959) 35 ITR 594 (SC)* *(Pages 48-65 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*15. This question has been the subject-matter of several judicial decisions; and in dealing with it all the Judges appear to be agreed that no principle can be evolved which would govern the decision of all cases in which the character of the impugned transaction falls to be considered. When Section 2 sub-section (4) refers to an adventure in the nature of trade it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade. Sometimes it is said that a single plunge in the waters of trade may partake of the character*

		of an adventure in the nature of trade. This statement may be true; but in its application due regard must be shown to the requirement that the single plunge must be in the waters of trade. In other words, at least some of the essential features of trade must be present in the isolated or single transaction...
b	*Estate Investment Co. Ltd. v. CIT, (1980) 121 ITR 580,591* *(Pages 22-40 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*22. The word "business" as defined in s. 2(4) of the Indian I.T. Act, 1922, "includes any trade, commerce, or manufacture or any adventure or concern in the nature of trade, commerce or manufacture". When s. 2(4) refers to an adventure in the nature of trade, it clearly suggests that the transaction cannot properly be regarded as trade or business. It is allied to transactions that constitute trade or business but may not be trade or business itself. It is characterised by some of the essential features that make up trade or business but not by all of them; and so, even an isolated transaction can satisfy the description of an adventure in the nature of trade.*
c	*Narain Swadeshi*	*15. "Business" as defined in Section*

	Weaving Mills v. Commissioner of Excess Profits Tax (1954) 26 ITR 765 *(Pages 41-47 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*2(5) of the Excess Profits Tax Act includes amongst others, any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture. The first part of this definition of "a business" in the Excess Profits Tax Act is the same as the definition of a business in Section 2(4) of the Indian Income Tax Act.* *Whether a particular activity amount to any trade, commerce or manufacture or any adventure in the nature of trade, commerce or manufacture is always a difficult question to answer. On the one hand it has been pointed out by the Judicial Committee in CIT v. Shaw Wallace & Co. that the words used in that definition are no doubt wide but underlying each of them is the fundamental idea of the continuous exercise of an activity. The word "business" connotes some real, substantial and systematic or organised course of activity or conduct with a set purpose. On the other hand, a single and isolated transaction has been held to be conceivably capable of falling within the definition of business as being an adventure in the nature of trade*

		provided the transaction bears clear indicia of trade. The question, therefore, whether a particular source of income is business or not must be decided according to our ordinary notions as to what a business is. The case of CIT v. Shri Lakshmi Silk Mills Ltd. decided by this Court is clearly distinguishable. There, the respondent company which was formed for the purpose of manufacturing silk cloth installed a plant for dying silk yarn as a part of its business. During the relevant chargeable accounting period, owing to difficulty in obtaining silk yarn on account of the war, it could not make any use of this plant and it remained idle for some time. In August 1943, the plant was let out to another company on a monthly rent. The question arose whether the income received by the respondent company in the chargeable accounting period by way of rent was income from business and assessable to excess profits tax. It should be noted that in that case the respondent company was continuing its business of manufacturing silk cloth. Only a part of its business, namely, that of dying silk

		yarn had to be temporarily stopped owing to the difficulty in obtaining silk yarn on account of the war. In such a situation, this Court held that part of the assets did not cease to be commercial assets of that business since it was temporarily put to different use or let out to another and accordingly the income from the assets would be profits of the business irrespective of the manner in which that asset was exploited by the company. This Court clearly indicated that no general principle could be laid down which would be applicable to all cases and that each case must be decided on its own circumstances according to ordinary common = sense principles...

- Where the purchaser does not have necessary resources to buy something, the transaction may point out to be in the nature of trade: -

a	*P.M. Mohammed Meerakhan v. CIT, (1969) 73 ITR 735 (SC)* *(Pages 78-85 of Case*	*Where the purchaser is found not to have resources to buy when he enters into an agreement to purchase and the conveyance is agreed to be executable in the name of himself or his nominee, the transaction points to be one in the*

	Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)	*nature of trade.*
b	*R. Dalmia v. CIT, (1982) 137 ITR 665 (Del)* *(Pages 100-107 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*Taking over of liability of payment to shareholders knowing that shareholders could not make claim, the surplus arising was held to be an adventure in the nature of trade.*
c	*P.D. Ghanekar v. CIT, (1971) 80 ITR 236 (Bom)* *(Pages 108-112 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*The decision is in the context of 'casual and non-recurring income'. However, it lays down certain important propositions. The assignment of right of actionable claim to the assessee (who had prior knowledge of the outcome of the claim), was seen as a venture undertaken by the assessee.*

- Where the transaction is a part of a well-designed and pre-planned scheme, it could be regarded as an adventure in the nature of trade: - Reference may be drawn to Para 29 of G. Venkataswami Naidu and Co. v. CIT, (1959) 35 ITR 594 (SC) extracted above.

104. Thus, Mr. Srivastava submitted that, in light of these settled propositions of law, the facts relating to the case at hand

has to be appreciated. As already pointed out in the preceding paragraphs, the Appellant Company was formed in 2010 and was closely associated with AJL and AICC through the managing personnel/directors of these entities. Within days of its formation, the AICC generously offered to sell/assign its receivables worth Rs. 90 crores from AJL in favour of the Appellant who did not have any money whatsoever to undertake a transaction of this volume. AICC offered this huge asset for a paltry sum of Rs.50 lakhs and the Appellant had absolutely no resources to pay even that small consideration. In that background, a loan of Rs. 1 crore was raised from a Kolkata based company, which had its own dubious record of providing accommodation entries. Without going into the question of genuineness of that credit, which is a subject matter of separate ground of appeal, it is enough to point out that the Appellant to acquire an asset worth Rs. 90 crores which was not realizable as it had been swelling on in the books of AICC over a period of several years and AJL had closed its business and was not deriving any substantial income to be able to repay the loan to AICC. Still the Appellant chose to buy/get the loan assigned in its favour by AICC even before any loan from Dotex (based out of Kolkata) had reached the Appellant. Interestingly, the document show that the cheque given by Dotex to the Appellant was dated 24.12.2010 and on that date, the Appellant did not have even a bank account where the cheque could be deposited. The assignment of this receivable was done by AICC without any payment and these 50 lakhs was paid some time in February,

2011 when the bank account was opened and the cheque was deposited. This kind of transaction smacks of a clearly design to proceed with a transaction, which completely lacked genuineness and credibility. The Appellant thereafter decides to sell or extinguish his receivables in consideration of equivalent number of shares of AJL. AJL willingly obliges the Appellant by allotting these shares in consideration for the amount which was outstanding in the books in favour of AICC at earlier point of time, and now in favour of Appellant after assignment. It may not be out of place to mention that AJL had ceased its business operations as early as in 2008 and had offered a VRS scheme to all its employees, way back then. It would be difficult to subscribe to the view that any person would invest in the shares of a company which has stopped its business operations and was only surviving on commercial exploitation of its properties unless the real intention of such a person is to get possession and control on enjoyment of these properties. So the facts of the case not only indicate a well-thought and pre-planned design aimed at acquiring the direct or indirect ownership of the prime properties of AJL in major cities by entering into transaction of acquisition / purchase of receivables worth Rs. 90 crores for a sum of Rs. 50 lakhs and then getting 99 per cent shares of AJL by means of the sale/exchange/ extinguishment of these receivables from AJL. Therefore, the transactions had the elements of both purchase / acquisition and its sale / exchange. This ought to be regarded as an adventure in the nature of trade. It needs also to be mentioned that this was the only activity

which the Appellant carried on in all these years and these transactions were particularly undertaken and completed with a swift speed within 3-4 months of its formation. In fact, the facts and circumstances, when viewed in totality go to indicate that the whole purpose of incorporation of the Appellant was to get hold over the prime properties of AJL.

105. He submitted that, the contention of the Appellant that it was only a shareholder of AJL and a shareholder has no rights over the assets of the company has been rejected by the jurisdictional High Court in the case of AJL itself. In fact, the entire transaction was examined by the Hon'ble High Court of Delhi first by a Single Judge and then by a Division Bench and the Hon'ble Court was of a categorial view that looking into the nature of the transaction, it was apparent that the corporate veil has to be lifted in this case. Once the corporate veil is lifted, as held by the Hon'ble High Court, the inevitable conclusion is that the Appellant derives benefit in the form of ownership, control and enjoyment of the commercial properties of AJL.

106. He further submitted that the afore-said is the benefit derived from the Appellant from the adventure in the nature of trade discussed above. The provisions of Section 28(iv) read as under:-

> ***"(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or exercise of a profession."***

This benefit arises to the Appellant from the adventure in the nature of trade and therefore, it arises from the business of the Appellant. This benefit would, therefore, be chargeable to tax in the year in which the said benefit arises.

107. Mr. Srivastava further submitted that the word 'benefit' as occurring in Section 28(iv) of the Act means some kind of advantage or gain. Reference is invited to the following: -

a	*P. Ramnatha Aiyar's Advanced Law Lexicon* *(Page 3 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6and 12)*	*Advantage; profit; gain; interest use; whatever contributes to promote prosperity or add value to property; includes payment of any kind.*
b	*State of Gujarat v. Essar Oil, (2012) 3 SCC 522* *(Page 113-136 of Case Law Compilation on behalf of Revenue for Grounds No. 5, 6 and 12)*	*63. ... Now the question is what constitutes a benefit. A person confers benefit upon another if he gives to the other possession of or some other interest in money, land, chattels or performs services beneficial to or at the request of security or advantage. He confers a benefit not only where he adds to the property of another but*

		also where he saves the other from expense or loss. Thus the word "benefit" therefore denotes any form of advantage.

106. He submitted that the primary contention of the Assessee is that the transaction in dispute is limited to 'the issue of shares at a lower value', which is outside the scope of Section 28(iv) of the Act. According to the Appellant, it can be taxed under Section 56 of the Act. In this regard, he submitted that such a contention is illogical, unfounded and based on a misconstruction of the relevant facts of the case and the applicable provisions of the statute. Section 56 brings to charge residual income which is not chargeable under any other head. This is apparent from a bare-reading of provisions of sub-section (1) of Section 56 which provides that only such income would be taxed under this head, as is not chargeable to tax under any of the other heads. Besides, Section 56(2)(viia) applies only to the shares of the company which are issued at a lower price. It is not the case of revenue that the transaction was for the acquisition of shares of AJL. The transaction aimed at control and enjoyment of the properties belonging to AJL and not the shares of AJL which were not worth investing by any prudent person at the relevant time. The entire hypothesis built by the Appellant that since it is a case of acquisition of shares at a lower value, this transaction cannot be brought to tax under Section 28(iv) of the Act is devoid of any merits and this kind of proposition fails to take into

account the entirety of facts and circumstances, the relationship of the parties and the well-conceived design under which the transactions were executed. However, Revenue would like to assert that the provisions of Section 56 are wholly out of context in the fact situation like this. The transaction in question is in the nature of trade or commerce. The Appellant purchases a certain receivable from another entity and then offers to extinguish that receivable in exchange of equivalent number of shares of the company. It is submitted that purchases or sales of an item or commodity can have different shades and types, as settled by apex court. The decisive factor would be the facts and circumstances of each case.

108. On the issue, should the benefit be taxed only when the properties are sold? Mr. Srivastava referring to the contention of the Appellant that, since neither the shares of the company nor the properties in question have been sold, there is no question of any benefit arising to the Appellant, submitted that the provisions as contained in Section 28(iv) contemplate benefits which are non-monetary in nature. Whether or not these are sold, these would be liable to tax once it is found that benefits have, in fact, arisen to the Appellant.

109. Mr. Srivastava submitted that the case-laws relied upon by the Appellant are inapplicable on the peculiar facts of the case:-

- The cases of Rustom Cawasjee Cooper, Carew & Co. and Bacha F. Guzdar have been relied to suggest that the

Appellant has acquired only the shares and not the assets of AJL. This contention has been rejected by the Hon'ble High Court of Delhi. The target of the Appellant was not the shares of the company which had already closed its business and retired its employees but the prime properties standing in different locations.

- Similarly, the cases of Mahindra & Mahindra, Jindal Equipments Leasing & Consultancy, Seshasayee Bros. and Shreyans Investments have been referred for the contention that the benefit is in the capital field and not covered in Section 28(iv). As already pointed out, this was not an investment of the Appellant, but an adventure in the nature of trade. The adventure started with the acquisition of receivables and ended with the exchange of that asset with the shares of the company. In the process, the benefit that came to the Appellant was not the shares but the properties of AJL and this benefit arose from a business operation being an adventure in the nature of trade. He submitted that if the business operation yields immovable properties like land or building it would not be in the capital field but it would be a benefit arising from business operations.
- The cases of Elscope Ltd., STADS Ltd. and Mahindra & Mahindra Ltd., have been referred to, for the proposition that these benefits do not arise out of business. The discussion hereinabove demonstrates in ample terms that the benefits arose from adventure in the nature of trade.

- The cases of Spunpine & Construction Co. Ltd., K.N.B. Investments P. Ltd., Excel Indsutries Ltd. and Krishnaram Baldeo Bank have been referred to for the contention that a mere acquisition of share does not give any benefit unless the shares are sold. As already pointed out, the benefit is not in the form of shares and therefore these cases are wholly inapplicable.

110. He submitted that, revenue is not seeking to tax these properties as stock-in-trade, nor Revenue seeks to invoke the provisions of Section 56(2)(viia) and therefore the cases referred to in that context namely, Chainrup Sampatram, Hindustan Zinc Ltd., T.P. Sidhwa, D.P. Sandhu Bros. and Girish Bansal are not relevant.

111. The Appellant has contended that the properties should be valued under Rule 11UA and has referred to the decisions in J. Krishna Murthy, R.M. Subhadvala, J.M. Chagla, Madhusudan Dwarkadas Vora and G.K. Swaroop. This he submitted that is an incorrect proposition. Rule 11UA is not at all applicable while valuing the benefits arising under business heads. These rules are specific to Section 56(2)(viia) or newly introduced Section 56(2)(x) of the Act.

112. Further, the Appellant has referred to the decisions in E.D. Sassoon, Godhra Electricity, Excel Industries and Balbir Singh Maini to contend that only real income can be taxed. It is submitted that in the facts of this case, what is being taxed is the benefit which has already arisen to the Appellant and therefore, it would represent a real-income and not a notional income.

DECISION

113. We have heard the rival contentions, perused the relevant finding given in the impugned order and the material referred to before us. Though we have incorporated the relevant portion of assessment order wherein AO has brought to tax the entire transaction under the provisions of section 28(iv) and how the benefit has arisen to the appellant company from the aforesaid transaction right from assigning of loan of more than Rs.90.21 crores for a sum of Rs.50,00,000/- and acquiring 9.021 crores shares thereby getting the share holding of more than 99% in the company. However, in the very succinct manner, the case of AO and his observations are being summarized in brief:-

- The Assessee had entered into a fraudulent transaction to enjoy the benefits embodied in the business assets of AJL.

- The alleged loan of Rs. 90.21 crores was an artificially inserted steps in the form of a paper entry of an amount which was sufficient for allotment of 99% shares of AJL.
- The motive to earn income by way of benefit from underlying assets of 99% shares of AJL was so strong that the assessee engaged itself in fraudulent activity. The sole purpose of transaction leading to acquisition of shares was to derive several types of benefits from underlying business properties of AJL.
- Legal provisions and case laws in discussed in Para 16.2, wherein the A.O. has arrived at the following conclusions: -
    - The word 'business' is of wide importance and in fiscal statutes, it must be construed in a broad rather a restricted sense. Mazagaon Dock Ltd vs CIT (1958) 34 ITR 368' 376 (SC)
    - Business is an activity capable of producing a profit which can be taxed. CIT v. Lahore Electric Supply Co. Ltd., (1966) 60 ITR 1, 5 (SC)
    - The word business is a word of large and indefinite importance. It is same thing which occupies attention and labour of a person for purchase of earning profit.
    - The word 'business' has more extensive meaning than the word 'trade'.
    - The activities which constitute carrying on business need not necessarily consist of activities by way of trade, commerce or manufacture or activities in the

exercise of a profession of vocation nor it be concerned with several individual or concern.

- A single and isolated transaction outside the assessee's line of business has been held to be falling within the definition of business as being 'adventure in the nature of trade'.
- The question therefore whether a particular source of income is business or not must be decided according to out ordinary notion as to what a business is.
- The repetition or frequency of activity though at times a decisive factor, is by no means an infallible test. Conversely, a single transaction may constitute business under the definition of the word in Section 2(14).
- The value or benefit whether convertible in money or not arising from the business or exercise of profession as stipulated in Section 28(iv) is also profit and gains of business.

- Significant facts and circumstances of the case having bearing on characterization of benefits arising out of the business transaction of takeover of properties of AJL:-
  - The purchase of 99% shares of AJL by assessee was not an ordinary transaction of investment but the transaction involving several steps (as many as 9 steps) as a adventure in the nature of trade. (Para 17)
  - The transaction was a part of well-devised scheme involving series of steps with the intention to earn

significant benefit as embodied in business assets of AJL.

- The assessee undertook a series of steps over a period of time and these steps had culminated during the year under consideration to achieve a pre-meditated objective of taking over of AJL in order to get several benefits from business assets of AJL having fair market value of Rs. 413.41 crore as well as to derive the value from these properties.
- These intermediary steps on paper were artificially inserted in the ell-devised scheme leading to takeover of AJL by allotment of 99% shares of AJL without even getting the real estate properties transferred in the name of the assessee but the transaction resulted in accrual of benefits from value of real estate business and properties to the assessee.
- The transactions were devised and carried out which represented an 'adventure in the nature of trade' and would squarely fall within the definition of the term business as appearing in Section 2(13).
- It is amply clear from the analysis of the steps that even though the transaction of getting benefit from properties of AJL by takeover of AJL was one transaction, however, it involved several steps, some real and some fraudulent, with the real and distinct intent of enjoying the benefit of the properties from the day of incorporation of the assessee.

- The assessee enjoyed the following benefits: - Benefit of underlying value of shares of AJL;
- Benefit of right to enjoy the business assets of AJL
- Benefit of income from real estate business of AJL; and
- Benefit of rental income of several crores from letting out of business assets of AJL.

  - The FMV of these business properties on date of takeover of AJL's business properties captures the benefits accrued to the assessee during the year under consideration.
  - Even though the benefit of Rs. 413.41 crore is in the form of FMV of immovable properties used as business assets, it does not alter the nature of income which is revenue in nature.
  - Since the assessee has taken control and management of AJL by allotment of 99% shares of AJL and has not carried out any activity during the year except for the transaction of taking over of AJL which was in the nature of adventure in the nature of trade, all the benefits embodied in the business assets having fair market value of Rs.413.41 crore has accrued to the assessee during year under consideration.
  - The assessee has actually started enjoying business income by way of benefit accrued to it during year under consideration by occupying and using their business assets for real estate business and having full

control over even entry and exit in the premises of the business assets.

- Whether the assessee holds the share simplicitor or has the right to direct enjoyment of benefit arising from business assets of AJL: -
  - The assessee company was granted registration u/s 12A by the Commissioner of Income Tax (Exemptions) subject to various conditions and registration of the association u/s 25 of the Companies Act, 1956 was also subject to several conditions.
  - During the course of assessment proceedings, it was revealed that the assessee company had not carried out any activities in furtherance of above referred to object.
  - It is a matter of record that only expenditure incurred by the assessee company during year under consideration was to purchase a non-existent loan of Rs. 90.21 crore through a fraudulent transaction and in subsequent assessment years the only expenditure incurred by the assessee company was to create provision for interest expenditure allegedly meant to pay interest on loan of Rs. 1 crore taken from a hawala entry operator in Kolkata.
  - The other expenditure is admittedly incurred on fee for auditor, preliminary expenditure, written off, etc. and this expenditure cannot be held to be for the purpose of the object of the company.
  - In view of the above, the claim of the assessee that the assessee company was carrying out its stated object is

factually incorrect and the assessee company as proved above had never engaged in the activities of promoting democratic values by incurring expenditure.

- Reference is made to the findings of the CIT(E) dated 26.10.2017-

- Whether the assessee holds the share simplicitor or has the right to direct enjoyment of benefit arising from business assets of AJL: -
  - The profits and gain from business in form of benefits to assessee having value of Rs.413.41 crores under Section 28(iv) has accrued to the assessee during the year under consideration and is taxable as income from profit and gains from business.
  - It is not a case of hypothetical income, but in this case quantification of benefit as derived and accrued to the assessee has already been determined and the assessee had already started enjoying the benefit of possessing and using these commercial assets during the year under consideration.
- Whether the benefit accrued to the assessee is in the nature of Revenue: -
  - All the properties of AJL were commercial assets of the real estate business of AJL and substantial business income has been generated from commercial use of these properties by way of sale or let out of property. Accordingly, the nature of benefit flowing from these

properties (which do not represent capital assets but constitutes commercial assets) was revenue in nature.

- It is to clarify that the business assets of AJL have remained in the legal ownership of AJL only, but enjoyment of several types of benefit embodied in these commercial assets stands transferred to the assessee.
- The decision with regard to mode, manner and extent of exploitation of these business assets of AJL rests with the assessee.

- Conclusion:-
  - Such benefit from the adventure constitutes profits and gains of the business within the meaning of section 28(iv) of the Act and would be regarded as income chargeable to tax under the provisions of the Act as the benefit in the form of fair market value of the properties of Rs. 413.41 crore arising to the assessee from the adventure in the nature of trade of takeover the assets of AIL by way of allotment of its 99% shares following several steps including a fraudulent transaction.
  - Income of the assessee for the year under consideration u/s 28(iv) has been computed at Rs.413.41 crore i.e., FMV of business assets of the AJL which best represents the value of several benefits arising to the assessee from the transaction.

114. Though Ld. CIT (A) has by and large endorsed the view of the AO, however, in sum and substance, his findings are summarized in the following manner:-

- Steps revolving around pre-meditated transaction as well as a schematic diagram representing the transaction (as discussed in A.O.'s order) as has been extracted above
- It was concluded by the AJL that the transaction was a pre-planned scheme with several steps and the real purpose of the transaction of allotment of 99% shares of AJL was to enjoy the benefit from the business assets of the assessee.
- Piercing of corporate veil: -
  - It was also noted that even though AJL continues to be a legal entity with the legal right to hold properties in it name, the true character of the transaction has to be judged by looking at the reality after removing or piercing the veil of these transactions since the circumstances of the case justify such an exercise.
- Reliance placed on Karanpura Development Co. Ltd. v. CIT, 44 ITR 362 (SC), Workmen, Associated Rubber Industry Ltd. v. Associated Rubber Industry ltd., 157 ITR 77 (SC), Union of India & Ors. v. Playworld Electronics Pvt. Ltd. & Anr, 184 ITR 308 (SC), Harsh Win Chadha v. DOlT, Circle-1(1), International Taxation, 2011 135 TT J 513 (Del).
- Adventure in the nature of trade: -
  - The AO has brought enough facts and surrounding circumstances on record which validate the fact that the real purpose of the artificially inserted step in the transaction involving purchase of non-existent loan from the AICC and allotment of 99% shares of the AJL in reality was only to transfer the underlying value of shares and value of

transfer of full right over benefit arising from properties of the AJL without having paid any amount to AJL as well as taxes to the government.

- It also validates the fact that the artificially inserted steps had no business purpose except for hiding the true nature of income earned by the assessee and evading taxes on income earned by the assessee on the takeover of business properties of AJL.
- This is further substantiated by the unfair reporting of its financials by the assessee like non-reporting value of 9.021 crore shares of AJL in its balance sheet on the ground of insignificant investment. However insignificant, investment has to be reported in the balance sheet.
- Since it was clear from the facts that sole purpose of the transaction leading to acquisition of shares of AJL was to derive several benefits from the underlying business properties, it was held that the impugned transaction was intended to maximize profit and to earn income as reflected in the several benefits embodied in the business assets of AJL.

- It was also noted that the transactions were facilitated by, directors of the assessee and the target company, i.e., AJL. The AO has analyzed what constitutes 'adventure in the nature of trade' and has concluded by relying on the decision of the Hon'ble Supreme Court in the case of Venkatswami Naidu & Co. vs. CfT (35 ITR 594).
- On valuation and reference to DVO: -

- Once it is established that the real purpose of the transaction was to take over the assets and enjoy the benefits, for determining the value of the benefit, the AO proceeded to value the properties by referring the same to the DVO, after discussing in detail the legal provisions for referring a matter to DVO, since the balance sheet of the AJL did not reflect the true picture of the FMV of the properties.
- The FMV of the properties which represented the value of the benefit under section 28(iv) was valued at Rs. 413.41 crores and in view of the fact that the valuation reports submitted by the appellant now are not being admitted as additional evidence, there appears to be no reason to deviate as such from the said valuation.

- Whether Section 56(2) (viia) of the Act applies?

- As regards the contention of the appellant that the said transaction can only fall under section 56(2)(viia), as has been observed by the AO in the third and the fourth remand reports by giving comments on merits on the valuation of shares under Rule 11 UA, this is not a case a case of a simple purchase or acquisition of shares of the AJL by the assessee.
- The case under consideration is also not that of a simple allotment of shares. As has been discussed above, it is a case of conversion of an alleged loan into shares and when the real intent of the scheme is looked at after removing or piercing the veil of these transactions, it is seen that the

scheme of takeover of the AJL by the assessee involved several pre-meditated and artificially inserted steps which had no purpose except for the intention of earning benefit from commercial properties of the AJL without paying any taxes, be it in the form of capital gains or in the form of stamp duty which would have to be paid at the time of transfer of ownership of the properties.

- The scheme led to the take-over of the AJL for the purpose of enjoying the rights in the property by having 100% ownership of the property, i.e., legal ownership of the AJL and its high value business assets. For the same reason the cases relied upon by the appellant in support of its contention that the provisions of section 28(iv) are not applicable and the provisions of section 56 would be applicable will not apply in this case where the AO has given finding of facts and analysed the real purpose of the transaction.

115. We have heard both the parties at length and also the relevant material placed on record before us both in the form of documents which were available with the authorities below as well as certain additional evidences which have been filed by the appellant before us.

116. In the first part of this order, we have already discussed in brief, the entire sequence and chain of events in the 'Background

of the Case', as to how Young Indian, i.e., appellant company had acquired the entire stake of AJL in a paltry sum of Rs.50,00,000/-, with the so-called intention to promote their objects, i.e., to inculcate in the minds of India's youth commitment of the ideal of democratic and secular society on the ideas of founding father of India, Mahatma Gandhi and Pandit Jawahar Lal Nehru. It has also been contended before us that the objects of the AJL were also aligned with the objects of Young Indian so as to fulfill the purpose of objects of Young Indian and tried to give a colour that all those transactions purely fall within the realm of charitable activities and with the sole intention to promote its objects. Further, it has also been contended that after the acquisition of shares and taking over the entire assets of the AJL, was purely with the intention to restart/revive the publication business and some stray instances and evidences have also been filed before us in the form of additional evidences in the paper book. However, there is a checkered history and entire background to look through the entire substance of such a contention and intention which has been tried to be canvassed and demonstrated before us in a very simplified manner, that all these transactions was with a pure intention of promoting the

objects of Young Indian through publication business and that is the reason why whole process of acquisition was initiated to acquire the huge assets and properties of AJL. Precisely, same very contention and intention has been threadbare analysed and judicially scrutinized in the case of either AJL or YI (appellant) not only by this Tribunal in assessee's own case in the cancellation proceedings u/s 12A/12AA and also by the Hon'ble Delhi High Court in the case of AJL itself, wherein it was found that the so-called reviving of publication business was mere an eye-wash and façade, only to save from certain rigorous of law, which started with various investigations and inquiries and proceedings that were initiated both under the Income-tax proceedings as well as under the Land Development Act.

117. First of all, this Tribunal has given the following findings on this aspect after considering the additional evidences to show that every step taken was only to promote objects by way of publication: -

> *"102. Now, what has been canvassed before us is entirely a new argument that the sole aim and objective of acquiring the entire stake holding in AJL was to carry out charitable activities for its objects, i.e., to spread democratic and secular values to the Youths of India through the medium of newspapers*

published by AJL. Now, in support of such newline plea, voluminous additional evidences have been filed before us on the ground that the ld. CIT (E) has wrongly held that AJL was into the Real Estate business and was carrying out commercial activities of construction and sale of properties. In order to controvert such a finding, assessee has filed hundreds of papers to show that how the publication of newspapers and articles in print media have been recommenced, when most of the documents pertain to post 21.03.2016 when the assessee had written a letter offering for suo moto surrender of registration u/s. 12AA; and some are even post facto cancellation order passed by the ld. CIT (E). Since we have permitted the parties to argue and put forth all their contentions to refer to all the additional evidences, therefore, we are not rejecting the additional evidences. Because, in our opinion they do not strengthen the case of the assessee because the factum of printing and publication of newspaper are post facto events when assessee itself acquiesced to cancellation of registration from March 2016. This is evident from the perusal of the additional evidence paper book; whereby following documents have been furnished:-

Sr. No.	*Description of document*	*Page Nos.*
1.	*The masthead of National Herald Newspapers published by the AJL from* ***24 September 2017 to 28 July 2019***	*1-92*
2.	*The masthead of Sunday Navjivan Newspapers published by the AJL from* ***14 October 2018 to 28 July 2019***	*93-132*
3.	*Copies of various reports, photographs of:*	
a.	*Launch of Commemorative Edition of National Herald (Publication) in Bangalore on* ***12 June 2017***	*133*
b.	*The Hindu*	*134-135*
c.	*NDTV*	*136-137*
d.	*Chronicle*	*138-140*
e.	*Star of Mysore*	*141-143*
f.	*Copy of National Herald Commemorative Edition*	*144-153*
4.	*Copies of various reports, photographs of:*	

a.	*Launch of Commemorative Edition of National Herald (Publication) in New Delhi on **1 July 2017***	*154-156*
b.	*ABP*	*157-158*
c.	*DNA*	*159-162*
d.	*Dainik Bhaskar*	*163*
e.	*Financial Express*	*164-165*
f.	*Hindustan Times*	*166-168*
g-	*Mint*	*169-172*
h.	*Copy of National Herald Commemorative Edition*	*173-185*
5.	*Copies of various reports, photographs of :*	
a.	*Launch of Commemorative Edition of Navjivan newspapers (Publication) in Chandigarh on **10 December 2018***	*186*
b.	*The Tribune*	*187*
c.	*Indian Express*	*188*
d.	*Amar Ujala*	*189*
e.	*Hindustan Times*	*190*
f.	*Copy of Navjivan Commemorative Edition*	*191-203*
6.	*Launch of National Herald Website on **14 November 2016***	*204-205*
a.	*The Indian Express*	*206-207*
b.	*The Economic Times*	*208-209*
c.	*Amar Ujala*	*210-211*
d.	*BW Business World*	*212-213*
7.	*Launch of Urdu Website on **12 August 2017***	*215-225*
a.	*Business Standard*	*226*
b.	*United News of India*	*227*
c.	*India Today*	*228*
d.	*Outlook*	*229*
8.	*Launch of Navjivan Website on **29 August 2017***	*230-236*
a.	*United News of India*	*237-238*
9.	*Registration Certificate of National Herald Newspaper with Registrar Office of Newspapers for Indian, Ministry of Information and Broadcasting dated **23 June 2017 and 24 Nov 2017***	*239-241*
10.	*Registration Certificate of Sunday Navjivan with Registrar Office of Newspapers for Indian, Ministry of Information and Broadcasting dated **20 Feb 2018, 11 Jan 2019***	*242-244*
11.	*Agreement of AJL with Press Trust of India for Wire News Services dated **15 November 2016***	*245-249*
12.	*Certificate issued by Audit Bureau of Circulations certifying the number of Newspapers sold by AJL dated **7 September 2018 and 11 March 2019***	*250-254*

13.	*Report of Google showing the outreach of the online news portals operated by AJL **from November 2016 to till date***	*255-265*
14.	*Resolution passed Board of Directors of AJL to resume the publications of newspapers dated **26 September 2016***	*266*
15.	*Letter of AJL to the Registrar of Newspapers of India to resume newspaper business dated 23 January 2014*	*267*
16.	*AJL Form - 23 submitted to ROC on 29 September 2011 along with amended MOA as passed by Shareholders on 13 Sep 2011*	*268-280*
17.	*AJL Form - 14 submitted to ROC along with amended MOA as passed by Shareholders on 21 Jan 2016*	*281-295*
18.	*Copies of National Herald and Qaumi Awaz Newspapers dated 1 April 2008 publishing the temporary suspension notice of publications*	*296-299*
19.	*Letter to AJL to the United News of India (UNI) dated 31 March 2008 informing about temporary suspension of publications*	*300*
20.	*Various Presentations and Photographs showing operations of Young Indian*	*301-386*

103 A bare perusal of the most of the documents, it is quite evident these are post surrender letter of the assessee filed in March 2016 and some are even after the date of passing of the impugned cancellation order. All these documents merely go to show that AJL had recommenced or endeavored to re-start the publication activity from the year 2016- 2017 onwards. As opined above, these documents even if we admit, are not of much significance for the reason that all these activities of printing and publication of articles had started when the assessee itself had given up its registration in March 2016. Prior to this date, it is an admitted fact that publication of newspaper business of AJL was suspended or as stated by the ld. counsel for the assessee, there was temporary lull in the business for the period 2008 to 2016. Neither between the periods 2011 to 2016, any such publication business had started nor has it been brought on record before the ld. DIT (E) either at the time of grant of registration or at the time of its cancellation. As far as the documents, like resolution passed by the board of directors of AJL on 26.09.2016; letter written to Registrar, Newspapers of

India dated 23.01.2014; Form No. 23 submitted by AJL to ROC on 29.09.2011 along with amended MoA and Form-14 etc., though indicate that AJL may had some kind of intention to start the publication business, but such an intention was never stated or canvassed before the departmental authorities in the course of cancellation proceedings. It is only when the ld. CIT (E) had made certain allegations in the impugned order that the AJL had carried out some activities of Real Estate, the assessee has taken this plea before us to justify that it intended to carry out the activities by acquiring AJL in furtherance of its main objects. Great deal of arguments have been made by the Ld. Counsel that publication business of AJL was a platform to promote the ideals and objects of YI and press being fourth estate of democracy is a powerful medium to inculcate such ideals. First of all, press will be used as medium to promote the objects of YI was never stated earlier at any stage; nor there is one instance that YI has ever used any other newspaper or media to propagate it's so called objects or democratic secular ideals. Is it that only AJL can be such medium and no other press company or it is orchestrated defense in wake of various proceedings initiated against it or is it to camouflage the real nature of arrangements? Secondly, these pleadings and documents only go to show that from the year 2107-18 some newspaper articles have been published which assessee is trying to link and align itself to prove its genuineness. All such toll claims and publication of articles are from year 2017 onwards. Thus, these additional evidences do not impinge upon the case of the assessee or in any way strengthen the case of the assessee."

118. The Tribunal after discussing entire gamut of facts and material, has given a very categorical finding that, at no point of time, the appellant company has carried out any charitable activities in furtherance of its objects and to promote its objects.

Had the intention of the appellant company was to promote its so-called charitable objects, then why not its objects were pursued through other agencies and why from an entity (AJL) which was no longer into publication. Nowhere it has been brought on record that YI had used some other agencies for publication and why only the objects could have been pursued publication through AJL only, when it has already ceased/suspended its publication business in 2008 itself. That itself goes to show that it never had an intention to promote its objects through medium of publication or through newspapers etc. For this precise reason, this Tribunal has categorically held that right from day of its inception to grant of registration u/s 12A/12AA, until the cancellation of registration by the ld. CIT (E) in the month of 26.10.2017, such purported objects were never pursued. In this regard, observations of the Tribunal in paras 107, 108 & 109 are reproduced hereunder:

> *"107. Had the intention of the assessee company being clear and bona fide from the date of its inception, that it wanted to acquire AJL only to carry out its charitable activities, then it should have been stated so and brought on record not only at the time of seeking registration u/s. 12AA, but also at the time of cancellation. The events clearly pointed out that even before incorporation of Young Indian, the registered office was shifted*

to Delhi and the Directors managing the affairs of the assessee company were taken on Board of AJL. Not only that, Young Indian was permitted to use the property of AJL as its registered office. Further, the manner, in which loan of Rs. 90 crores was assigned by AICC to Young Indian for paltry consideration of Rs. 50 lakhs does not reflect the real intent of the transaction. Not all these facts indicate that the assessee company had any clear conscience or intent for acquiring the AJL to carry out the charitable activities. Not a single such instance have been demonstrated that it had carried out any activity in furtherance of its objects, nor any such thing has been placed before us that it had carried any activity between the years 2011 to 2016 or up to the date of cancellation of registration. Even as noted by the ld. CIT (E) that the Income-tax returns do not indicate that any expenditure has been incurred in furtherance of the objects except for payment of interest on loan borrowed from a Kolkata based company. Once, AJL was not in publication of any kind of newspaper in print or digital form during the entire period, then it can be easily deduced that the intention was never to carry out any charitable activity by acquiring AJL. Even after takeover of AJL, no activity has been done by AJL at least for a period of 5 years. One of the main allegation of the ld. CIT (E) and ld. Special counsel was that, it was in wake of certain enquiries conducted by the Income Tax Department and proceedings of eviction initiated by the Land Development Office, steps were taken by the AJL for renewal of newspaper business; and even the so called resuming the newspaper business post September 2016, is much after the assessee had written to the department surrendering its registration. Thus, the entire contention as raised by the ld. counsel that the newspaper business was started later on, which indicates that AJL was acquired only to promote the ideals enshrined in the objects of Young Indian, belies all such intents and in fact the allegations that some printing work had started post inquiries by the Governmental authorities is convincing and probable.

108 Much emphasis has been laid by the ld. counsel that AJL has converted itself into a Section 8 company under the Companies Act 2013 in January, 2016, i.e., as a non-profit company, to carry out the objects of Young Indian and the objects of AJL were aligned with that of Young Indian. Such a contention is of no consequence for the reason that, firstly, it is an admitted fact that till date, the assessee had not been granted license by ROC as Section 8 Company; and secondly, all these events have neither been stated by the assessee before the ld. CIT (E) and are post 2016. The amendment in MoA of AJL in the year 2011 is again of no consequence because till the year 2016, no such activity has been carried out by Young Indian through AJL. In any case, we are in tandem with the contention of the ld. Special counsel that merely adopting the changes in MoA does not make the company a Section 8 Company or a non-profitable company, because it is always open for the Board of Directors to amend its MoA and become a profitable company at any time and sweet will. Thus, acquisition of AJL to further the objects of the assessee company as purported by the ld. counsel, is not acceptable.

109 Before us, the ld. counsel had also submitted that way back on 23.01.2014, AJL had filed letter to Registrar for Newspapers of India, which indicates the assessee's intention to resume the publication activities. However, as we have held earlier, such an intention was never brought on record before the departmental authorities or even before the ld. CIT (E) during cancellation proceedings. Even filing of letter to Registrar for Newspaper of India to start the publication business, does not carry much weight, because admittedly, such an intention remained on paper and nothing had started prior to the year 2016-17 by that time the assessee had already forgone its claim for registration u/s. 12AA. Acquiring and construction of various buildings of AJL at Panchkula, Mumbai etc. does not prove that

the publication activities were carried out and even if there was some kind of future intent to do so, then also, it does not make AJL a newspaper publication company between 2008 to 2016, because not a single activity was carried out through which it can be inferred that AJL was acquired by YI to use the platform of newspaper publication, albeit entire conduct of the assessee company shows that AJL has been acquired for such nominal amount of Rs. 50 lakhs, to control and have interest in huge immovable assets of AJL throughout the country which were earning huge rental income, which was never the object of YI for which it was granted registration."

119. Thus, the contention of showing the bonafide intention for acquiring almost entire stake in AJL has been demolished by the Tribunal on the basis of material and facts brought on record.

120. Another very important fact in this entire chain of events and on this issue, is the judgment of **Hon'ble Delhi High Court** in case of AJL wherein, in the first instance, there was **first judgment dated 21.12.2012, passed by Hon'ble Single Judge in the Writ Petition filed by the AJL** against the notice sent by Land Development Office for vacation of the property known as 'Herald House', 5A, Bahadur Shah Zafar Marg, New Delhi, wherein the Hon'ble High Court categorically noted that at the time of inspection by the LDO, no press activity was carried out by the AJL in the said property and in fact, the property was

rented out to various commercial establishments. The Hon'ble High Court has taken note of inspection committee report and has given a categorical finding that no such printing press was functioning and only National Herald Weekly newspaper was published for the first time on 24.10.2017 which too was outsourced from elsewhere. No such press activity of the editorial team was discernible when the inspection of the premises was taken in the presence of Chairman of AJL and no such evidences were produced either before the inspection committee or before the Hon'ble High Court, that before the proceedings were initiated, substantial publication activity had been started. The court also noted that the dominant purpose of leasing out the properties to AJL for publication has now practically lost.

121. Thereafter, the judgment passed by Hon'ble Single Judge was challenged by way of an appeal before the **Hon'ble Division Bench of Delhi High Court in LPA 10/2019 & CM 566 & 649 of 2019.** Hon'ble Delhi High Court speaking through Hon'ble Chief Justice again after considering the entire gamut of material brought on record and the arguments placed by both the parties has not only upheld the judgment passed by Hon'ble Single

Judge but also made certain important observations which are completely germane to the issue in hand before us. These observations and the findings of the Hon'ble High Court clearly clinch the issue to demolish the whole arguments which has been canvassed before us to show that everything was done with a very bonafide and clear intention just to promote objects of Young Indian. For the sake of ready reference, following extracts of Hon'ble High Court is reproduced as under:-

> "*46. .....As far as the assertion made with regard to the transfer of shares of AJL to Young India and the share holdings of Young India and various other issues connected thereto are concerned, they are based on certain facts stated in the show cause notice issued by the Income Tax authorities on 15th June, 2018 and even if show cause notice is ignored, they do form part of the facts stated by co-ordinate Bench of this Court while deciding three writ petitions decided on 10th September, 2019, that is, W.P.(C) No.8482/2018 and other connected matters which were filed by the shareholders of Young India while challenging the action taken by the Income Tax authorities. There is no whisper or serious challenge to these factual aspects by the appellant. They do not say, even orally, that these facts stated and relied upon by the respondents are false, incorrect, fabricated, untrue etc. They only say that certain facts have been stated without filing a counter affidavit. If the facts so stated, cognizance of which have been taken by the writ Court, are based on materials available in proceedings held before the L&DO and by a co-ordinate Bench of this Court in a writ petition, we see no reason as to why we cannot take cognizance or judicial notice of these facts and proceed to consider them for deciding the lis in question, particularly, when there is no specific or categorical denial of them even orally before us at the time of hearing.*

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48. The first objection of the appellants were to the finding recorded by the learned writ Court in the impugned order passed on 22nd December, 2018 pertaining to there being no press activity in the premises in question, that is, finding in para-17 of the impugned order. The facts that have come on record clearly shows and it is an admitted position if we analyse the show cause notices issued to the appellants on 10th October, 2016 replied to the same on 19th November, 2016, the second show cause notice dated 5th April, 2018, the third show cause notice dated 18th June, 2018 and the fourth show cause notice dated 24th September, 2018 and the series of replies filed by the appellants on 19th November, 2016, 7th April, 2018, 16th July, 2018 and 9th October, 2018 along with the communication made by Sh. Motilal Vora on 26th September, 2018 available at page-406 of the paper book ***that between the period from the year 2008 to 2016, the appellant themselves admitted that there was no publication of the newspaper from the premises in question or from any other place and it was only after the inspection of the premises was conducted for the first time on 26th September, 2016 that indication was made about commencement of newspaper publication for 2016 - 2017.***

49. In this regard, we may take note of the communication made by Sh. Motilal Vohra on 26th September, 2016 at page-406 of the paper book. In this communication reference is made to an inspection noticed dated 15th September, 2016 and it indicates that one Sh. Ravi Dayal is authorized to be present as a representative of AJL at the time of inspection at 11 A.M. on 26th September, 2016. That apart, as requested in the notice issued, certified copies of the sanctioned plan and occupation certificates were also submitted with this letter. The letter further states that the basement and the fourth floor of the building are being used for press and offices of the lessee and surprisingly the letter further says "I am pleased to inform you that the Associated Journals Ltd. has taken steps to resume newspaper publication. Towards this objection an Editor-in-Chief was appointed in August, 2016" and the letter further says that

preparations are in full swing to resume publication of the newspaper in the current financial year 2016-17. Referring to this letter, the learned Solicitor General had argued that this letter was written only for pre-empting the authorities so that they are not surprised if no printing activities are found in the premises. ***In fact, Sh.Tushar Mehta is right in contending that this was an attempt by the appellants and, in fact, an admission by them that no printing activity was being carried out in the premises at that point of time.*** *That apart, when we go through the four show cause notices available on record issued on 10th October, 2016, 5th April, 2018, 18th June, 2018 and 24th September, 2018 and the reply filed thereto, we find that various breaches were pointed out in all these show cause notices and they were replied to by the appellant company and the cumulative admitted position that can be made out from the reading of these documents are as under.*

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50. ***When the premises was inspected on 26th September, 2016, no press activity was being carried out in the area. Press activity and publication of the newspaper was suspended right from the year 2008 and all the employees were granted VRS. After the communication dated 26th September, 2016 was made by Sh. Motilal Vohra digital publication of the English Versions of the newspaper, National Herald commenced from 4th November, 2016.***

51. Digital version of Urdu edition Qaumi Awaz commenced on 12th August, 2017. Digital version of Navjivan, that is, Hindi version commenced on 28th August, 2017 and the print weekly newspaper, National Herald Sunday resumed publication from 24th September, 2017 and it is the case of the appellants that these newspapers were printed in a press at Noida. Finally the printing of Hindi weekly newspaper Navjivan commenced publication on 14th November, 2018 and the necessary license and authorization for the purpose of publication indicated hereinabove was granted by the Registrar of Newspapers for India on 21st November, 2017 available at page-581 is a certificate of registration issued by Sh. K. Ganeshan, Registrar of Newspaper for India giving registration certificate for a newspaper titled "National Herald Sunday". ***Accordingly, it is clear that***

publication of the newspapers commenced after a gap of eight years as is indicated hereinabove. If this is the factual position, it can very well be concluded that on 26th September, 2016 when the first inspection took place, admittedly, there was no printing of press or publication activity and the digital versions in English commenced publication only on 14th November, 2016, that is, about one and half month after the inspection took place on 26th September, 2016. Even though in the breach notice dated 10th October, 2016, there is no mention of there being no press activity but the admitted position is that when this notice was issued on 10th October, 2016 after inspection on 26th September, 2016 and the admission of Sh.Vohra on 26th September, 2016 that there is no printing activity, three other show cause notices were issued as have been detailed hereinabove and in the final show cause notice issued, that is, 24th September, 2018 before taking the impugned action there is a mention about no press activity being carried out in the premises when the first inspection was ordered on 26th September, 2016.

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57. The next issue which was vehemently canvassed before us on behalf of the appellant was with regard to the transfer of shareholding from AJL to Young India. It is the case of the appellant that mere transfer of shareholding cannot be a ground for holding that to be change of ownership or transfer of the lease. Placing reliance on the judgment of Bacha F. Guzdar (supra) detailed submissions were made by Dr. Singhvi to emphasize that a shareholder only acquires a right to participate in the profit of the company. He gets no interest in the property of the company and even if the shareholders of the company do have some voice in administering the affairs of the company, but their interest is limited to sharing the profits of the company and the company, a juristic person, which is distinct from the shareholders still owns the property. It is argued that in the backdrop of this legal position even if some of the shares of the company have been transferred that would not mean that the ownership of the leased premises also get transferred to Young India Ltd. It was emphasized that the ownership still remains even on such

transfer with AJL and the said transfer would not have any effect on the ownership or transfer of the leased premises. To consider this aspect of the matter, we are required to take note of the shareholding pattern of both the companies and the manner in which the transactions have taken place and further in case the lifting of the veil theory is applied, what would be its effect with regard to the issue in question.

58. Indian National Congress sometimes referred to as AICC had advanced a loan of Rs.90 crores to AJL. The loan was advanced on the condition that the amount shall be utilized by AJL to write off their accumulated debts and to recommence publication of its newspaper. As per the facts recorded by the co-ordinate Bench of this Court in its decision rendered on 10th September, 2018 in W.P.(C) 8482/2018, the books of account of AJL from 1st April, 2010 to 31st March, 2011 showed an outstanding debt of Rs.88,86,68,976/- and it ultimately became Rs.90,21,68,980/- as on 15th December, 2010. On 13th August, 2010, an application was made for incorporation of a charitable non-profit company (a company under Section 25 of the Companies Act named Young India). The application was in Form 1A with the competent statutory authority and on 18th November, 2010 Young India was incorporated and on 18.11.2010 license was granted and ultimately on 23rd November, 2010 Young India was incorporated with Sh. Suman Dubey and Sh. Sam Pitroda as its founder Directors. This company had an authorized share capital of 5,000 shares of Rs.100/- each valued at Rs.5,00,000/- and the paid up share capital was 1100 shares of Rs.100/- each valued at Rs.1,10,000/- and the company at that point of time had two shareholders, (a) Shri Sam Pitroda - 550 shares valued at Rs.100/- each and (b) Shri Suman Dubey - 5,000 shares valued at Rs.100/- each. On 13th December, 2010, the first Managing Committee Meeting of Young India took place and Shri Rahul Gandhi was appointed as its Director, namely, a non-shareholder and Shri Motilal Vora and Shri Oscar Fernandes as ordinary members. Within five days thereafter, that is, on 18th December, 2010, by a deed of assignment the loan of Rs.90 crores and odd outstanding in the books of Indian National Congress as recoverable from Associated Law Journals for the period 2002 to 2011 was transferred to Young India. Three days thereafter,

on 21st December, 2010, a Board Meeting of AJL called for an EGM which was subsequently held on 24th December, 2010 and on the said date a loan of Rs.1 crore was received by Young India from another company M/s Dotex and thereafter on 28th December, 2010 i.e. within a week a formal deed of assignment was executed by AICC assigning the loan of Rs.90 crores in favour of Young India. Immediately thereafter on 21st January, 2011, an EGM of Associated Law Journal was held approving fresh issue of 9.021 crores shares to Young India and on 22nd January, 2011 i.e. on the next day the second Managing Committee of Young India was held in which Smt. Sonia Gandhi, Mr. Motilal Vohra and Mr. Oscar Fernandes were appointed as Directors and the 550 shares of the existing shareholders of Young India - Suman Dubey and Sam Pitroda were transferred to Smt.Sonia Gandhi and Mr.Oscar Fernandes and on the same day fresh allotment of Young India shares were made in the following manner: (a) 1,900 shares having paid up value of Rs.1,90,000/- to Shri Rahul Gandhi, (b) 1,350 shares with a paid up amount of Rs.1,35,000/- in the name of Smt. Sonia Gandhi, (c) 600 shares with a paid up value of Rs.60,000 in the name of Sh. Motilal Vohra and (d) 50 shares with a paid up value of Rs.5,000 in the name of Sh.Oscar Fernandes and after issuance of PAN by the Income Tax Department a bank account was opened by Young India with Citibank on 14th February, 2011 and the cheque issued by M/s Dotex for Rs.1 crore was deposited in the Young India Bank account on the said day and on 26th February, 2011 Young India issued a cheque of Rs.50 lakhs to AICC as consideration for assignment of Rs.90 crore debt payable by ALJ to AICC. On the same day, i.e., 26th February, 2011, ALJ allotted 9,02,16,899 equity shares to Young India in pursuance to the AGM Meeting decision held on 21st January, 2011 and the ALJ Board Meeting on 26th February, 2011 and thereafter Young India applied for exemption under Section 12-A on 29th March, 2011 and on 9th May, 2011 the Income Tax Authorities granted the exemption with effect from the F.Y. 2010-11.

59. ***Be that as it may, by the aforesaid transaction that had taken place Young India acquired beneficial interest on AJL's property which on the said date was valued at more than Rs.400 crores on payment of a sum of Rs.50 lakhs to AICC.***

This, according to the respondent, if viewed in the backdrop of the purpose of transfer lease and the modus operandi adopted is nothing but a devise to transfer the property held on lease from the Government by AJL, Young India which became 99% or rather 100% shareholder of AJL. *With these facts, we now propose to examine the judgments relied upon by both the parties to evaluate the legal implication and the principles culled out from these judgments and examine their applicability in the present factual matrix to decide the issue of breach of conditions of the lease on this count.*

60. In the case of Bacha F. Guzdar (supra) relied upon by Dr. Singhvi, a Constitution Bench of the Supreme Court has taken note of certain judgments with regard to corporate identity and a legal position with regard to the rights to property of a company, a juristic person, and the relationship of a shareholder with the company and its property, as canvassed by Dr. Singhvi and as observed by the Hon'ble Supreme Court the principle indicates that a shareholder acquires a right to participate in the profit of the company but he does not acquire any right or interest in the assets of the company. It has been held that by investing money in the purchase of shares the shareholder does not get any right to property of the company though he acquires a right in the profits if and when the company decides to divide it. Even though the shareholder of the company have the sole determining voice in administering the affairs of the company and are entitled to as provided in the Articles of Association to declare the dividends and distribute the profits of the company but their right individually or collectively is nothing more than participating in the profits of the company, it is held that the company is a juristic person and is distinct from the shareholders. In fact, it is the company which owns the property and not the shareholder. The judgment further goes to say that there is nothing in the Indian Law to warrant the assumption that the shareholder who by his share buys any interest in the property of the company which is a juristic person entirely different from the shareholder. This in fact is the law laid down by the Constitution Bench of the Supreme Court in the aforesaid case.

61. It was vehemently argued by Dr. Singhvi that once this is the accepted legal position that is culled out on a perusal of the law laid

down by the Constitution Bench, then by no stretch of imagination can it be argued that on transfer of shares of AJL to Young India Ltd., there is transfer of ownership or lease or property as contemplated in clause 13(3) of the lease in question. By referring to the judgment in the case of Monsanto Manufacturers (supra) and the terms and conditions of the lease deed which prohibited transfer in the said case and by comparing it to clause XIII(3) of the lease deed in question, we were told that in the absence of there being any specific prohibition permitting transfer of ownership of shares or change in the Article of Memorandum, the finding recorded with regard to transfer of ownership of the property recorded by the learned writ Court and the competent authority is unsustainable. The principles laid down in judgment of the Supreme Court in M/s K.G. Electronics (supra) and by this Court in DDA v. Human Care Medical Charitable Trust were also relied upon to canvass this contention.

62. On a consideration of the argument as canvassed by Dr. Singhvi, at the first instance, the same looks very attractive and the findings recorded may look to be unsustainable and perverse, however, it is an equally settled principle of law that in public interest and for assessing the actual nature of a transaction or the modus operandi employed in carrying out a particular transaction, the theory of lifting of the corporate veil is permissible and a Court can always apply this doctrine to see as to what is the actual nature of transaction that has taken place, its purpose and then determine the question before it after evaluating the transaction or the modus operandi employed in the backdrop of public interest or interest of revenue to the State etc. The theory and doctrine of lifting of corporate veil had been considered by the Supreme Court in the case of Gotan Lime Stone (Supra) and in the said case, judgments in the case of Vodafone (supra) and Skipper Construction (supra) etc. have been taken note of and in para 30, specific reference has been made to the Constitution Bench judgment in the case of Bacha F. Guzdar (supra). After referring to most of the judgments including the judgment in the case of Bacha F. Guzdar (supra) relied upon by Dr.Singhvi is referred to and finally the consideration to be made is culled out in para 19 of the judgment in the following manner:

"19. As already stated, the question for consideration is whether in the given fact situation the transfer of entire shareholding and change of all the Directors of a newly formed company to which lease rights were transferred by a declaration that it was mere change of form of partnership business without any transfer for consideration being involved can be taken as unauthorised transfer of lease which could be declared void."

63. Thereafter, the learned Court proceeds to discuss various issues and takes note of the fact that the transaction in fact technically does not sell the lease right but only shares are transferred and in para 24, it has been held that the principle of lifting of corporate veil as an exception to the distinct corporate personality of a company and its member is recognized not only to unravel tax evasion but also to protect public interest which is of paramount importance and to prevent a corporate entity in attempting to evade legal obligation. It has been held by the Hon'ble Supreme Court after relying upon an earlier judgment in the case of Workmen vs. Associated Rubber Industries, (1985) 4 SCC 114 that this doctrine is employed to prevent device and to avoid welfare legislation. After observing so, various judgments of this Court including Skipper Construction (supra) and the judgment of the House of Lords in the case of Salomon v. Salomon, 1897 AC 22 is taken note of and the cardinal principle laid down in the case of Salmon v. Salmon (supra) with regard to the company being a different person altogether from its subscribers is taken note of and it is observed that since after the judgment of Salmon (supra) the Courts have recognized several exceptions to the rule laid down in Salmon (supra) ***and one of the relevant exception is that when a corporate personality is being blatantly used as a cloak for fraud or improper conduct or where the protection of public interest is of paramount importance or where the company has been formed to evade obligation imposed under the law, the theory which has been described by certain jurists as peeping behind the corporate veil is employed*** *and in para 27 and 29, the Hon'ble Supreme Court goes to determine the doctrine in the following manner:*

"27. It is thus clear that the doctrine of lifting the veil can be invoked if the public interest so requires or if there is allegation of violation of law by using the device of a corporate entity. In the present case, the corporate entity has been used to conceal the real transaction of transfer of mining lease to a third party for consideration without statutory consent by terming it as two separate transactions--the first of transforming a partnership into a company and the second of sale of entire shareholding to another company. The real transaction is sale of mining lease which is not legally permitted. Thus, the doctrine of lifting the veil has to be applied to give effect to law which is sought to be circumvented.

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29. It is also well settled that mining rights are vested in the State and the lessee is strictly bound by the terms of the lease. [Orissa Mining Corpn. Ltd. v. Ministry of Environment and Forests(2013) 6 SCC 476, para 58; State of T.N. v. Hind Stone, (1981) 2 SCC 205, para 1; Monnet Ispat& Energy Ltd. v. Union of India, (2012) 11 SCC 1, para 41; AmritlalNathubhai Shah v. Union of India, (1976) 4 SCC 108; Geomin Minerals & Mktg. (P) Ltd. v. State of Orissa, (2013) 7 SCC

571. Ed.: See also Thressiamma Jacob v. Deptt. of Mining & Geology, (2013) 9 SCC 725 : (2013) 4 SCC (Civ) 559.] Cases of Arun Kumar Agrawal v. Union of India [Arun Kumar Agrawal v. Union of India, (2013) 7 SCC 1] (Vedanta case), Balco Employees' Union v. Union of India [Balco Employees' Union v. Union of India, (2002) 2 SCC 333] (Balco case) and Vodafone International Holdings BV v. Union of India[Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867] cited by the learned counsel for the respondent have no application to the present case once real transaction is found to be different from the apparent transactions. In fact, the principle of law laid down in Vodafone case [Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867] that the court can look to the real transaction goes against the respondent."

64. Finally in para 31, it is held by the Hon'ble Supreme Court that while discerning the true nature of the entire transaction, the Court is not to merely see the form of the transaction which is of sale of shares

but also the substance which is the private sale of a mining right avoiding legal bar against transfer of sale rights. In fact, the learned Court deals with the issue in para 31 in the following manner:

> *"31. ....Thus, while discerning the true nature of the entire transaction, the court has not to merely see the form of the transaction which is of sale of shares but also the substance which is the private sale of mining rights avoiding legal bar against transfer of sale rights circumventing the mandatory consent of the competent authority. Consent of competent authority is not a formality and transfer without consent is void. The minerals vest in the State and mining lease can be operated strictly within the statutory framework. There is nothing to rebut the allegation that receipt of Rs 160 crores styled as investment in shares is nothing but sale price of the lease. No precedent has been shown permitting such a private sale of a mining lease for consideration without any corresponding benefit to the public."*

65. If we consider the transaction in the present case in the backdrop of the aforesaid principles laid down by the Hon'ble Supreme Court, ***we have no hesitation in holding that the purpose for which the doctrine of lifting of the veil is applied is nothing but a principle followed to ensure that a corporate character or personality is not misused as a device to conduct something which is improper and not permissible in law, fraudulent in nature and goes against public interest and is employed to evade obligations imposed in law. If that is the purpose for which the doctrine of lifting of the veil is to be employed and if we see the transaction that has taken place in the present case with regard to how the transfer of shares between AJL and Young India took place, we find that within a period of about three months, that is, between 23rd November, 2010 to 26th February, 2011, Young India was constituted. It took over the right to recover a loan of more than 90 Crores from All India Congress Committee for a consideration of Rs.50 Lakhs, thereafter replaced the original shareholders of Young India by four new entities including Sh. Moti Lal Vohra, Chairman of AJL and Young India after acquiring 99% of shares in AJL,***

became the main shareholder with four of its shareholders acquiring the administrative right to administer property of more than 400 Crores. Even though Dr. Singhvi had argued that there is nothing wrong in such a transaction and it is legally permissible, but if we take note of the principles and the doctrine for which the theory of lifting of the corporate veil has received legal recognition, we have no hesitation in holding that the entire transaction of transferring the shares of AJL to Young India was nothing but, as held by the learned writ Court, a clandestine and surreptitious transfer of the lucrative interest in the premises to Young India. In fact, the contention of Dr. Singhvi has to be rejected and rightly so was rejected by the Single Judge even though without applying the principle of lifting of the corporate veil. In case the theory of lifting of the corporate veil, as discussed hereinabove, is applied and the transaction viewed by analyzing as to what was the purpose for such a transaction, the so called innocent or legal and permissible transaction as canvassed before us, in our considered view, is not so simple or straight forward as put before us, but it only indicates the dishonest and fraudulent design behind such a transaction as laid down in various judgments *referred to not only in the case of Gotan Lime Stone Khanij Udyog (P) Ltd. (supra) but also in the case of Union Territory of Estate Officer, UT, Chandigarh vs. S.C. Information Technologies, (2016) 12 SCC 582, Skipper Construction (supra), wherein also the theory has been applied after considering the principle laid down in Salomon (supra) and in para 28, in the case of Skipper Construction (supra), the law has been crystallized in the following manner:*

> *"28. The concept of corporate entity was evolved to encourage and promote trade and commerce but not to commit illegalities or to defraud people. Where, therefore, the corporate character is employed for the purpose of committing illegality or for defrauding others, the court would ignore the corporate character and will look at the reality behind the corporate veil so as to enable it to pass appropriate orders to do justice between the parties concerned. The fact that Tejwant Singh and members of his family have created*

several corporate bodies does not prevent this Court from treating all of them as one entity belonging to and controlled by Tejwant Singh and family if it is found that these corporate bodies are merely cloaks behind which lurks Tejwant Singh and/or members of his family and that the device of incorporation was really a ploy adopted for committing illegalities and/or to defraud people."

66. Apart from the aforesaid judgments, there are various other judgments which have been brought to our notice wherein the said theory of lifting of the corporate veil has been approved and we have no hesitation in holding that the transfer in question, if analyzed in the backdrop of the principles as discussed hereinabove, we see no error in the findings recorded by the learned writ Court to hold that the transfer in question comes within the prohibited category under clause XIII (3) of the lease agreement."

[Emphasis in bold is ours]

122. The Hon'ble High Court have further held that the breach was continuing right from the year 2008 till commencement of digital publication on 14.11.2016 and went on to hold that this court has no hesitation in holding that the breach of there being no publication activity or paper publication for a long period stands established. Though, this would come within the purview of the breach of terms and conditions of the license, their Lordships have held that admittedly printing activities and publication of newspapers was not carried out in the premises when the inspection took place initially on 26.09.2016 and not even when second inspection took place on 09.10.2018.

Regarding transfer of shares/property from AJL to YI and the manner in which entire transaction was done has been frowned upon by the Hon'ble Court by stating that it was **a *clandestine and surreptitious transfer of the lucrative interest in the premises to Young India***. After applying the principle of lifting of the corporate veil, their Lordships have held that "***the transaction viewed by analyzing as to what was the purpose for such a transaction, the so called innocent or legal and permissible transaction as canvassed before us, in our considered view, is not so simple or straight forward as put before us, but it only indicates the dishonest and fraudulent design behind such a transaction……".***

123. The sequitur of the findings and observations of Hon'ble High Court in the case of AJL clearly demolishes the so called intention and the contention of the appellant wherein the court has taken note of identical facts as discussed here in this order and have categorically held that;

- The share holding pattern of both the companies, i.e., AJL & YI and the manner in which the transaction has taken place, principle of lifting of corporate veil is clearly applicable;

- Their Lordships have narrated the entire factum of advancing of loan of Rs. 90 crores by AICC to AJL and the manner in which it has been assigned to YI for a meager sum of Rs. 50 lakhs, brings the entire transaction within the ambit of some kind of colourable device because YI had acquired beneficial interest on AJL's properties which have been valued for more that 400 crores on a meager payment of Rs. 50 lakhs to AICC. It has been further observed that modus operandi is nothing but a device to transfer the property held on lease from the Government to AJL to YI, which became almost 100% shareholder of AJL.
- Their Lordships have also considered the judgment of Hon'ble Supreme Court in the case of Bacha F. Guzdar (supra) which has been strongly relied by the assessee before us and held that though the principle laid down by the constitutional Bench of Hon'ble Supreme Court cannot be in dispute and it is an accepted principle of law, however, in the public interest and for assessing the actual nature of transaction or modus operandi employed in carrying out a particular transaction, the theory of lifting of the corporate veil is permissible and the court can always apply this doctrine to see as to what is the actual nature of transaction that has taken place, its purpose and then determine the question before it after evaluating the transaction or the modus operandi employed in the backdrop of public interest or interest of revenue to the State. The principle of lifting of corporate veil is an exception to the corporate personality of

a company, but can be resorted to unravel tax evasion to public interest, which is of paramount interest to prevent a corporate entity in attempting to evade legal obligation. If a corporate personality is being blatantly used as a cloak for fraud or improper conduct or where the protection of public interest is undermined and the company has been formed to evade imposition of revenue under law, the principle of lifting of corporate veil is justified to be applied.

- In para 65 of the judgment, it has been clearly held that the transaction which has taken place and the manner there has been transfer of shares between the AJL and YI between the period of three months starting from 23.11.2010 to 26.02.2011 itself shows that the entire transaction of transferring the shares to YI was nothing but a clandestine and surreptitious transfer of lucrative interest to the premise of YI. The Hon. court has come down very heavily in stating that the entire transaction is not only dishonest, but also fraudulent design.

124. The Tribunal also considering the entire facts on record and noting down all the contention concluded as under :-

114 The aforesaid observations and findings of the Hon'ble jurisdictional High Court clearly have a binding precedence because not only it proves that the conduct of the assessee company right from the incorporation of YI till the application for registration u/s. 12AA before the DIT (E), was not to carry out any charitable activity, but to acquire huge assets of hundreds crores of Rs for a negligible amount. Seeking a

status of charitable institution and to get registered under welfare legislation like section 12A/12AA, with such kind of conduct clearly indicates that it is a misuse of law and some kind of colourable device. This is perpetuated by the fact that all these transactions were completely hidden from the Income-tax Department and DIT (E) while seeking the registration u/s. 12AA. If all these things are put in perspective, then the contention of the ld. Special Counsel and ld. CIT (E) is to be believed that it is only when the Investigation Wing and Income-tax Department started making certain investigation and enquiries and also looking to the fact that no genuine activity was carried out for the period of five years, the assessee may have been prompted to surrender its registration u/s. 12AA.

115 *There is another angle which ponders us is that, if no activities were carried out by YI towards charitable activity between the period 2011 to 2016, then why so much of clamour that assessee should be recognized as charitable institution qua that period only should have the benefit of registration u/s. 12AA for this period of five years, i.e., from the assessment year 2011-12 to A.Y. 2016-17 and post 21st March 2016, the assessee itself chose to surrender its registration and willingly give up its charity status under the Income Tax Act. If both YI and AJL are non-profitable company, then why such a dispute on cancellation from retrospective date.*

116 *Before us, the ld. counsel had very strongly objected to refer and rely upon the judgments of Hon'ble Delhi High Court as cited (supra) on the ground that, Hon'ble Supreme Court in SLP No.7345/2019 had stayed the further proceedings pursuant to the High Court order vide order dated 05.04.2019. The relevant directions of the Hon'ble Supreme Court read as under:*

"There shall be stay of the further proceedings pursuant to High Court's order."

Not only that, it has been strongly contended that once the operation of the order has been stayed then either the said judgment should not be taken into cognizance or the matter should be adjourned sine dine till the matter stands decided by the Hon'ble Apex Court. We are unable to accept such a plea raised by the ld. counsel for the assessee for the reason that firstly, the Hon'ble Supreme Court had stayed further proceedings pursuant to High Court's order, which was Eviction of the property situated at 5A, Bahadur Shah Zafar Marg leased to AJL. Thus, in our opinion, what have been stayed are any further proceedings pursuant to the order of Hon'ble High Court and not the entire finding arrived at by the Hon'ble Court. It is a settled principle of law reiterated by Hon'ble Supreme Court in the case of ***Shree Chamundi Mopeds Ltd. vs. Church of South India Trust Association CSI Cinod Secretariat, Madras (1992) 3 SCC 1****, that distinction has to be made between quashing of order and stay of operation of order because quashing of order results in restoration of position as it stood on the date of passing of the order whereas the stay of operation only means that it would not be operative on the date of passing of the stay order, but it does not mean that the said order has been wiped out from existence. The relevant observations read as under:*

> *"10. In the instant case, the proceedings before the Board under ss. 15 and 16 of the Act had been terminated by order of the Board dated April 26, 1990 whereby the Board, upon consideration of the facts and material before it, found that the appellant-company had become economically and commercially non-viable due to its huge accumulated losses and liabilities and should be wound up. The appeal filed by the appellant-company under Section 25 of the Act against said order dated January 7, 1991. As a result of these orders, no proceedings under the Act was pending either before the Board or before the Appellate Authority on February 21, 1991 when the Delhi High Court passed the interim order staying the operation of*

the Appellate Authority dated January 7, 1991. The said stay order of the High Court cannot have the effect of reviving the proceedings which had been disposed of by the Appellate Authority by its order dated January 7, 1991. ***While considering the effect of an interim order staying the operation of the order under challenge, a distinction has to be made between quashing of an order and stay of operation of an order Quashing of an order results in the restoration of the position as it stood on the date of the passing of the order which has been quashed. The stay of operation of an order does not, however, lead to such a result. It only means that the order which has been stayed would not be operative from the date of the passing of the stay order and it does not mean that the said order has been wiped out from existence. This means that if an order passed by the Appellate Authority is quashed and the matter is remanded, the result would be that the appeal which had been disposed of by the said order of the Appellate Authority would be restored and it can be said to be pending before the Appellate Authority after the quashing of the order of the Appellate Authority. The same cannot be said with regard to an order staying the operation of the order of the Appellate Authority because in spite of the said order, the order of the Appellate Authority continues to exist in law so long as it exists, it cannot be said that the appeal which has been disposed of by the said order has not been disposed of and is still pending****. We are, therefore, of the opinion that the passing of the interim order dated February 21, 1991 by the Delhi High Court staying the operation of the order of the Appellate Authority dated January 7, 1991 does not have the effect of reviving the appeal which had been dismissed by the Appellate Authority by its order dated January 7, 1991 and it cannot be said that after February 21, 1991, the said appeal stood revived and was pending before the Appellate Authority. In that view of the matter, it cannot be said that any proceedings under the Act were pending before the Board or the Appellate Authority on the date of the passing of the order dated August 14, 1991 by the learned Single Judge of the Karnataka High Court for winding up of the company or on November 6, 1991 when the Division Bench passed the order dismissing O.S.A. No. 16 of 1991*

filed by the appellant-company against the order of the learned Single Judge dated August 14, 1991. Section 22(1) of the Act could not, therefore, be invoked and there was no impediment in the High Court dealing with the winding up petition filed by the respondents. This is the only question that has been canvassed in Civil Appeal No. 126 to 1992, directed against the order for winding up of the appellant-company. The said appeal, therefore, fails and is liable to be dismissed."

[Emphasis in bold is ours]

117 *Thus, it has been clearly held that staying the operation of the order of the Court does not mean that the said order does not exist in law. Hon'ble Bombay High Court in* ***Nilkamal Limited vs. Union Territory of Dadar & Nagar Haveli, in criminal writ petition No. 3794 of 2014,*** *after referring to various judgments including that of Shree Chamundi Mopeds Ltd. (supra) held that even if a decision of the High Court is stayed by the Apex Court, the subordinate courts are bound by the same unless the decision is set aside by the Apex Court. Accordingly, the High Court directed the Magistrate to follow the judgment of High Court unless and until it is set aside by the Hon'ble Apex Court.*

118 *In view of the aforesaid law, the contention raised by the ld. counsel is hereby rejected. Even otherwise, also here it is not the case that the order of the Hon'ble High Court has become non-operative, albeit the consequences of eviction pursuant to the directions of Hon'ble High Court, has been stayed and not the order. The ld. counsel has also relied upon the judgment of Delhi High Court in the case of Bhushan Steel (supra) and of Calcutta High Court in the case Exide Industries Ltd. (supra) where the order has been stayed by Hon'ble Supreme Court, and in Subsequent judgment, Hon'ble Delhi High Court has not followed the said order. Such a plea and reference does not come to aid for the reason that in the judgment of Delhi High Court (Bhushan Steel) it has been held that the*

Sales Tax Subsidy is the Revenue receipt and the Hon'ble Supreme Court had admitted the SLP and the entire order was stayed. Here situation and direction are not similar. Further the judgment of Hon'ble Calcutta High Court in Exide Industries Ltd.(supra), wherein the provisions of section 43B(f) was declared unconstitutional where also SLP was filed before the Hon'ble Supreme Court the entire operation of the order was stayed. In any case, once the jurisdictional High Court has passed the judgment which has not been set aside or reversed by Hon'ble Supreme Court, then for lower courts within its jurisdiction constitutes a binding precedence specifically when the judgment has been rendered on similar facts and transaction as held by the Hon'ble Supreme Court in the case of Shree Chamundi Mopeds Ltd. (supra), wherein Hon'ble Supreme Court has clearly held that the order of the Appellate Authority where the operation has been stayed continue to exist in law. We are clearly bound by the observations and findings of the Hon'ble jurisdictional High court.

119 *Most of these documents, though submitted at the rejoinder stage, are in nature of clarifications to the submissions made by the ld. DR and the letters written to DDIT in 2014 and certain notices issued by LDO, but none of the documents filed impinge upon our finding in any manner as given above, because none of these documents prove that acquisition of AJL by the assessee company was for carrying out any charitable activities in pursuance of its objects nor any such activity was carried during the relevant period. Accordingly, these additional evidences, as filed by the assessee, though are taken on record, but we do not deem fit to adjudicate on each and every document for the reasons given in the foregoing paragraphs.*

120 *One of the key contentions raised by the ld. counsel before us is that the ld. CIT(E) does not have the power to cancel the registration from retrospective date and any such cancellation can only be prospective, i.e., from the date of passing of the order and in support of which certain decisions have also been relied upon. From a bare reading of Section 12AA (3) it is seen that, section provides that where a trust or an institution has been granted registration and if subsequently, Pr. CIT or CIT is satisfied that the activities of the trust are not genuine or are not carried out in accordance with the objects of the trust, he may cancel the registration by way of an order in writing. Consequently, if there is violation of any such conditions, then the registration so granted can be cancelled by the CIT. Nowhere, the Statute envisages that the cancellation cannot be retrospective or it has to be necessarily prospective. What it provides that the Commissioner has statutory powers to cancel the registration u/s. 12A/12AA if he finds reason to believe that the activities of the assessee are not in line with its objects or the activities carried out by the assessee are not genuine in nature. If from the date when registration has been granted, the assessee has not carried out any activity in line with its objects or the activities carried out are not genuine, then from that date itself, the registration can be cancelled because it is only when the knowledge of such breach come to the notice of the Commissioner, then he has the power to cancel the registration from the date he notices the infringement. The cancellation of registration, whether with retrospective effect or prospective, depends upon the facts and circumstances of the case and the Commissioner has power to cancel the registration from the time when such breach has occurred. Suppose, if the assessee after grant of registration carries out its activities in accordance with its objects and the activities are also genuine then the assessee is entitled for benefits of section 12AA; and if from a particular period or year, the activities are found to*

be either non-genuine or not carried out in accordance with its stated objects, then the Commissioner can cancel the registration from the date or period when such non genuineness is found. Hon'ble Madras High Court in the case of Prathyusha Educational Trust (supra) have clearly reiterated this proposition, relevant text of which has been already incorporated above, wherein their Lordships have held that it a misnomer to sate that the order is retrospective or retroactive and the order of the cancellation of registration even passed on subsequent date would take effect from the year when cause of action arose.

121 *Here, in this case, as we have gathered from the material facts on record and discussed in detail, the assessee at the time of seeking registration itself has concealed the material facts and not disclosed the entire events of transactions which had undergone from the date of inception of assessee company till the grant of registration and one of the conditions on which the registration has been granted stood violated from the day one and therefore, under these circumstances, the ld. CIT(E) was fully justified in law and on facts in cancelling the registration from the date of granting of registration itself, i.e., from the assessment year 2011-12. Secondly, here in this case it has been found that even after grant of registration u/s. 12AA, no genuine activities have been carried out by the assessee either in furtherance of its objects or otherwise, which can be held to be for charitable purpose because one of the so called purpose of acquiring AJL was not carried out at all. Otherwise, also, we have already discussed and given our categorical findings that till the grant of registration and surrender made by the assessee, no worthwhile activities were carried out by AJL. In fact, what it turns out to be is that, the assessee has acquired AJL, a company that owns property worth hundreds of crores from which the AJL had been enjoying only rental*

income. Clearly, AJL, which had been earning rental income, cannot be held that its activities were aligned with the objects of the assessee company or through AJL; it was carrying out activities in pursuance of its objects qua that period. Hence, in that sense, the assessee's activities cannot be held to be genuine. Thus, the cancellation of registration u/s 12AA by the Ld. CIT (E) from A.Y. 2011-12 is upheld.

122 Accordingly, in view of our findings given above, we hold that the ld. CIT (E) was justified in cancelling the registration from the assessment year 2011-12, because none of the activities of the assessee was carried out in accordance with its objects nor its activities can be held to be genuine. Consequently, the appeal of the assessee is dismissed.

123 In the result, the appeal is dismissed."

125. Thus, if we test the arguments of the appellant before us in line with the judgments of Hon'ble Delhi High Court in the case of AJL as well as the order of the Tribunal in the case of YI, appellant company, the entire contention that these transactions were nothing but to promote the objects of Young Indian has been rejected and frowned upon by the Hon'ble jurisdiction High Court as well as by the Tribunal. In wake of these findings, now what is required to be seen is the underlying substance for entire process of acquisition of shares of AJL, whether there was some other dominant purpose for acquiring the entire stake of AJL?

From the sequence of events which have been discussed in the earlier part of the order and the finding of fact arrived by this Tribunal on the same set of transactions in the case of assessee as well as the findings of fact and observations of Hon'ble Delhi High Court based on various judicial jurisprudence, it is clearly established that, the corporate entity of AJL stands pierced and in fact what has been acquired by the appellant company is the underlying assets to acquire huge properties by the AJL and to get commercial benefit derived from such properties. It is very difficult to fathom that all these transactions which have been purported to be portrayed within legal framework to show that what is apparent is also real, which has been found to be incorrect.

126. If we succinctly analyse the sequence of events, then it can be seen that, the appellant company was incorporated on 23.11.2010 and the first step which has been taken was the assignment of loan of Rs.90.21 crores by AICC to Young Indian by journal entry; and then this loan has been assigned on a very paltry sum of Rs.50,00,000/-, which too appellant did not had the funds when the loan was assigned. Subsequently, after two -

three months, an account was opened in the name of appellant company and loan is received from a Kolkata based company named Dotex for a sum of Rs.1 crore and that amount is given to AICC for assignment of loan. Immediately thereafter, the entire shareholding of AJL is allotted, i.e., 9.021, crore equity shares in lieu of assignment of loan of Rs.90.21 crores. Simultaneously the authorized share capital of AJL was raised to Rs.10 crores from Rs.1 crore. It is not a case here that by acquiring the entire stake in AJL, the appellant company has infused certain funds to revive the business or any finance was arranged to raise capital of AJL so that it can revive its business. This itself goes to substantiate the conclusion and finding of the Assessing Officer that the entire scheme was to acquire the assets of AJL by the appellant company and there was no other motive, which has been clamored by the appellant that it was purely for charitable purposes. Because, not a single instance of carrying out any charitable activities was found to be carried out right from the year 2011 till the cancellation of its charitable status or till the passing of the impugned assessment order.

127. As observed above, if we analyze these contentions raised by the Special Counsel on behalf of the Revenue that all these narratives were build when certain enquiries/investigation started in the year 2015. Had it been the intention to carry out charitable activities only, then there was no need for the appellant to suo moto surrender its charitable activities or registration certificate vide its letter dated 21.03.2016. If the appellant itself believes that it was no longer carrying out charitable activities, ostensibly the only inference which can be drawn is that the appellant company had acquired the stake of AJL only to enjoy the benefits of huge properties owned by the AJL which was granted or licensed by various Governments from time to time for publication business which operation has already ceased to exist or suspended for a substantial time in the year 2008 itself.

128. As noted above, the Hon'ble Delhi High Court had pierced the corporate veil after detailed observation in paras 62 to 65 as incorporated (supra), wherein they have observed that when a corporate personality is being blatantly used for fraud or improper conduct or where the protection of interest is of

paramount importance or where the company has been formed to evade obligation imposed under the law, the corporate veil can be pierced. In para 65, Hon'ble High Court have precisely noted these very transactions which came into the scanner of the authorities and held that, ***"if we see the transaction that has taken place in the present case with regard to how the transfer of shares between AJL and Young Indian took place, we find that within a period of three months, that is, between 23rd November, 2010 to 26th February, 2011, Young Indian was constituted and took over the right to recover a loan of more than Rs.90 crores from AICC for a consideration of Rs.50,00,000/- and thereafter replaced the original shareholders of Young Indian by four new entities including Shri Moti Lal Vohra, Chairman of AJL and Young India after acquiring 99% of shares in AJL, became the main shareholder with four of its shareholders acquiring the administrative right to administer the property of more than Rs.400 crores."*** The observation as noted above in bold clearly highlights that there is no distinction between two entities and corporate veil of AJL was rightly pierced. In fact, Hon'ble High Court had gone to the extent holding ***"we have no***

hesitation in holding that entire transaction of transferring shares of AJL to Young Indian was nothing but a clandestine and suspicious transfer of the liquidated interest in the premises to Young Indian and it only indicates dishonest and fraudulent design behind this transaction." These are strong observations of Hon'ble Division Bench of Hon'ble Delhi High Court based on same material facts before them and transaction involved in this case. Thus, nothing is left to support the contention of the appellant which has been stated before us.

129. The entire submissions made on behalf of the appellant before us are that appellant company being a section 25 company, any alleged gain which the company could have derived could never be distributed as dividend by the appellant, therefore, no motive was to undertake such transaction to derive any benefit or gain. The ld. Sr. Counsel has also referred that shareholders of AJL had passed a unanimous resolution on January 21, 2016 to get the company registered under section 8 of the Companies Act, 2013, the effect of which is that, even AJL is prohibited from declaring dividend or distributing or paying

any amount to its members. The properties of AJL itself were subject to various covenants and the company is not allowed to sell or dispose off its assets which were received with the purpose of utilization in the publishing business. Insofar as this contention that unanimous resolution has been passed to get the AJL converted into section 8 entity has been dealt with by this Tribunal in assessee's own case (supra) wherein it has been dealt in the following manner :-

> *"108. Much emphasis has been laid by the ld. counsel that AJL has converted itself into a Section 8 company under the Companies Act 2013 in January, 2016, i.e., as a non-profit company, to carry out the objects of Young Indian and the objects of AJL were aligned with that of Young Indian. Such a contention is of no consequence for the reason that, firstly, it is an admitted fact that till date, the assessee had not been granted license by ROC as Section 8 Company; and secondly, all these events have neither been stated by the assessee before the ld. CIT (E) and are post 2016. The amendment in MoA of AJL in the year 2011 is again of no consequence because till the year 2016, no such activity has been carried out by Young Indian through AJL. In any case, we are in tandem with the contention of the ld. Special counsel that merely adopting the changes in MoA does not make the company a Section 8 Company or a non-profitable company, because it is always open for the Board of Directors to amend its MoA and become a profitable company at any time and sweet will. Thus, acquisition of AJL to further the objects of the assessee company as purported by the ld. counsel, is not acceptable."*

130. The contention that appellant being section 25 Company and, therefore, there is no alleged gain which could have been distributed in the form of dividend to shareholders, does not lead to an inference that entire transaction which has been undertaken was for motive of charity or towards its objects. First of all, there is not a single instance starting from its inception till the passing of cancellation order by the ld. CIT (E) u/s 12AA, where it has been found that any charitable activities have been carried out; and secondly, the formation of the appellant company and change of Directors and taking over the AJL within short span of 2 – 3 months itself shows that the intention was purely to acquire the properties and assets of AJL. Whether the benefit of acquisition of the properties would have come in the form of dividend to the shareholders or not, is not relevant, because what is relevant is the real intention behind the entire scheme of acquiring the AJL. We have already noted above and it is again reiterated that nowhere the appellant company had carried out its objects through some other agencies or any other publication house when that was purported to be the dominant object that only through publication the charitable objects of the appellant company would have been pursued or achieved. As

highlighted by the ld. Spl. Counsel for the Revenue, if we see the relationship between key position holders who were holding high positions in AICC, as well as in the appellant company and having some beneficial interest directly or indirectly in AJL, then it can be safely inferred that they themselves have treated these two entities as transparent and have not maintained veil of separate corporate entity, which now they are trying to portray.

131. One has to see from the angle of third-party scenario, whether in case of some third-party comparable instance and amongst unrelated entities, can such transaction between the parties will happen where; one party assigns the loan of more than Rs.90 crores for a paltry sum of Rs.50,00,000/- to other; and for the same paltry amount, the entire shareholding of a company who owed the debt of Rs. 90 crores is transferred to a newly formed company who is not into same or any kind of business, along with all the underlying assets of that company which is being taken over and the worth of those assets are running into hundreds of crores and that to be of a company which has suspended all its publication activities; and the company whose shares are being acquired were no longer into

the business of publication. It is not case here that a company is being acquired by a company which is having similar line of business so as to augment its own business or there is some business interest in such acquisitions. Here, this is not a case at all. This chain of events definitely leads to only one conclusion that it is nothing but a masquerade and make-believe arrangement which has been given a cloak of charity and to believe that it was purely for the purpose of charitable activities to promote ides of democratic and secular society. Here a company was taken over with huge underlying assets for allegedly promotion of its objects which otherwise stopped carrying out its publication activity and later on also, it was a non-starter when shares were acquired. Such make-believe arrangement cannot convince any prudent mind or judicial conscience. Thus, the contention raised by the ld. Sr. Counsel for the assessee is without any merits and is therefore unacceptable.

132. Another strong contention which has been raised that merely be acquiring shares of a company shareholders would not become owners of the company and in this regard, decision of **Hon'ble Supreme Court in the case of Mrs. Bacha F. Guzdar**

vs. CIT 27 ITR 1 and also the judgment of Rustom Cawasjee Cooper vs. UOI (1970) 1 SCC 248 and Carew & Co. Ltd. vs. UOI 46 CC 121 (SC) has been relied upon. This line of argument has already been dealt by the Hon'ble Delhi High Court and also by the Tribunal in paragraphs noted (supra). Thus, this contention has no *locus- standi* in the light of the binding judicial precedents, because the corporate veil has been pierced and the separate juridical identity of two entities has been blurred, therefore, the principle laid down in the aforesaid judgments of Hon'ble Supreme Court is not applicable to the present facts.

133. It has also been contended before us that the judgment of Hon'ble Delhi High Court was neither with regard to income-tax proceedings nor under the Income-tax Act, albeit under the Land Development Act and clause III (xiii) Lease Deed of the transfer. This contention again is not acceptable because though primary issue may have been related to under the breach of terms of lease; however, Hon'ble High Court has discussed and related the entire transaction which are the same transaction involved in the present matter and the Hon'ble High Court have clearly lifted the corporate veil for these transactions as already noted above.

133. Another very important argument which has been taken before us is that, till today, Income-tax department has never lifted the corporate veil of AJL in the Income-tax matters and the entire rental income is being taxed in the hands of AJL and not the appellant and the depreciation of the same are taken in the computation of income of the AJL. What has been done in the subsequent years or whether the Department has pierced or lifted the corporate veil or not, we are not going into this aspect insofar as the present proceedings are concerned and the transactions which are subject matter and dispute before us. The said transaction which has been judicially frowned upon by the courts and after a detailed finding based on material and facts coming on record, the corporate veil has been pierced, then what is required to be seen is that, the benefit of such transfer has arisen to company or not. At least as of now the judgment of Hon'ble Delhi High Court subsists and we cannot take a different view as the same is binding upon us.

134. Now, we come to the legal proposition raised by the appellant before us as to whether, by way of acquisition of shares any benefit has been arisen to the appellant company which can

be taxed under section 28(iv). It has been contended that section 28(iv) applies only to benefit arising out of business which is not in existence in the present case, because the appellant is section 25 Company and not engaged in a business whatsoever and the appellant is not involved in business of shares and immovable properties and in support, various judgments have been cited which have been taken note in the foregoing paragraphs while dealing with the appellant's submissions. It has also been contended that receipt of shares arose on account of a non-business-related one-off transaction and, therefore, the receipt of shares was not liable to be taxed as 'business income' nor it can be regarded as 'adventure in the nature of trade' to fall under section 28(iv). Again, in support, catena of judgments relied upon before us, especially the judgment of **Hon'ble Supreme Court in the case of Janki Ram Bahadur Ram 57 ITR 21** wherein it was held that mere discounted purchase cannot mean that the assessee was involved in any adventure in the nature of trade to attract the provisions of section 28.

135. Again, the same line of argument is taken that when appellant is itself section 25 company and no dividend income

has been distributed by the appellant and there are huge losses in AJL, therefore, the intention was never to earn business income by acquiring the shares or by selling said shares and assets.

136. Now again, if we go by the entire sequence of events and the manner in which entire transaction has taken place which has been reiterated time and again in the foregoing paragraphs of this order, we have already held that the intention was never to take over the entire AJL to run publication business merely to promote its object of promoting ideas of democratic and secular society in youth. The AJL whose publication business was stopped or suspended was having income from commercial exploitation of the properties all across the country and once the entire company was taken over by the appellant company, all the underlying assets have also been acquired. Once the corporate veil has been lifted and the interested parties have been found to be in collusion with each other to give huge benefit of hundreds of crores of property to the appellant company, the only inference which can be drawn is that all which has been tried to showcase the picture was just phantasmagorical illusion and not real. Even

if the appellant company did not had any intention of carrying on business of shares or properties when the shares were acquired but neither it was for promotion of its objects also. Otherwise, there is no way this transaction can be looked from prism of simple acquisition of shares for promoting charitable objects other than that a company has been formed only for taking over the entire properties of the AJL and nothing else. Neither the appellant company had carried out any activities either charitable or otherwise, except that the formation of this appellant company was only and only for the purpose of acquiring of properties of AJL. Thus, there was a clear-cut benefit which has come to the appellant company in the form of assets which are various immovable properties spread all over the country owned by the AJL.

137. Now let us analyse, whether the said benefit can be taxed Section 28 (iv) of the Act, which reads as under :-

> ***"28. Profits and gains of business or profession***
>
> ***.....***
>
> ***(iv) the value of any benefit or perquisite, whether convertible into money or not, arising from business or the exercise of a profession; ....."***

The aforesaid section stipulates that there should be benefit or perquisite whether convertible into money or not, arising from business or exercise of a profession. Thus, section 28 seeks to bring to tax income arising from business or profession in all its dimensions. The expression business has been defined in **sub-section (13) of section 2** which means as under :-

> ***"(13) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture."***

138. The definition of business is inclusive and has therefore, wide connotation and its contours cannot be limited by this definition. One very important facet which has been included in the definition is the term, ***any adventure or concern in the nature of trade or commerce.*** It may not mean carrying out trade or commerce or manufacture *per se* but any activity which has some trapping of a trade, commerce or manufacture would fall within the ambit of expression in the nature of trade or commerce. It could mean that adventure can be a pecuniary risk or a venture or a speculation or commercial enterprise or something which might be carried out in future and may not be

present. Certain decisions have been cited by the AO and ld. Special Counsel on behalf of the Revenue which has been incorporated above and heavy reliance has been placed on **G. Venkataswami Naidu and Co. vs. CIT 35 ITR 594 (SC)** and also judgment of **Janki Ram Bahadur Ram vs. CIT 1965 AIR 1898.** These judgments explain this concept and lay down the principle that how in such circumstances a venture or transaction can be considered as adventure in the nature of trade or commerce.

139. The adventure in the nature of trade is something where a person undertakes an adventure which may result into gain or profit immediately or may be in future. It is not necessarily that such an adventure undertaken is for immediate gain. The Courts have held that where any transaction falls within the meaning of 'in the adventure in the nature of trade or commerce' or not, depends upon the facts of the case. It has also been held that even one single or isolated transaction can satisfy the description of an adventure in the nature of trade and profit transaction bears some indication of a trade. If we analyse the judgements cited before us, then following principles emerge:

- An adventure in the nature of trade need not be business itself. Any activity akin to business may be taken to be adventure in the nature of trade.
- A single transaction may also constitute adventure in the nature of trade. There need not be regularity or repetitiveness in the activity.
- No hard and fast rule can be laid down in this regard as it has to be understood on the facts and circumstances of each case.
- The activity alleged/claimed adventure in the nature of trade need not be allied to the already existing activity of the assessee.
- In the circumstances and the facts as in the present case, it is the duty of the court to see where ingenuity is expended to avoid taxing and get behind the smoke screen of welfare legislation and discover the true state of affairs.

140. Now, we will deeply analyze the facts, then here is a company which has been formed and was found to have carried out only one activity, i.e., takeover of a company having huge immovable properties which are otherwise were commercially

exploited by the said company for its own business and profession. A company which is formed in October 2010 and was closely associated with AJL and AICC through their managing personnel and its stake holders and within days of its formation one of the entity, i.e., AICC offered to sell/assign its receivables worth Rs.90.21crores from AJL in favour of the appellant who at that point of time did not even not had money to undertake a transaction. AICC has offered its huge assets (loan of Rs.90.21 crores) for a mere sum of Rs.50,00,000/-) and the appellant company did not have any resources to pay the same when the loan was assigned. It was only after assignment of the loan of Rs.1 crores which was raised from Kolkata based company; out of that, amount of Rs.50,00,000/- has been paid for acquiring assets worth Rs.90 crores. Before that, AJL had already closed its publication business and was having income only from commercial exploitation of property and was not able to pay the loan, which if had taken from any commercial bank or financial institution would have been obliged to liquidate its debt first. A newly formed Company (YI) buys the loan even before any loan was received. In fact, appellant had not even opened its bank account when the loan was assigned for Rs.50,00,000/-. Such a

transaction, we already observed above, is beyond any prudence in any comparable third-party scenario, where any person would do that. The AICC immediately extinguished its receivables worth Rs.90.21 and instead of getting amount of Rs.50,00,000/- from AJL had assigned the receivables in favour of a new Company and the entire stake in AJL of more than 99% has been taken over by that company in one stroke. All these transactions have been frowned upon and held to be a colourable device by the Hon'ble Delhi High Court, wherein it has been held that the real intention was to get the possession of the assets of AJL and enjoy these properties which are situated in major cities of the country. This clearly shows that the intention of the appellant was to enjoy the benefits by commercial exploitation of these properties and to acquire the benefit of these properties which is nothing but adventure in the nature of trade which can be carried out at some future point of time. It is also very clear from the fact that this was the only activity done swiftly within a period of 3 – 4 months, which appellant had carried out in all these years starting from 2010 till date.

141. The word 'benefit' is occurring in section 28(iv) means some kind of adventure or gain or had same value or acquire any interest in any land, chattel, etc. Thus, the benefit is nothing but any form of adventure and here the adventure is clearly getting the underlying huge properties situated all over the country by stroke of one transaction and to enjoy the benefits of all those properties in future.

142. The entire hypothesis of the appellant which has been canvassed before us that, since it is a case of acquisition of shares simplicitor at lower rate, therefore, this transaction cannot be brought to tax u/s 28(iv). This hypothesis has clearly been demolished looking to the entire scheme of design under which transactions have been executed. Therefore, we agree with the contention of the Department that benefit has been derived by this transaction which could be brought to tax u/s 28 (iv).

143. Before us, ld. Sr. Counsel for the assessee has taken various facets of the arguments stating that the so-called benefit could not have been taxed under the provisions of section 28(iv). His first limb of argument, that the appellant has acquired shares of AJL and not the assets of the AJL. We have already discussed

above that here is not the case of acquisition of shares albeit entire assets of AJL, because nature of transaction undertaken has already been opined upon by the Hon'ble Delhi High Court and by us in the foregoing paragraphs.

144. Another argument of Ld. Counsel was that, if the appellant is regarded as owner of AJL, benefit if any is only in the capital field and, therefore does not cover u/s 28(iv). It has been contended that acquiring of shares even if it is held that assessee acquired assets at a discounted price which is benefit to the appellant the same is purely in capital in nature, because appellant had no intention of selling the shares for any profit in future. We are unable to appreciate such a contention on the peculiar facts of the case, because here it is not a case of acquisition of shares per se, albeit it is a case where assessee had acquired benefit in the interest in the immovable properties held by AJL. The acquisition of shares is merely a step in the entire adventure, which we have already held in the nature of trade and commerce. The benefit has arisen in this year only, the moment the whole transaction had taken place right from purchase of an asset in the form of loan from AICC for a sum of Rs.50,00,000/-

and in lieu of that, the whole shares of AJL have been acquired which was nothing but to get entire interest of the immovable assets of AJL. This we are stating on the strength of our finding given above as well as the observation and the finding of Hon'ble Delhi High Court as cited (supra).

145. Again, it has been contended that there is no benefit or perquisite within the meaning of section 28(iv), because, here in this case, the purchases cannot give rise to income u/s 28) (iv) even if it was discounted over the market place. This argument of the ld. Sr. Counsel for the assessee persists on the assumption that, what were being acquired were the shares of AJL. As already stated herein above, the entire exercise was to have the control and enjoyment of the properties of AJL and, therefore, the appellant has realized the benefit in the real terms when the acquisition was over and how the benefit would be dealt with or property in future is not something to be seen at this stage. With this reasoning, the contention raised by the ld. Sr. Counsel for the assessee before us, that the provisions of section 28(iv) would not apply when the shares/assets are sold, is rejected.

146. We are not discussing the judgments which have been cited before us in view of our findings herein above which is based on the peculiar facts and circumstances of the case as it is not a case of acquisition of shares or any other assets at a discounted price. Therefore, these judgments are not discussed.

147. Another limb of argument is that even if it is assumed that the shares of AJL so acquired by the appellant are business assets and should be recorded as stock-in-trade even in that case, ld. Sr. Counsel submitted that no profit has said to be arisen by merely valuation of shares. He has further contended that there is certain accounting principle that stock-in-trade has to be recorded in the books at their cost or market value, whichever is lower. This argument is again based on the premise that it is a case of acquisition of shares at a discounted price. Here, it is a case of acquisition of properties in the garb of these transactions which has not only resulted of having these properties immediately after the acquisition of the transaction but also in future whereby exploitation of these properties would lead income in the nature of trade and business. It is a case of valuation of stock-in-trade and, therefore, the judgment of

Hon'ble Supreme Court in the case of Chainrup Sampatram v. CIT 24 ITR 481 has no application in the present facts of the case or the judgment of **Hon'ble Supreme Court in the case of CIT vs. Hindustan Zinc Ltd. 291 ITR 391**.

148. Another limb of argument which has been vehemently argued before us that when there is a specific provision under the Act that section 56(2)(viia) for taxing the gain of shares then the general provisions cannot be applied mainly because the specific provision is not made applicable to the relevant assessee. First of all, the provisions of section 56(2)(viia), at the very outset, is not applicable, because the assessee being section 25 company which falls within the ambit and definition of a company in which public are specially interested in section 2(18)(iiaa). Even the ld. Sr. Counsel has agreed that this provision is not applicable but his case was that such transactions will fall u/s 56(2)(viia) and not section 28(iv). However, we have already held that how the entire transaction has led to benefit arising from adventure in the nature of trade so as to fall within section 28(iv) and section 56(2)(viia) has no applicability at all. Accordingly, the judgments which have been cited before us have no relevance.

149. Ld. Sr. Counsel on behalf of the assessee had also pointed out that now there is a specific provision brought into the statute to cover such nature of transaction u/s 56(2)(x) which has been brought in the statute w.e.f. 01.02.2017 and, therefore, if the legislature intended to cover such transaction u/s 28(iv), there is no requirement of bringing it within the taxable ambit under the deeming provisions of section 56(2)(x). We disagree with him because, the provisions of either section 56(2)(viia) or 56(2)(x) deal with the situation where transaction is made for no consideration or lower consideration and someone transferring the assets to the other. This is a case where the properties are being taken control of under a scheme and designed to acquire the shares of a company under a pre-planned scheme with the connivance of amendment of AJL and AICC. We have already noted above that the applicability of section 28(iv) and benefit derived thereon is due to peculiar facts and circumstances of this case and nature of transaction has been undertaken which has resulted into the benefit of the appellant company in the form of huge immovable properties held by the AJL.

150. Now, coming to the last limb of the arguments that here it is not the case of real income albeit a notional income, therefore, the real income can be taxed. Here in this case, we have already held that the benefit which has arisen as a consequence of adventure in the nature of trade where benefit has been derived in the non-mandatory form i.e.,v in the form of immovable properties of AJL during the year which is taxable u/s 28(iv) and, therefore, it is an income, which has arisen to the assessee, taxable u/s 28(iv).

151. Thus, in view of our discussion above, we hold that the Department has rightly taxed the amount during the year under section 28(iv) of the Act.

GROUNDS NO.7, 8 & 9

152. In these grounds, appellant has challenged, *firstly,* reference to the Departmental Valuation Officer (DVO) stating that it is beyond the scope of section 142A of the Act; *secondly*, computing the Fair Market Value (FMV) beyond the value computed by the DVO; and *lastly*, the value computed by the DVO are erroneous.

153. It is a matter of record that, the AJL which was earlier into the publication of newspaper was allotted/acquired certain properties all across the country for carrying out its publication business. Over all, it had owned five immovable properties which has been valued by the DVO and AO as at 26.02.2011 on the following value:-

Sr.No.	**Property**	**Value as at 26.02.2011 In Rs.**
i	**5A, Herald House, Bahadur Shah Zafar Marg, New Delhi (Delhi property)**	**201,83,92,400**
ii	**Land at S. No. 340/341, CTS No. 608/1A, Bandra (East), Mumbai (Mumbai property)**	**132,94,44,480**
iii	**Land at Plot Nos. 353, 352 & 360, Thana No. 6 Phulwari, Vill. Mahuli, Patna-800001 (Patna Property)**	**5,77,52,700**
iv	**Nehru Bhawan and Nehru Manzil, 1, Bisheshwar Nath Road, Kaiserbagh, Lucknow-226018 (Lucknow property)**	**40,59,06,400**
v	**Land at C-17, Sector 6, Panchkula (Panchkula property)**	**32,25,60,000**
	Total	**413,40,55,980**

154. This valuation made by the AO for a sum of Rs.413.40 crores has been taxed as benefit accrued to the appellant u/s 28(iv) of the Act. Out of these five properties, four properties were allotted by respective State Governments to AJL for its newspaper activities and property at Lucknow was self acquired property which was Headquarters/Head Office of AJL, before it was shifted to 5A, Herald House, Bahadur Shah Zafar Marg, New Delhi in the year 2010.

155. Before us, Shri Soparkar on behalf of the appellant made very elaborate submissions and in support of which he has filed voluminous documents as well as additional evidences and relied upon various case laws highlighting the different propositions to challenge the valuation of DVO/AO. All his contentions and objections have been summarized and elaborated in his written submissions also and accordingly, his submissions on various aspects of the valuation are dealt with as under :-

"GENERAL CONTENTIONS:

a. The benefit, if any, can be computed only with reference to the shares of AJL acquired by the Appellant. Since no specific method has been prescribed under section 28(iv) to value the benefit derived in the form of fair market value of

shares acquired by an assessee, the rules prescribed under the same Act, albeit under another provision (Section 56(2)), should be the basis even for determining said benefit. Under section 56(2)(vii)/(viia), Rule 11UA has been prescribed. Value per share of AJL as per Rule 11UA, prior to the transaction of conversion of loan into shares is a negative figure (Rs. -770.09) (page 870-881 of PB II). Value per share of AJL as per Rule 11UA, post the transaction of conversion of loan into shares is Rs.2.01 per share. Considering said value per share, the total value of the benefit alleged to have been received by the Appellant would amount to Rs. 18.32 crores (Page 882-894 of PB II). Hence, if at all, the value of the shares of AJL ought to be determined in accordance with Rule 11UA.

Sr. No.	*Case law*	*Reference Page Nos.*
1	*CED vs. J. Krishna Murthy (96 ITR 87)(Mys)*	*127-131 of LPB VII*
2	*CED vs. R. M. Subhadvala (192 ITR 389) (Bom)*	*132-133 of LPB VII*
3	*Jehangir Mahomedli Chagla vs. ACED (155 ITR 637)(Bom)*	*134-139 of LPB VII*
4	*Madhusudan Dwarkadas Vora vs. Superintendent of Stamps (141 ITR 802)(Bom)*	*140-142 of LB VII*
5	*CED vs. G. K. Swaroop (275 ITR 137)(Guj)*	*143-145 of LPB VII*

b. Without prejudice to the above, even if the approach adopted by DVO/AO is to be considered, since what has been acquired by the assessee are the shares of AJL, effect has not been given for obvious adjustments for valuation of shares such as:

i. Deduction for tax outgo which results in approx. 30% reduction in the value;

ii. Deduction of liabilities of the company as on the valuation date. Such as the loan of Rs. 90.21 crores, should have been considered to arrive at the value of the shares acquired by the Appellant.

iii. Discount for illiquidity since shares are unlisted,

iv. Deduction for cost of Rs. 50 lacs incurred for acquisition of shares, etc.

c. Also, even though the valuation reports of registered valuers submitted by the Appellant as additional evidence were not admitted by the CIT(A), the arguments bringing out the inconsistencies in the valuations done by DVO/AO cannot be ignored. However, neither the CIT(A) nor the AO has in its remand report considered any of the arguments of the Appellant in relation to valuation of the properties, which were provided in detail in the written submissions.

Sr.No.	*Case Law*	*Page Nos.*
1	*Jagannathan Sailaja Chitta v. ITO [2019] 104 taxmann.com 131 (Madras) : It is only after hearing objections of assessee, that Fair Market Value of capital asset as per 'Guidance Value' can be determined by authorities*	*36-46 of LPB IX*

d. Also, all the DVO reports were issued directly without first sharing the draft with the assessee, which is in violation of the principles of section 142A which requires

opportunity to be provided to the assessing before issuing the report.

6.7 Without prejudice to above, it is submitted that there are several errors in the valuation as of the properties as done by the AO/DVO. The property wise contention of the Appellant are as under:

6.8 ERRORS IN VALUATION OF THE DELHI PROPERTY:

6.9 The Delhi Property has been valued by the DVO. The DVO report is at pages 400-411 of the PB-I.

6.10 As would be observed, at Page 406 of PB-I,

- *DVO has used comparable sale instance method to determine the value of the land;*
- *He has considered a sale instance of a residential plot at Tolstoy Marg as on 10.3.2008 and made various adjustments to the same to derive the value of Delhi Property.*
- *Rate of Tolstoy Property as on 10.3.2008 is considered at Rs. 312,724 per Sqm.*
- *He has then increased the value by 21% YOY to arrive at the rate as on 26.2.2011(valuation date) at Rs. 507,020.67 per sqm.*
- *Then he allowed 5% discount to the same for the reason that Tolstoy Marg is more prime than Bahadur Shah Zafar Marg and determined the rate at Rs 481,669.64/ sqm.*
- *He has further used multiplicative factor of 3 to determine the rate for a commercial property. = Rs. 481,669.64 /sqm x 3 = Rs. 14,45000 per sqm.*
- *Accordingly, the value of land was determined at Rs. 194,74,26,500. (Rs. 1445000 x1347.70 sqm)*

6.11 At page 408 of PB-I, the value of the built-up area (building) on the land was determined by considering the CPWD Plinth Area Rates Delhi 2007 at Rs. 7,09,65,900.

6.12 Accordingly, the total value of the Delhi Property has accordingly been determined at Rs. 2,01,83,92,400 (194,74,26,500 + 7,09,65,900). – Page 406 of PB I.

6.13 It is submitted that the each of the steps adopted by the DVO and the method of valuation itself is completely erroneous. In this regard, attention is drawn to the observations of the GAA Valuer, Registered Valuers, which is at Page 1377-1378 of PB IV (GAA Report – pages 1371-1401 of PB IV). The said report was also submitted to the CIT(A) and the same was also sent to the AO for his remand report. However, neither the CIT(A) nor the AO has commented on this report. Further, our arguments before AO is at Pages 361-362 of PB-I and detailed submission for CIT(A) are at pages 1304-1310 (Para 2.1-2.6) of PB-II.

6.14 Contentions:

6.15 DVO ought to have considered circle rate instead of comparable sale instance method, especially in absence of a proper comparable instance:

6.15.1 For the period of valuation (valuation date being 26.2.2011), ready reckoner rates for concerned property were readily available. The rates were notified in February 2011 itself. The same is at pages 1389-1390 of PB IV. As would be observed, circle rates for Delhi were released vide Notification dated 4.2.2011 which falls in the same month as the valuation date. However, the AO has completely ignored this and computed to value of the property by following comparable sale instance method. For that too, he has considered a residential property (as against institutional property) which was sold in 2008 (that is 3 years prior to the valuation date) located at Tolstoy Marg (around 4 Kms away from the Delhi Property) and then made various artificial adjustments to it to determine the rate as at valuation date. It is submitted that when the circle rates were readily available, the DVO should have relied on those rates, instead of computing the rate based on non-comparable sale instance and then adjusting the price artificially such as an escalation

of 21% per year. When the circle rate is notified very close to valuation date, same ought to be considered. In fact, while determining the value as on 13.7.2017, the DVO has considered circle rates! However, for 26.2.2011, the DVO has ignored said rates without providing any reason in respect thereof. Not only that, while valuing all other 4 properties of AJL both as at 26.2.2011 as well as 13.7.2017, the DVOs and the AO have considered only the circle rates. Besides, even under the Income Tax Act, under various sections, fair market value of immovable property is determined based on circle rates only (such as section 50C, 56(2), etc.). However, only for this property while valuing it as at 26.2.2011, the DVO has deviated from the consistent method otherwise adopted, and selected comparable sale instance method, even though apparently no comparable sale instance was readily available near the valuation date and in respect of a property similar to this property. Even the road/area in which the comparable property considered by the DVO is situated is different from the road/area in which this property is situated. It is submitted that instead valuing the property in such arbitrary fashion, the DVO ought to have considered the circle rates which are prescribed very close to the valuation date, for the exact location and also provides for an adjustment multiple for institutional properties. Observation of GAA Valuers, registered valuers in this respect is at Page 1378 of PB IV, Para 10.

6.15.2 In this regard, reliance is placed on the decision in Appropriate Authority v. Kailash Suneja [2001] 118 Taxman 295 (SC) (Pages 93-99 of LPB IX) wherein it is held that different methods cannot be arbitrarily applied by the valuation officer.

6.15.3 It is accordingly submitted that the circle rates ought to be considered for valuing the Delhi Property. As would be observed from the ready reckoner (Page 1390 of PB IV), the highest base rate prescribed therein for poshest of locality is Rs. 86,000 per sq. m, as against this, the DVO has considered the base rate of Rs. 507,020.67 per sq. m, which is almost 6 times the rate provided in the ready reckoner.

6.15.4 The Ld. DR has, during the course of the hearing, stated that the DVO had given full opportunity to the Appellant and no such ready-reckoner was made available either before the DVO or the AO. Accordingly, this contention cannot be raised now by the Appellant.

6.15.5 In this regard, it is submitted that the ready reckoner issued by the Government Authorities is a public document and a very basic document which the DVO, being the technical expert on valuation, has to be aware of. In fact, for 2017 valuation, the DVO himself has considered the ready reckoner rates (Page 407 of PB I). However, the DVO has ignored the said rates for the valuation as on 26.2.2011 without providing any reason for the same. Hence, the contention that the said argument cannot be entertained since ready reckoner was not submitted by the Appellant holds no water.

6.15.6 The Ld. DR has justified this arbitrary treatment of the DVO, by stating that Delhi has a peculiar aspect, where people generally do not want to sell the property and only purchase them as and when an opportunity arrives. He states that the people are prepared to pay fancy price for the properties in Delhi. Based on this reasoning, the Ld. DR has attempted to justify DVO's action of adopting comparable sale method instead of ready reckoner rates. It is submitted that this explanation given by the Ld. DR, as a matter of fact, supports the case of the Appellant inasmuch as, if it is true that these properties are not sold and comparable sale instances are not available, then this would all the more be the reason to ignore alleged comparable sale instance as the correct basis of valuation and to consider the published ready reckoner rates, which were notified in the same month (February 2011) in which the valuation date falls.

6.15.7 The Ld. DR has also stated that the circle rates for this area are very hypothetical for the reasons that there are no sale circumstances. It is submitted that, again, this a loose statement without any basis. The DVO himself has

considered circle rates while valuing the property as on 2017. The DVO has not provided any reason for not considering circle rates for 2011 and certainly not made any such comment about the rates being hypothetical in nature. Further, can rates notified by the stamp duty authorities be summarily brushed aside without providing any cogent reason and proof for the same? It is surprising how the Revenue can argue that the stamp duty rates are hypothetical when various provisions of the Act requires consideration of circle rate for valuation under various sections such 50C/56/43CA, etc. If the said argument is taken to its logical conclusion, then all additions made by the Revenue under these sections in case of every assessee should fail.

6.15.8 The Ld. DR has further stated that valuation once done by a technical expert cannot be challenged subsequently, if the same has been done on reasonable basis. In this regard, it is firstly submitted that the AO himself has ignored the DVO's report in case of the valuation of Mumbai Property and determined the alleged fair market value himself. Hence, when the Department itself does not accept DVO's report to be a final document, it cannot now, at its convenience, ignore the blatant errors in the reports by stating that DVO being a technical expert, its report cannot be questioned. Secondly, it is submitted that, it is amply clear that in the present case, the DVO has considered a total non-comparable sale – which is non-comparable qua (i) the type of property (residential vs. institutional) (ii) the year of sale (2008 vs. 2011) (iii) the location of the property (Tolstoy Marg vs. Bahadur Shah Zafar Marg) and then made various adjustments to try and make it comparable by applying arbitrary factors. Hence, the valuation done by the DVO cannot be regarded as reasonable especially without providing any reason for ignoring the applicable ready reckoner rates readily available.

6.16 The property has been allotted for newspaper publication business and is therefore, there is usage restriction on the property. Further, it is an institutional property and not a commercial property and therefore, is not

readily marketable since the purchaser of the property would also be bind by the usage restrictions for all time to come. Therefore, the DVO should have applied multiplicative factor of 2 and not 3.

6.16.1 It is submitted that to the base rate determined by DVO, he has applied a multiplicative factor of 3 to determine the rate applicable to Delhi Property by stating that this is a commercial property. (Page 406 of PB-I). In this regard, it is submitted that the Delhi Property was allotted by the Land & Development Officer to AJL for specific purpose of using it in its publication activity. Clause III(7) of the Perpetual Lease Deed dated 10.1.1967 specifies the purpose for which the property can be used. (Page 1484-1485 of PB – V). The same reads as under:

> *"(7) The lessee will not without such consent as aforesaid carry on or permit to be carried on, on the said premises, any business, trade or manufacture which in the opinion of the lessor or such office as he may authorize in his behalf is noisy noxious or offensive, or permit the said premises to be used for any purpose other than the purpose specified below:*
>
> *(i) basement and the first floor of the building for the press and the offices of the lessee.*
>
> *(ii) the remaining four floors of the building for letting out to other commercial concerns as office accommodation accepting use as hotels, cinemas and restaurants. Running of a canteen in the building for the bona fide use of the building will, however, not constitute a breach of the covenant."*

6.16.2 Hence, it is clear the entire property cannot be used for general commercial purpose and has a limited market. In fact, even as per the Master Plan of Delhi – 2021, the property is situated in zone classified as public and semi-public areas (Page 1396 of PB IV). Also, in the letter dated October 4, 2011, L&DO itself has mentioned that the property as a press/media plot, which shows that it is a public utility

(Page 1385 of PB IV. Better readable copy is at page 1402 of PB IV). It is accordingly submitted that the multiplicative factor of 3 applied by the DVO by considering the property as a commercial property is incorrect. The observation of GAA Valuers, registered valuers in this respect is at Page 1377 of PB IV (Paras 1, 2 and 7).

6.16.3 In this regard, attention is again invited to the ready reckoner at page 1390 of PB IV. As would be observed therefrom, the multiplicative rate prescribed for properties like this is 2 and not 3.

6.16.4 Further, reference is also drawn to the decision of the Supreme Court in S. N. Wadiyar v. CWT [2015] 62 taxmann.com 289 (SC)(Pages 56-67 of LPB IX), wherein it is held that where there are restrictive clauses in the property which has depressing effect on the value of the asset, impact should be given to such clauses while valuing the property, since a reasonable buyer would pay for the property after considering the impact of such clauses.

6.16.5 Similar view has also been taken in the following decisions:

- *Ajit J. Mehta v. JCIT [2006] 101 ITD 11 (PUNE) (Pages 68-71 of LPB IX)*
- *AIMS Oxygen (P.) Ltd. v. CWT [2012] 23 taxmann.com 185 (Guj.) (FB) (Pages 72-78 of LPB IX)*
- *CIT v. G. S. Krishnavati Vahuji Maharajkalyanraiji Temple [2003] 131 Taxman 339 (Gujarat) (Pages 79-81 of LPB IX)*
- *Gouri Prasad Goenka & Family (HUF) v. CWT [1993] 203 ITR 700 (Cal) (Pages 82-86 of LPB IX)*
- *CWT v. Smt. Ballabh Kumari [1986] 24 TAXMAN 396 (RAJ)(Pages 87-88 of LPB IX)*
- *CWT v. K. S. Ranganatha Mudaliar [1985] 21 Taxman 360 (Mad.) Pages 89-92 of LPB IX).*

6.16.6 Accordingly, it is submitted that the multiplicative factor of 2 ought to be considered.

6.16.7 During the course of the hearing, the Ld. DR has submitted that the land is given 'for the purpose of construction of building for commercial purposes' as per the recital of 122 the deed and that the restrictions in the deed are only to the extent that the building shall not be used for running of a cinema or restaurant or any other activity which may be noisy, noxious or offensive. (Page 1485 of PB-V). He has accordingly argued that this is not really any effective restriction on the commercial use of the building.

6.16.8 In this regard, it is submitted that it is true that the property is allowed to be partly leased out by AJL. However, the catch word is 'partly'. That itself shows that AJL cannot use the entire property in any manner as it likes and that a portion of the property has to be used for the stated purpose, namely the publication business. Further, there are clear restrictions on free transfer of the property by AJL. If these are not in the nature of restrictive clauses, then the entire order of L&DO cancelling the lease ought to fail immediately and the matter pending before the Supreme Court should be rendered in the favour of AJL. The Ld. DR has stated that these restrictive clauses are just enabling clauses and that it can always be changed in future which is a normal routine. It is submitted that this is complete misrepresentation of facts. Besides, even assuming that the permission is allowed in future to do away with the restrictive clauses, it would be subject to payment of some hefty fee, which in fact supports the contention that a discount ought to be provided for such clauses. It is reiterated that such restrictions affect the marketability of the property and reduces the market participants to a limited group of people as any purchaser of property would acquire the land with the attended conditions of using the property partly for publication business. Accordingly, the Appellant prays that a proper discount ought to be provided for such restrictions.

6.16.9 Besides the Ld. DR has not contested that this property was an institutional allotment to AJL and accordingly, in any case, the multiplicative factor of only 2 should apply to this property.

6.17 No impact has been given for the transfer restriction on the property and the condition that 50% of the unearned increase is payable to L&DO on the transfer:

6.17.1 Attention is invited to Clause (III)(13) of the Perpetual Lease Deed dated 10.1.1967 (Page 1487 of PB V), which provides that prior approval is required before transfer, and L&DO shall be entitled to claim 50% of the unearned increase (profit on sale). The said clause reads as under:

"The Lessee shall not be entitled to sub-divide the demised premises or transfer by sale, mortgage, gift or otherwise the said premises or building erected thereon or any part thereof without obtaining the prior approval in writing of the Lessor or such officer or body as the Lessor may authorise in this behalf and all transferees shall be bound by all the covenants and conditions herein contained and be answerable in all respects thereof.

Provided also that the Lessor shall be entitled to claim and recover 50% (fifty) per cent) of the unearned increase i.e. the difference between the market value of the demised premise at the time of assignment or transfer thereof made for the first time after grant of the lease and the premium already paid or the difference between the market value of the said premises at the time of the immediately preceding assignment or transfer of the said Premises. The decision of the Lessor in respect of the amount payable to the Lessee shall be final and binding on the Lessee and his transferees or assigns. The Lessor shall have the pre-emptive right to purchase the said premises after deducting 50% (fifty) percent) of the unearned increase payable to the Lessor as aforesaid."

6.17.2 As would be observed, under the lease deed, AJL cannot transfer the land without prior permission of the government and even in that case, 50% of the unearned increase would belong to the government. In this regard, the Appellant draws kind attention to the decision of the Supreme Court in CIT vs. P. N. Sikand (107 ITR 922)(SC) (Pages 47-55

of LPB IX), wherein while considering the similar clause in a leasehold property, the Supreme Court held that where there is restrictive covenant on the property, which requires that a % of the unearned increase in the value of the land is to be paid to the lessor, in such a case, the fair market value of the land would have to be reduced by the said % of unearned increase in value of land on basis of hypothetical sale on valuation date. In that case, the assessee had acquired leasehold rights in certain land from the original lessee. Clause 13 of the lease deed provided that the assessee would not be entitled to assign the leasehold interest in the land without obtaining the prior approval in writing of the lessor and 50 per cent of the unearned increase in the value of the land at the time of the assignment would be claimable by the lessor, and moreover, if the lessor so desired, he would have pre-emptive right to purchase the property after deducting 50 per cent of the unearned increase in the value of the land. At the time of its wealth tax assessment, the assessee claimed that the 50 per cent of the unearned increase in the value of the land which was payable to lessor was deductible out of valuation of property. On appeal, the High Court held that the liability to pay 50 per cent of the unearned increase in the value of the land to the lessor at the time of the assignment was a dis-advantage attached to the leasehold interest in the land and, hence, its value was liable to be deducted from the value of the property in arriving at the net wealth of the assessee. On the revenue's appeal to the Supreme Court, it held the issue in favour of the assessee. The relevant extract of the same is as under:

> *"Clause 13 of the lease deed also provided that whenever an assignment of the leasehold interest was made by the lessee, the assignee would be bound by all the covenants contained in the lease deed and these would indisputably include the covenant in clause(13). Clause (13) would equally bind the assignee and if the assignee in his turn wants to assign his leasehold interest in the land, he would have to obtain the prior approval in writing of the lessor to such assignment and the lessor would be entitled to claim 50 per cent of the unearned increase in the value*

of the land. The covenant in clause (13) was, therefore, clearly a covenant running with the land and it would bind whatsoever was the holder of the leasehold interest for the time being. It was a constituent part of the rights and liabilities and advantages and disadvantages which went to make up the leasehold interest and it was an incident which was in the nature of burden on the leasehold interest. Plainly and indisputably it had the effect of depressing the value which the leasehold interest would fetch if it were free from this burden or disadvantage. Therefore, when the leasehold interest in the land had to be valued, this burden or disadvantage attaching to the leasehold interest must be duly discounted in estimating the price which the leasehold interest would fetch. To value the leasehold interest on the basis that this burden or disadvantage were to be ignored would be to value an asset different in content and quality from that actually owned by the assessee.

The burden or limitation attaching to the leasehold interest in the instant case must, therefore, be taken into account in arriving at the value of the leasehold interest and it could not be valued ignoring the burden or limitation.

6.17.3 Accordingly, it is submitted that whatever value is ultimately arrived for this property, the same ought to be reduced by 50% for the aforesaid conditions in the lease deed. Observation of the GAA Valuers, registered valuers in this respect is at Page 1377 of PB IV (Para 3).

6.17.4 With regards to this contention, the Ld. DR has argued that the said condition under clause III(13) of the lease deed (Page 1487 of PB V) is applicable only at the time of transfer of land whereas in the present case, the valuation is being done for the purpose of determining the value of benefit to the Appellant and not the value at the time of transfer. He has accordingly, argued that the said adjustment is not required. The Ld. DR has stated that while determining the value of a benefit of a property on a given date, considerations of a hypothetical transfers etc. cannot be taken into consideration.

These would amount to notional adjustments, without the stipulated eventuality being in sight.

6.17.5 In this regard, firstly, kind attention is drawn to Para 12 at page 47 of the assessment order, wherein the AO has stated that Appellant has derived benefit u/s. 28(iv) embodied in the assets held by AJL and 'the value of this benefit can be best represented by Fair Market Value (FMV) of business properties, exploitation whereof is yielding the benefit of these business assets on the date of taking over of the AJL by the assessee'. He has also referred to the definition of the term 'fair market value' u/s. 2(22B) of the Act wherein the said term is defined to mean 'the price that the capital asset would ordinarily fetch on sale in the open marke ton the relevant date'. Accordingly, at para 12.4 of the order, it is stated that a reference was made to the DVO u/s. 142A requesting to estimate the 'fair market value' of the properties of AJL.

6.17.6 From the above, it is clear that the case of the Revenue is that the 'fair market value' of the properties of AJL is the benefit to the Appellant. It is on the said premise that the entire addition has been made by the AO. It is not a case that a value of any benefit from the property (such as the rent amount) has been sought to be added as benefit accrued to the Appellant. Rather, the fair market value of the properties itself has been deemed as the benefit accrued to the Appellant. If that is the case, it is submitted that all the settled valuation principles applicable while valuing the 'fair market value' of a property needs to be complied with even in the present case. Indeed, the definition of 'fair market value' itself refers to price which a property would fetch 'on sale'. Hence, the Ld. DR is completely wrong in contending that the foregoing clause 13 is not relevant since it applies only at the time of transfer. The presumption while valuing the property is in fact the that it is the price it would fetch on sale. Accordingly, any payment which needs to be mandatorily made for effecting the sale has to be allowed as deduction while computing the fair market value.

6.17.7 Indeed, if the argument of the Ld. DR that all

hypothetical situations like possible transfers, etc. is to be disregarded while valuing the properties is accepted, then the entire addition itself ought to fail since the addition itself is based on a hypothetical assumption that by acquiring shares a benefit in the form of fair market value of the underlying assets could arise to any assessee even though there is no demonstration whatsoever as to what benefit has really accrued. As stated by DR himself, the properties have not been sold. Then why is the fair market value of these properties being taxed today? However, as they are being taxed, it needs to be taken to its logical conclusion. The department cannot blow hot and cold at the same time.

6.17.8 It is accordingly submitted that following the settled position as laid down by the Supreme Court in P.N. Sikand's case, deduction ought to be allowed for the 50% unearned increase required to be paid to the L&DO in case of transfer of the property. Indeed, the contention of the Ld. DR is complete contrary to the said decision of the Supreme Court. Even in this case, the Supreme Court was dealing with the case of measuring the value of a leasehold land, which too has a similar clause as in the Delhi Property regarding payment of 50% of unearned increase. This too was not a case of transfer of land by the assessee or a case of computing capital gain, but a case of valuation for the purpose of wealth tax wherein valuation has to be done on year on year basis and not only on transfer. The Supreme Court considering the said clause categorically held that "in determining the value of the leasehold interest of the assessee in the land for the purpose of assessment to wealth-tax, the price which the leasehold interest would fetch in the open market were it not encumbered of affected by the burden or restriction contained in clause (13) of the lease deed, would have to be reduced by 50 per cent of the unearned increase in the value of the land on the basis of the hypothetical sale on the valuation date."

6.17.9 Hence, the said decision is fully applicable even to the present case and accordingly it is submitted that a discount of 50% ought to be provided in view of clause (III)(13) of the Lease Deed.

6.18 Alternatively, since the land allotment instances are available for such institutional lands, the same should have been considered for comparable instance instead of sake of residential plot.

6.18.1 The observation of GAA Valuers, registered valuers in this respect is at Page 1378 of PB IV, Paras 8 and 9. As would be observed, the instances of similar allotment of lands by the government is available in the public domain. Please see Pages 1387-1388 of PB IV and better readable copy at page 1403 of PB IV for the said rates. Accordingly, it is submitted that even if comparable instance method were to be adopted, the DVO ought to have considered these rates as against the instance of sale of residential plot in Tolstoy Marg. The Ld. DR. has not even objected to the said contention of the Appellant during the course of the hearing.

6.19 Alternatively, DVO has incorrectly chosen 'comparable sale instance' method as most appropriate method on the ground that the property was self-occupied, even though the DVO himself has noted that the property was occupied by tenants. If not circle rate, then rent capitalisation method ought to have been considered by the DVO.

6.19.1 It is submitted that the DVO has in its report observed that the property was rented out by AJL to Tata Consultancy Services (P) Limited. Please see Page 1384 of PB IV or Pg. 403 of PB-I, Point 6.4. It is submitted that when it is established that the property is rented, the property ought to be valued by applying rent capitalisation method. In this regard, reliance is placed on the following decisions:

- *CGT v. Hans Raj [2001] 119 TAXMAN 129 (DEL)(Pages 23 of LPB IX);*
- *Smt. Savita Mohan Nagpal v. CWT [1986] 26 TAXMAN 640 (RAJ.)(Pages 24-28 of LPB IX);*
- *CWT v. Seth Gokuldas Pradeep Kumar [1994] 77 TAXMAN 415 (RAJ.)(Pages 29-31 of LPB IX)*
- *Dr. Miss V. Banka v. WTO [1995] 52 ITD 623 (DELHI)(Pages 32-35 of LPB IX)*

6.19.2 Further, observation of GAA Valuers, registered valuers in this regard is at Page 1378 of PB IV, para 12 and 13.

6.19.3 It is accordingly submitted that the DVO is completely wrong in applying comparable sale instance method.

6.20 Sale of property at Tolstoy Marg, New Delhi cannot be considered as comparable for a property situated at Bahadurshah Zafar Marg.

6.20.1 It is submitted that sale of property at Tolstoy Marg, New Delhi cannot be considered as comparable for a property situated at Bahadurshah Zafar Marg. The sale instance considered is that of the year 2008, which is 3 years prior to the date of valuation, which is a huge gap. The sale instance considered by DVO is that of residential plot whereas AJL's property is an institutional property. Further, the DVO ought to have considered a sale of commercial property/I nstitutional property, if at all, if comparable sale instance method is to be used. The method adopted by DVO is clearly against the principles of valuation. The observations of GAA Valuers, registered valuer in this regard is at Page 1377 of PB IV, para 5.

6.20.2 As regards adjustment for the difference in the location, the Ld. DR has stated that there is no major difference in Tolstoy Marg and Bahadur Shah Zafar Marg and that they are comparable as both are commercial lanes and that they are not very far off.

6.20.3 Firstly, as has been submitted in detail earlier, the Herald House is not a commercial property as generally understood, and it falls in the category of institutional property and it is an institutional land allotted by the government for specified purpose.

6.20.4 Further, if this submission of the Ld. DR is accepted, then it would become permissible for any person to compare the rates of any two commercial properties regardless of

where they are situated. We have already seen in the case of Mumbai Property that the rates of property can differ even when they are across each other, as in the case of rate of Zone 29/166 viz-a-viz rate of Zone 29/167 at two sides of western express highway. For instance, the rate of open rate of Zone 29/166 in the year 2011 is 46300 per sqm whereas that of Zone 29/167 is 71200 per sqm which is 1.5 times of the former.

6.20.5 Besides, it is well known that Tolstoy Marg is fully commercialized lane, whereas on Bahadurshah Zafar Marg there are only institutional properties such as Bureau of Indian Standards, Office of Comptroller and Auditor General of India, office of University Grants Commission (India), etc. Also, the Bahadurshah Zafar Marg falls under zone 'Public and Semi-public areas' as per the Master plan of Delhi (page 1396 of PB IV). Attention is also invited to the observations of the Registered Valuers at page 1377 of PB IV, wherein it is stated that the plots located on Bahadurshah Zafar Marg, New Delhi are 'institutional' in nature and not 'commercial'. Hence, without prejudice to the contention that the comparable sale instance method adopted by the DVO ought to be discarded, it is submitted that a proper discount ought to be provided for the difference in the location where the two properties are situated.

6.21 DVO has considered YOY inflation rate at 21% p.a. which is unreasonable:

6.21.1 It is submitted that the DVO has after considering purported comparable sale instance of 2008, increased the said rate on year on year basis by applying rate of 21% p.a. to arrive at the rate as on the valuation date 26.2.2011 without provided any basis whatsoever for the same. It is submitted that the rate of 21% p.a. considered by the DVO is too high. The observations of GAA Valuers, registered valuer in this regard is at Page 1377 of PB IV, para 6. Accordingly, the said artificial adjustment by the DVO ought to be struck down. During the hearing, the Ld. DR has not even commented on this contention of the Appellant.

6.22 Impact of penalty along with interest of Rs. 3.54 crores paid by AJL on 21.7.2011 on account of damages and misuse charge on the property to the L&DO has not been considered

6.22.1 It is submitted that AJL had a liability to pay Rs. 3.54 crores to L&DO as penalty on account of damages and misuse charges. The letter of the L&DO acknowledging actual payment of said penalty is attached at Page 1385 of PB IV; Better readable copy is page 1402 of PB IV. The observations of GAA Valuers, registered valuer in this regard is at Page 1378 of PB IV, para 14. It is accordingly submitted that the final value of the property ought to be adjusted for this liability. During the hearing, the Ld. DR has not even commented on this contention of the Appellant.

6.23 Lastly as per Annexure A1 to the DVO report, the built-up area of the ground floor has been considered as 1779.08 sqm which is more than the plot area itself, which is 1347.76 sqm.

6.23.1 In this regard, attention is invited to relevant portion of DVO report at Page 408 of PB-I, wherein it would be observed that the built-up area of the ground floor has been considered as 1779.08 sqm whereas the area of plot itself is 1347.76 sqm. It is submitted that the area of a floor can never be more than the area of the land itself. It is accordingly, submitted that this apparent mistake ought to be corrected while valuing the property. The observations of GAA Valuers, registered valuer in this regard is at Page 1378 of PB IV, para 11.

6.23.2 In this regard, the Ld. DR has referred to page 58 of the assessment order (second bullet point from the top) where it is stated that as per a letter dated 13.7.2017 the property had Mezzanine area and accordingly, that area has been added to Ground floor area for the purpose of valuation. In this regard, it is submitted that firstly, the property in question has no Mezzanine Floor and the basis on which the letter of AO dated 13.7.2017 refers to the same is not clear. The said letter was not shared with the Appellant. Besides,

the Appellant submits that the AO has called for the comments of the DVO on the objections raised by the Appellant at the time of assessment. However, these comments were never put to the Appellant and accordingly, the Appellant has not had any chance to reply to these comments. Accordingly, it is submitted that the Ld. DR cannot rely on these comments without considering the actual facts on record.

6.24 In view of the foregoing, it is submitted that the valuation of the Delhi Property is fraught with a number of errors. In fact, the method itself has been wrongly adopted inasmuch as the comparable sale instance method has been arbitrarily applied by the DVO by considering the sale of 2008 of uncomparable property, even though the ready reckoner rates were readily available for the same month as the valuation date. Further, when ready reckoner rates have been considered valuing all other properties of AJL, the DVO had no reason to deviate from the said method only for this property, especially when he himself has considered ready reckoner rates while valuing this property as on 13.7.2017.

6.25 Accordingly, said report of the DVO ought to be ignored and held to be invalid. Indeed, it is submitted that all the foregoing objections formed part of the observation report of the registered valuer submitted to the AO. However, from the remand report submitted by the AO, it is observed that the AO has not made any adverse comment on said objections whatsoever, which clearly shows that even he agrees with said errors in the DVO's report.

6.26 ERRORS IN VALUATION OF THE MUMBAI PROPERTY

6.27 The Mumbai Property has been valued by the AO. In this regard, please see page 55 of the assessment order.
6.28 The said property was first valued by the DVO at Rs.29.47 crores considering the ready reckoner rates. The DVO original valuation report is at pages 432-446 of PB-I.

6.29 Thereafter, on re-request by the AO, the DVO again valued the property considering comparable sale instance

method, however, the value arrived at was close to the first valuation at Rs. 30 crores. The revised valuation report by the DVO is at pages 447-467 of PB-I.

6.30 The AO ignored both the valuation reports of the DVO, and issued notice dated 13.11.2017 to the Appellant revising the value of the property from Rs. 29.47 crores to Rs. 79.10 crores, which is at pages 357-358 of the PB-I.

6.31 However, ultimately, without even issuing any notice, directly in the assessment order, the AO increased the value of the property to Rs. 132.94 crores. In the final valuation, the AO has considered the circle rate of 'land plus built-up area for shops' for zone 29/167 at Rs. 1,91,000 per sqm and applied that to the area of land (3478.40 sqm) plus TDR. The final value of Rs. 132.94 crores determined by the AO is at page 55 of the assessment order.

6.32 In this regard, it is submitted that valuation done by the AO is firstly in violation of principles of natural justice and secondly, completely erroneous. In this regard, attention is drawn to the observations of the Kishore Karamsey & Co., Registered Valuer at Pages 798-803 of the PB-II. The said report was also submitted to the CIT(A) and the same was also sent to the AO for his remand report. However, neither the CIT(A) nor the AO has commented on this report. Further, our arguments before AO is at Pages 364 of PB-I and detailed submission for CIT(A) are at pages 1332-1337 (Para 1.24-1.39) of PB-II.

6.33 Contentions:

6.34 The valuation of Rs. 132.94 crores in violation of principles of natural justice in absence of any show cause notice and is therefore, void.

6.34.1 It is submitted that the Appellant was not provided any notice as to why the Mumbai property of AJL should be valued at Rs. 132.94 crores. The said valuation has been done directly in the assessment order. It is submitted that the

said action of the AO is in gross violation of natural justice and accordingly, ought to be struck down as illegal.

6.34.2 The Ld. DR has stated that the Appellant was given proper opportunity for valuation of this property. For this purpose, he has drawn attention to Para 13 of the assessment order which is reproduction of the final show cause notice dated 8.12.2017 issued by the AO. The same is at page 366 of PB I. The Ld. DR has referred to the end of Para A at page 367 wherein it is stated as under:

> *"The value of the benefit has been determined considering Fair Market Value (FMV) of business assets of AJL in possession and control of the assessee. The FMV of the business assets has been determined at Rs. 310.55 crore by the valuer which is re-computed at Rs. 359.56 crores considering circle rate as prevalent in the area at Mumbai where the property is located."*

6.34.3 Referring to the said Para, the Ld. DR has argued that an opportunity was provided to the Appellant to give its submissions for the value re-computed by the AO. In this regard, the Appellant submits that the re-computed value mentioned in the said notice is Rs. 359.56 crores whereas the value ultimately computed by the AO in the assessment order is Rs. 413.40 crores! (Page 50 of the assessment order). It is submitted that the said difference is due to the change in the value of the Mumbai Property which has been re-computed to Rs. 132.94 crores directly in the assessment order. The AO had issued one notice dated 13.11.2017 for valuing the property at Rs.72 crores. However, the almost two fold increase from Rs. 72 crores to Rs. 132 crores has been done by the AO directly in the assessment order without providing any opportunity whatsoever in this respect. Accordingly, it is submitted that reference of the Ld. DR is completely irrelevant and the contention that opportunity was provided is also completely wrong.

6.34.4 The Appellant again relies on the settled law that any order passed without an opportunity of hearing makes the

order void ab initio and accordingly, the valuation done by the AO ought to be ignored/ deleted.

6.35 Without prejudice to above, where AO had referred the valuation to DVO, he is bound by said report of the DVO and he cannot ignore the same and proceed with his own valuation.
6.35.1 In this regard, the Appellant places reliance of decision in CWT v. Dr. H. Rahman (189 ITR 307)(All)(Pages 100-101 of LPB IX), where in the context of Wealth Tax Act, it is held that the report of the valuation officer is binding on the AO. Where the AO makes 132 reference to the valuation officer to value immovable properties under section 55A of the Act, said section provides that the provisions of section 16A of the Act would apply even under the Act. Accordingly, it is submitted that the same powers would apply even under the Act.

6.35.2 Without prejudice to the above, despite DVO valuing the property twice, the AO has disregarded the same and himself done the valuation. Hence, CIT(A) should have issued a notice of hearing to the DVO in this matter before deciding the matter. Powers to make reference to the DVO under the Act is derived from the Wealth-tax Act. Section 23(3A)(a) of the Wealth-tax Act specifically requires that where valuation done by the DVO is in dispute, an opportunity of hearing ought to be given to the DVO by the CIT(A).

6.36 Without prejudice to above contentions,
6.37 The circle rate applied by the AO is completely wrong. Property in Mumbai is an open land, however, rate applicable for land 'plus building built up' has been applied by the AO.
6.37.1 It is submitted that the AO has incorrectly applied the rate of a land + built up area assuming that this is a constructed property, even though it is undisputed that Mumbai property was an unconstructed open piece of land in 2011. In this regard, attention is invited to the DVO's report, which are page 442 of PB I, 1 st para, last few lines, the DVO has clearly noted that the construction on the property had started only in 2013.

6.37.2 Yet, the AO has ignored these facts and applied the

highest rate mentioned in the ready reckoner to value the property. In this regard, attention is invited to the ready reckoner rate for 2011 which is at page 803 of PB II. As would be observed therefrom, the rate specified for zone 29/167 is as under:

Village No./Z One No.	*Descri-ption*	*Rate of Open land per sq.mtr.*	*Rate of Land + Building in Rs. per Sq.Mtr. Built up*			
28	*Mumbai Suburb, Taluka Andheri, Village Bandra-I*		*Residen-tial Building*	*Office/ Comm-ercial above floor*	*Office/ Comm-ercial*	*Indus-trial Area*
29/167	*Land : On North Santacruz – Chembur Link Road on East and South Village boundary/ creek on West Express Highway*	*71200*	*118800*	*150200*	*191100*	*132500*

6.37.3 The AO has while valuing the land, considered the rate of Rs. 191100 per sq. mtr which is the rate provided for zone 29/167 for rate of land + built up in case of office/commercial built up on ground floor.

6.37.4 However, as stated above, there was no built-up construction of land in 2011. As noted by the DVO itself, the construction on the property was sanctioned itself in 2013

and accordingly, it is for this reason, the DVO considered the rate of 71200 in the above table (which is applicable for open land) while valuing the property. The valuation done by the DVO is at page 444 of the PB I. Further, the observations of Kishore Karamsey & Co., registered valuers in this regard is at page 800 of PB II, 1st para.

6.37.5 It is accordingly submitted that the AO has applied a wrong rate while valuing the property and accordingly, it should be ignored.

6.37.6 The Ld. DR has objected to the foregoing contention by stating that the rates notified by the authorities of Maharashtra, refer to only land with different kinds of usages. This is not a rate of building, but of land only. He has accordingly submitted that the AO was right in ignoring the rate of open land adopted by the DVO.

6.37.7 In this regard, it is submitted that the Ld. DR has grossly misread the circle rates as notified by the Maharashtra Government. In this regard, attention is again invited to the circle rates for the 2011 as notified by the Maharashtra Government at page 803 of PB-II as also circle rates for 2016 and 2013 which are at pages 1544 and 1545 of PB V. As would be observed therefrom, the header of the table is as under :-

.....

6.37.8 As is clear from the foregoing table, it is crystal clear that the last four columns of the table apply only for determining "Rate of land + building in Rs. per Sq. Mtr. Built-up" and not just the rate of land.

6.37.9 The Ld. DR has placed on record the Marathi version of the rates at pages 56-82 of the Synopsis filed by it on Grounds 7, 8 and 9. Even in the Marathi version filed by the Ld.
*DR (page 81-82 of the synopsis for the rates in 2011), it is clear that the last four columns applies to '**इमारत**' and '**मजला**' etc. which means building and floors. Clearly, building and*

floors can come into existence only in case of a constructed property and not for only a land. Hence, clearly, the said columns provide the rate for open land plus constructed area as against just the rate of land.

6.37.10 Indeed, on comparison of the rates mentioned in the English version viz-a-viz the Marathi Version, it would be observed that the same are identical. For instance, at page 1545 of PB V, the rate for Land + Building for Shop/Commercial on Ground Floor for Zone 29/166 is Rs.1,70,200 per sq. mtr. which is the exactly same rate mentioned at Page 73 of the Synopsis filed by the Revenue for ***तळ मजल्या वरील दुकाने/व् यावसाययक*** *. This undoubtedly means that the heading has to be read in the manner as has been explained in the English version. Accordingly, it is submitted that only the rate for open land can be used to valuing the Mumbai Property.*

6.37.11 It is exactly for this settled reason that the Mumbai DVO has considered the rate of open land as against that of a 'shop/commercial on ground floor' in the report issued by it (Page 444 of PB I). Further, even as per the report issued by Kishore Karamsey & Co. (Govt. Registered Valuers), only the rate of open land can be considered for valuing a land which admittedly has no constructed property on it on the date of valuation (Page 800 of PB II). The exact observation of the registered valuer is as under:

> *"It is highly surprising that though the valuation is of open land, the rates adopted in the valuation are that of SHOPS/COMMERCIAL ON GROUND FLOOR, which is highly erroneous, illogical and therefore non-acceptable."*

6.37.12 Attention is also invited to the order dated 30th May 2017 of the Municipal Corporation of Greater Mumbai (page 1542-1543 of PB V), where too, after admitting about wrong classification of the land in incorrect zone, the rate of this land has been reworked by the Authority itself by considering the rates of open land and not that of shop at ground floor. As would be observed in the order, the rate for 2013 has been

stated to be Rs. 61200 which is the 'rate of open land' as per 2013 ready reckoner (attached at page 1545 of PB V) and the rate for 2016 has been stated by the authority to be Rs. 85200 which is the 'rate of open land' as per 2016 ready reckoner (attached at page 1544 of PB V).This itself destroys the argument of learned DR that the rate of shop at ground floor should be adopted.

6.37.13 Also, if the Ld. DR is right that all the columns of the ready reckoner table are applicable only to land based on its usage, then what would be the relevance of the first column which refers only to open land. Certainly, every land would be either residential or commercial or industrial in nature. If the interpretation of Ld. DR is adopted, it would render the first column of the ready reckoner table otiose.

6.37.14 Hence, the Appellant humbly submits that the AO/DR have chosen to read the rates notified by the Maharashtra government, in a complete misguided and imprudent manner which is apparent from the language of the notification itself.

6.37.15 Accordingly, it is submitted that only the rates specified for open land can be considered for valuing the Mumbai Property of AJL being an open piece of land as on 2011.

6.37.16 However, if at all, there is still any confusion about the applicable rate for an open land, the Appellant humbly requests the Hon'ble Tribunal to call for a clarification from the Municipal Authorities in this respect.

6.38 Rate of wrong zone has been considered. The transactions cited are on the other side of the Highway. Rates taken are of premises in BKC which is a premium commercial space. He should have considered entry 29/166 instead he has considered entry 29/167. The ready reckoner wrongly clubbed the property in Zone 29/167.

6.38.1 It is submitted that in the ready reckoner rates of Mumbai for 2011, the property in question has been wrongly

clubbed in Zone 29/167 when actually it falls under Zone 29/166.

6.38.2 The said mistake was pointed out by AJL vide Letter dated February 15, 2017 to Deputy Director Town Planning, Mumbai asking for correction of the ready reckoner. The said letter is at page 806 of PB II. Thereafter, the Municipal Corporation of Greater Mumbai has passed an Order dated 30th May 2017 acknowledging that there was wrong classification of zone for the Mumbai property. It stated that the correct zone of the said property is 29/166 and accordingly passed an order refunding the excess premium of Rs. 6.39 crores paid by AJL due to such wrong classification. The said order is at Pages 1542-1543 of PB V. The relevant extract of the order reads as under:

> *"The Dy. Director of Town Planning [Valuation] has considered the issue and has issued clarification to Architect that the plot bearing CTS No. 608/A of village Bandra falls in zone 29/166 vide their letter dated 27.02.2017. Further, this office has sought the letter issued by M.S.D. Andheri I to the Architect vide at Pd. (C-7).*
>
> *As the said CTS No. 608/A is now included in zone 29/166, the land rate for the year 2013 comes to Rs.61200/- for year 2016 comes of Rs.85200/- instead of Rs. 115700/- and for the year 2016 of Rs. 143000/- which resulted in excess payment during issue of IOD plan on 20.04.2013 and amended plan certificate on 03.11.2016."*

6.38.3 As is clear, the wrong clubbing of the land in zone 29/167 stands now corrected by the Municipal Corporation of Greater Mumbai. In fact, if one compares the rates of 2016 and 2013 mentioned in the aforequoted para with the ready reckoners of those years (which are at pages 1544 and 1545 of PB V), it would be observed that even though in these reckoners too, the land in question has been clubbed in zone 29/167, the Municipal Corporation has categorically stated that the rate applicable to the land in question would be that

of zone 29/166. Further, even here, the rate considered by the Municipal corporation itself is that of an open land and not that of commercial built up as done by the AO.

6.38.4 Further, the observations of Kishore Karamsey & Co., registered valuers in this regard is at page 798 of PB II, 1st bullet.

6.38.5 It is accordingly, mentioned that for valuing this property the rate of open land for zone 29/166 as applicable for 2011 should be considered. As per the ready reckoner of 2011 at page 803 of PB II, the said rate is Rs. 46300 per sqm.

6.38.6 The Ld. DR has objected to this contention and made the following two points, namely:

(i) As on 2011, the Mumbai property was falling in zone 29/167 as per the ready reckoner and the zone was changed only subsequently.

(ii) In any case, the different zones would not affect the value of the property since the two zones are at two sides of the same western express highway and therefore, there cannot be much difference in the value of the two zones.

6.38.7 In this regard, the Appellant humbly submits as under:

6.38.8 The Appellant has already placed on record the documents which undisputedly showthat the land in question was wrongly clubbed in the ready reckoner in zone 29/167 as against 29/166 in all these years. It is for this reason that the Municipal Corporation of Greater Mumbai vide order dated 30 th May 2017 (page 1542-1543 of PB V) in fact refunded a sum of Rs. 6.39 crores to AJL which was paid in excess by AJL due to 'wrong classification' of land. This is not a case of 'change' in classification as the Ld. DR has tried to portray but a clear case of 'wrong' classification.

6.38.9 In this regard, attention is reinvited to the Order dated 30 th May 2017 of the Municipal Corporation of Greater Mumbai wherein the Authority has acknowledged that there was wrong classification of zone for the Mumbai property. It is categorically stated in the order that the correct zone of the said property is 29/166. The said order is at Pages 1542-1543 of PB V. It is stated therein as under:

> *"The Dy. Director Town Planning [Valuation] has considered the issue and has issued clarification to Architect that the plot bearing CTS No. 608/A of village Bandra falls in zone 29/166 vide their letter dated 27.02.2017."*

6.38.10Based on this, the Municipal corporation has in fact recomputed the rates for the years 2013 and 2016 based on zone 29/166 even though plot 608 was still clubbed in zone 29/167 of the ready reckoners issued for 2013 (please see page 1545 of PB V for English version as well as page 73 of the synopsis filed by the Revenue for Marathi version) and 2016 (please see page 1544 of PB V for English version as well as page 63 of the synopsis filed by the Revenue for Marathi version). As would be observed therefrom, plot 608 is still appearing in zone 29/167 in these reckoners. Yet, the authority have themselves computed the value of this property as per zone 29/166 in the order dated 30.5.2017 attached at page 1542-1543 of PB V.

6.38.11The Ld. DR has implied that the plot CTS no. 608/1A has been subsequently specifically included in zone 29/166 since 2017 (Page 58 of Revenue's Synopsis) and therefore, this classification was not there in earlier years. However, it may please also be noted that not just CTS No. 608/1A but also CTS No. 608 has been shown in zone 29/166 in the ready reckoner of 2017 (Page 58 of Revenue's synopsis) whereas in the earlier ready reckoners for 2011-2016, the same was include in zone 29/167 (Pages 63, 66, 70, 73, 78 and 82 of Revenue's synopsis), which was a wrong classification. In 2017, the Municipal Corporation of Greater Mumbai vide order dated 30th May 2017 (page 1542-1543 of PB V) admitted that this was a wrong classification and since

in 2017 this mistake had already come to light subsequent ready reckoners have correctly shown the classification of the plots. Clearly, there was no reason to continue with the wrong classification once the mistake was discovered.

6.38.12Hence, it is submitted that this is not the case that the zone of the Mumbai property has changed subsequently. It is a case where the property was classified in a wrong zone which has been acknowledged and corrected by the relevant authorities subsequently.

6.38.13In fact, it is undisputed fact here, that the land in question is on the opposite side of zone 29/167 as is clear from the map pointed by the Ld. DR himself in his synopsis. It is unimaginable that the land could suddenly shift its place from one area to another for it to classify under another zone as suggested by the Ld. DR. In this regard, attention is also invited to the report issued by Kishore Karamsey & Co. (Govt. Registered Valuers) at page 798 of PB II where after physical inspection of the property, they have pointed out that zone 29/167 covers properties that are surrounded

On North by Santacruz-Chembur Link Road;

On East and On South by Village boundary/creek;

On West by Express Highway

Whereas, the property in question is surrounded

On North by road connecting Khar Sub-way to Santacruz-Chembur Link Road;

On South by Village boundary;

On West by railway;

On East by Western Express Highway.

Which are the boundaries for zone 29/166.

6.38.14 Hence, it is clear that the said property always was part of zone 29/166 and mere wrong classification of the property should not lead to wrong valuation of the property. 6.38.15Further, even assuming that the zone was not corrected even today by the Municipal Authorities, can that have any impact of the valuation of the land in the real sense? Merely because the land is clubbed in the wrong zone, if AJL were to sell the land it would certainly not fetch any higher value. No purchaser would be ready to pay a higher value merely because of incorrect classification. It is accordingly, submitted that the valuation of the land cannot be done based on wrong classification.

6.38.16 Further, as regards the remark of the Ld. DR that there should not be any major difference in values ascribed to both the zones since they fall on either side of the same western express highway, it is submitted that the stamp duty authorities themselves have ascribed different values to the two zones being fully aware of the exact location of these two zones. As per the stamp duty authorities, the rate for zone 29/167 is almost double the rate for zone 29/166. For instance, in 2011, the rate for open land in zone 29/166 is Rs. 46300 per sqm whereas rate of open land in zone 29/167 is Rs. 71200 per sqm which is 1.6 times the rate for zone 29/166 (Page 803 of PB II/page 80-82 of Synopsis filed by the Revenue). Similarly, in 2011, rate for Shops in ground floor for zone 29/166 is Rs.128700 per sqm whereas rate of open land in zone 29/167 is Rs. 191100 per sqm which is again 1.5 times the rate for zone 29/166. Apparently, the said difference in rate has been maintained even in 2017 as per the ready reckoner rate filed by the Ld. DR (at pages 58-59 of the synopsis) where the rate for open land in zone 29/166 is 92400 per sqm whereas rate of open land in zone 29/167 is 169000 per sqm which is 1.8 times the rate for zone 29/166.

6.38.17 Based on these rates on record, it is submitted that the Ld. DR's remark about the value of the two zone should be same should be ignored as irrelevant. Certainly, it cannot be anyone's case, much less the Income-tax Department that why stamp authorities have consistently prescribed different

rates for zones, which accordingly, to the department are close enough. If such arguments are allowed, then it could lead to disastrous results in all additions made u/s. 50C. Certainly this cannot be the intention of the law.

6.38.18 Further, the Ld. DR has remarked that it is well know that Bandra Kurla Complex (BKC) is a posh commercial area and has implied that the Mumbai property should be valued in line with the BKC. In this regard, attention is drawn to photograph of the locality of the Mumbai property (pages 1617-1620 of PB VI), wherefrom it would be the Mumbai property is surrounded by structures such as bus depot, BMC sewage treatment plant, etc. and BKC is on the opposite side of the highway. As per google maps, BKC is approximately 4 kms away from the Mumbai property.

6.38.19 It is accordingly submitted that such remarks of the Ld. DR ought to be discarded.

6.39 Area of the plot is 3478.4 sq mtr. The AO has applied the ready reckoner rate to the land without considering mandatory 15% deduction applicable to open lands of more than 2000 sqm, which was even considered by DVO. This is a mandatory deduction applicable under the Maharashtra Valuation guidelines for open land with more than 2000 sqm.

6.39.1 It is submitted that under the Maharashtra valuation guidelines, while valuing an open plot of land of more than 2000 sqm, a mandatory deduction of 15% is to be given to the ready reckoner rates. The said guideline has been considered by the DVO in both 140 his reports. In this regard, reference is drawn to page 444 of PB I, where the DVO has stated as under:

> *"As per the guideline for valuation contained in the Ready Reckoner, Government of Maharashtra, the property is having a potential of usage of Transfer of Development Right (TDR) to be valued at 40% extra. Moreover, as per the same guidelines, the property having area more than 2000 sqm is to be valued at 15% less than the Ready Reckoner*

rates. The rate and factors is considered for the valuation herein."

6.39.2 Accordingly, while valuing the property, the DVO has reduced the rate of 71200 applicable to open land in zone 29/167 by 15% and considered the rate of Rs. 60520 per sqm (0.85 x 71200). The same treatment has been given by the DVO even in his revised report (page 465 of PB I).

6.39.3 However, the AO has completely ignored this mandatory adjustment by stating that the deduction was without any basis in case of land for commercial complex (page 55 of the assessment order).

6.39.4 It is submitted that the said treatment by the AO is against the prescribed guidelines and accordingly, the mandatory deduction of 15% ought to be allowed. The observations of Kishore Karamsey & Co., registered valuers in this regard is at page 799 of PB II, last para.

6.39.5 The Ld. DR has objected to this contention by stating that the mandatory deduction of 15% in case of open land of more than 2000 sqm is not applicable in the present case. For this statement, the Ld. DR has specified that the said deduction is applicable only to such land which has no usage rights. However, the Ld. DR has not provided any basis whatsoever to support this contention. It is submitted that the DVO has clearly stated in his report (page 444) that as per the valuation guidelines, 15% deduction is to be provided when the land has more than 2000 sqm. The said view is also reiterated in the report issued by Kishore Karamsey & Co. (Govt. Registered Valuers) at Page 799 of PB II.

6.39.6 To further substantiate this point, attached herewith is the relevant extract from the Book on 'Stamp duty Ready Reckoner & Market Value of Properties in Mumbai 2011' (Page 1547-1548 of PB VI) wherein at page 3 (page 45 of the book) it is stated as under:

"(a) Vast Open Land more than 2000 sq. mt. should be valued at 15% less than R.R. rate

(b) While valuing No-development Zone land 40% of rate applicable for developed land rate for that zones is to be taken. Further, according to area of the land valuation should be done as per vast open land as per point (a) above. Before adopting this method it has to be confirmed that the land is in no- development zone and certified as showing no-development zone land and D.P.Remarks should be obtained from Mumbai Municipal Corporation."

6.39.7 As would be observed, it is clearly provided under clause (a) of afore-quoted guidelines that vast open land more than 2000 sqm should be valued at 15% that ready reckoner rates. Clause (b) is a separate rule for no-development zone which is not applicable in present case.

6.39.8 Hence, the Appellant submits that the mandatory 15% deduction ought to be allowed in the present case. However, if there is any confusion about the same, the Appellant requests the Hon'ble Tribunal to call for a clarification from the relevant authorities about the applicability of this deduction to the property in question.

6.40 The property has been allotted for newspaper publication business and is therefore, there is usage restriction on the property. The property is an institutional allotment, with various usage restriction and not commercial in nature. No adjustment has been provided for the same.

6.40.1 Kind attention is drawn to the allotment letters for the land which clearly states that the land is being provided for the purpose of publication of daily newspaper and for establishing Nehru Library. (Pages 1528-1541 of PB V relevant @Page 1528 and Page 1531).

6.40.2 Attention is also drawn to clause 4 of the said letters, wherein it is mentioned that the building to be constructed shall be exclusively used for the purpose for which it is granted and the grantee shall credit to Government 50% of the net income derived by it by way of commercial user of the land. Clause 5 further provides that the land shall not be

transferred/ mortgaged except with previous sanction of the government (Pages 1534 and 1537 of PB V).

6.40.3 The foregoing clauses clearly show that the property in question is not a commercial property as treated by the AO. It is an institutional plot of land with various restriction usage and accordingly, has limited market. The courts have consistently held that where there are restrictive clauses in the property which has depressing effect on the value of the asset, impact should be given to such clauses while valuing the property, obtained several licences for starting its press activity, such as Factory permit from the Municipal Corporation of Greater Mumbai to start printing press (Page 1549 – 1552 of PB VI), Approval from the Registrar of Newspaper of India (Page 1553- 1554 of PB VI), storage licence from the Licence department of the Municipal Corporation of Greater Mumbai for storage of various printing material in the building (Page 1555- 1562 of PB VI); fire safety compliance certificate from Mumbai Fire Brigade (Page 1563- 1565 of PB VI), etc.

6.40.9 Accordingly, AJL inaugurated the newspaper publication activity and Nehru Library and Research Centre on November 14, 2021. The pictures for inauguration are at pages 1566- 1578 of PB VI. Further, the copy of the masthead of the first newspaper published on November 14, 2021 is at page 1579 of PB. Accordingly, it is submitted that today, the ground and the first floor of the building is used for the publication activity. The photos of the office and press activity is at pages 1580-1595 of PB VI. And, the second floor of the building is being used by AJL as the Nehru Library and Research Centre. The photographs of the library and research centre is at pages 1596-1606 of PB VI.

6.40.10It is accordingly submitted that the property is being used by AJL for the purpose for which it was allotted to it and in accordance with the conditions of the allotment deed. Indeed, the Nehru Library being a public place can be inspected by the tax department at any time, during the working hours. Further, if necessary, the Appellant can try

and request AJL to allow inspection of its office during normal working hours, if so desired by the Hon'ble Tribunal.

6.40.11Further, AJL has been permitted in September 2020 to rent out a portion of the property to other lessees in accordance with the applicable bye laws on payment of annual lease permission fee. In this regard, attached herewith is the order dated 10.9.2020 of the Collector, Mumbai Suburban District read with Corrigendum dated 9.10.2020 (Page 1607-1609 of PB VI, English translation at pages 1609A-1609B) whereby AJL has been permitted to lease out 3841.08 sqm for which AJL is liable to pay annual lease permission fee of Rs. 38,76,094/- before 10th of September of each year. The said fee has already been paid by AJL for the year 2021, the proof of which is attached at pages 1610-1613 of PB VI.

6.40.12Hence, as would be observed, there has not been any change in the usage of the property and the restrictive clauses of using a part of the property for printing activity and for library is still applicable. In fact, the rent from the leased portion is also being utilised by AJL only for the its newspaper purpose and not for any other purpose. Further, it is submitted that renting out the balance of the newspaper property along with carrying on newspaper publication is a standard practice in case of all newspaper 144 companies. As has been pointed out earlier, every newspaper company are allotted land by the government, which is used partly for newspaper and partly rented out to meet the cost of printing viz- a-viz the price at which newspaper are sold. It is reiterated that in public interest, State Governments, as a policy, have allotted lands/buildings to various entities engaged in the newspaper business to partly use it for running newspaper business and partly to rent it out. The same is done by the Government to ensure independence of the press. The news paper publishing business, being capital intensive in nature, is primarily a loss making business. In fact, the price at which newspapers are sold is very nominal so that it can reach to masses and generally, the cost of publishing a newspaper is higher than the price at which the same is sold. Therefore, in order to promote press and ensure

its freedom, the Government allots lands/buildings to various entities engaged in the newspaper business so that they can recoup their losses from publication business and survive by commercially exploiting the said allotted lands/buildings by renting out the same. The lease deed allotting the said lands/buildings specifically permits the lessees to use the property for renting out. Indeed, said practice of renting out the properties by newspaper business is permissible in standard newspaper leases and allotments of immovable property for newspaper user. The aforesaid facts are matter of public knowledge and policy. In support, reliance was placed on the judgment of Hon'ble Supreme Court in the case of Govt. of AP v. Maharshi Publishers Pvt. Ltd.(Civil appeal 7152-7157 of 2002)(Page 1621-1624 of PB VI).

6.40.13 In this regard, attached herewith is the list of certain properties of major newspaper companies in Delhi along with the list of the tenants for various such companies at page 1614-1616 of PB VI. Thus, it was submitted that practice of allotment of land to newspaper companies and such newspaper companies using the same for renting purpose is part and parcel of the publication activity and is not so uncommon.

6.40.14 In any which case, the Ld. DR has argued that since the property has been used for commercial purpose firstly, the rate adopted by the AO is correct and secondly, no adjustment should be made for restriction usage.

6.40.15 In this regard, it is submitted that the Ld. DR is wrong in both the counts. As regards the rate, as submitted in detail above, the rate adopted by the AO is completely inapplicable since applies only in case of a constructed property which is undisputedly not there in 2011.

6.40.16 Secondly, as regards the second contention of the Ld. DR that the land has no restriction usage as it is put to commercial use, it is on the contrary very clear that the land in fact has various usage restrictions. The Appellant has already pointed out various restriction usage attached to the land under the allotment letters and accordingly, based on

various decisions cited, the said restrictions merit a discount to the value of the property since such restrictions affect the marketability of the property and reduces the market participants to a limited group of people as any purchaser of land would acquire the land with the attended conditions of using the land partly for publication business and for maintaining and running a Nehru Library and Research centre.

6.40.17 Further, the Ld. DR has stated that even newspaper activity of AJL cannot be regarded as charitable activity. Firstly, it is submitted that for the valuation of property containing restriction usage, the question is not whether these activities are charitable or not. The question is that the land is subject to certain specified usages as against a free land, which can be put to any commercial usage. A free land could be purchased for any purpose, be a service company or a trading company or any other legal activity, as compared to the property in question, which even after transfer has to be used in a certain specified manner only. Hence, a free land would clearly have better marketability as compared to land in question.

6.40.18 Hence, whether or not publication activity is a commercial activity is not relevant. What is relevant is that the property in question undisputedly has usage conditions attached to it which warrants a proper discount.

6.40.19 Besides, it is submitted that the Ld. DR is wrong in saying that newspaper activity is not a charitable activity. The activity of AJL may not be eligible for section 11 exemption since it has not applied for 12AA registration, however, it cannot be denied that the activity of publishing newspaper is a part of general purpose utility and 146 therefore, charitable in nature. In this regard, attention is invited to the decision of the Privy Council in the case of The Trustees of the 'Tribune' In re (7 ITR 415) (Page 1625-1628 of PB VI).

6.40.20 Accordingly, it is submitted that even in this case, considering the objects of AJL since inception, the activity of

AJL is surely in nature of advancement of general public utility, irrespective of whether it claims or is eligible for exemption u/s. 11 of the Act.

6.40.21 The Ld. DR has further stated that the usage can always be changed with government permission and therefore, this is not relevant. The issue is not whether the usage can or cannot be changed. The issue is that with this usage what is the value of the land. Further, it would be appreciated that even using the usage conditions are permitted to be changed, the same cannot happen without payment of additional fee, which in fact supports the Appellant's contention that such restrictions warrant a discount.

6.40.22 Accordingly, it is submitted that the restrictive covenants need to be factored in while valuing the land.

6.41 No impact has been given for the transfer restriction on the property and the condition that a percentage of premium is payable to the government on transfer:

6.41.1 Kind attention is drawn to Clause 8 of the allotment letters for land, which state that no land or building constructed thereon shall at any time be diverted, temporarily or permanently, without the previous consent in writing of the State Government. Further, the State Government shall be at liberty to grant such permission subject to the condition requiring payment of premium, as the State Government in its absolute discretion deems fit. (Page 1535 and 1538 of PB V).

6.41.2 As would be observed, AJL is not permitted to transfer the land without prior permission of the government and even in that case, certain premium would be payable to the government. In this regard, the Appellant draws attention to the decision of the Supreme Court in CIT vs. P. N. Sikand (107 ITR 922)(SC) (Pages 47-55 of LPB IX), wherein while considering the similar clause, the Supreme Court held that where there is restrictive covenant on the property, which requires that a % of the unearned increase in the value of the land is to be paid to the lessor, in such a case, the fair market

value of the land would have to be reduced by the said % of unearned increase in value of land on basis of hypothetical sale on valuation date.

6.41.3 Accordingly, it is submitted that a suitable discount ought to be provided for such transfer restrictions of the land.

6.41.4 As regards this contention, the Ld. DR has reiterated that the property in question is now being used for commercial purpose and therefore, this issue is not relevant. He further says that the allotment letter does not provide a complete bar but only requires AJL to obtain permission, and therefore, this is an enabling provision as against a restrictive provision.

6.41.5 In this regard, reference is again drawn to clause 8 at page 1535/1538 of PB V which clearly states that the government can charge a premium as it thinks fit in its absolute discretion. Though the quantum is not stated in this case like in the case of Delhi and Patna property, it is submitted that the Supreme Court has clearly stated in CIT vs. P.N. Sikand (107 ITR 922)(SC) (Pages 47-55 of LPB IX) that where there is restrictive covenant on the property, which requires that a % of the unearned increase in the value of the land is to be paid to the lessor, in such a case, the fair market value of the land would have to be reduced by the said % of unearned increase in value of land on basis of hypothetical sale on valuation date.

6.1.1 It is accordingly submitted that the contention of the Ld. DR is to be ignored. The Ld. DR has further stated that the Appellant has not provided any proof of payment of such premium. In this regard, it is submitted that it is no one's case that the Appellant has sold the property, hence, the question of it paying any premium at this stage does not arise. Besides, as submitted above, the Appellant indeed is required to pay annual fee of Rs. 38.76 lacs annually for the permission recently received to give portion of the property on lease.

6.42 No deduction has been given by the AO for the cost of additional FSI.

6.42.1 It is submitted that in both the DVO reports, cost of acquisition of additional TDR has been allowed as deduction, which has been ignored by the AO (Page 444 and 465 of PB I).

6.42.2 It is submitted that the said treatment of the AO is wrong, since if additional FSI is considered while valuing the property, corresponding deduction for acquiring such FSI ought to be provided. Even the Ld. DR has not objected to the said contention of the Appellant.

6.43 In view of the foregoing, it is submitted that the valuation of the Mumbai Property is firstly, in violation of principles of natural justice and secondly, fraught with a number of errors which are apparent errors clear from the records. Accordingly, said valuation ought to be ignored and held to be invalid. Indeed, it is submitted that these foregoing objections formed part of the observation report of the registered valuer which was submitted to the AO for his comments. However, from the remand report submitted by the AO, it is observed that the AO has not made any adverse comment on said objections whatsoever, which clearly shows that even he agrees with said errors.

6.44 ERRORS IN VALUATION OF THE PATNA PROPERTY

6.45 The Patna Property has been valued by the DVO. The DVO report is at pages 412-431 of PB – I.

6.46 As would be observed, at Page 420: DVO has considered circle rate of the land at Rs.750,000 per decimal or Rs.18536.83 per sqm, added 5% on account of prime location
of land and 10% on account of plot being situated at two side roads and accordingly arrived at the rate of Rs. 21,300 per sqm. Accordingly, the value of land is arrived at 2711.394 Sqm. (0.67 acre) x Rs. 21,300 = Rs. 5.77 crores.

6.47 It is submitted that the valuation done by the DVO has various errors. In this regard, attention is drawn to the observations of the GAA Valuer, Registered Valuers, which is at Pages 1409-1410 of PB (GAA Report – pages 1404-1425 of PB IV). The said report was also submitted to the CIT(A) and the same was also sent to the AO for his remand report. However, neither the CIT(A) nor the AO has commented on this report. Further, our arguments before AO is at Page 362 of PB-I, para 3, 1st row of the Table referring to Land (Patna). The detailed submission for CIT(A) are at pages 1310--1314 (Para 3.1-3.6) of PB-II.

6.48 Contentions:

6.49 No discount has been provided even though the property was under 100% encroachment as on the valuation date:

6.49.1 It is submitted that the Patna property is 100% encroached by the slum dwellers' Jhuggi/Jhopdis since atleast 2007. The DVO himself has acknowledged said fact in his report. At page 4 of the report, under the head 'Any Special Observations', the DVO has mentioned that 'unauthorised encroachment appears to have taken place in the plot'. (Page 416 of PB I, last para). However, the DVO has still not provided any adjustment for the same while arriving at the value of the property on the pretext that the bona fides of the encroachment could not be verified.

6.49.2 In this regard, attention is invited to Pages 1417 and 1418 of PB IV (better copies at 1426-1428 of PB IV), wherein attached are the copies of letters dated September 19, 2007 written by AJL to the Governor of Bihar and the Chief Minister of Bihar, respectively requesting appropriate actions for removal of encroachments on said land

6.49.3 Attention is also invited to Page 1416 of PB IV, which contains an aerial photograph showing the encroachments on said land.

6.49.4 Further, attention is also invited to Page 1409 of PB IV, where at Para 5, GAA Valuers, registered valuers on inspection of the property have observed as under:

> *"As on date of site visit, it was observed that the property has 100% encroachment and not even 1 Sqm of land is in possession of AJL".*

6.49.5 Also relevant are paras 6 and 8 of page 1409.

6.49.6 It is submitted that where 100% of the property in question is under encroachment, it severely hampers the value of the property. Such a property commands no value in the open market, since encroachments would need to cleared before the property can be used for any purpose, which entails long drawn litigation. Proper adjustments need to be made to derive circle rate on account of non-availability of un encumbered, free, vacant and peaceful possession of the land as on date of valuation.

6.49.7 In this regard, reliance is placed on the following decisions, wherein it is held that in case of encroachment attached to a property, circle rate cannot be applied and there need to be adjustment for such encroachment.

- *Sir Mohd. Yusuf Trust vs. ACIT (ITA No. 2243/Mum/2015)(MumT) (Page 120-136 of LPB IX);*
- *Smt. D. Anitha vs. ITO (68 SOT 266)(HydT)(Page 137-144 of LPB IX).*

6.49.8 Accordingly, it is submitted that the correct value of said property cannot be arrived at without making foregoing adjustments.

6.49.9 The Ld. DR has objected to this contention by stating that since there is no evidence for the same, no adjustment can be provided for the same. However, the DVO himself has acknowledged the encroachment. Further, the Appellant has before the CIT(A) as well as before the Hon'ble ITAT produced the photographs of encroachment (Page 1416 of PB IV) as well as proof that encroachment existed even in 2011 (Pages

1417 and 1418 of PB IV. Better copies at 1426-1428 of PB IV). It is accordingly, submitted that a proper discount ought to be provided for the said encroachment. It is not a case where two or more people are sleeping on pavement, as has been explained by the Ld. DR but a case of complete encroachment through small residential constructions (juggi jhopdis) by slum dwellers.

6.50 The property is an institutional allotment and not commercial in nature with limited marketability. It can be used only for newspaper publishing and not for any other purpose. However, no adjustment has been provided for the same.

6.50.1 It is submitted that the plot was allotted to AJL by the Bihar Government for a specific use i.e. for newspaper publishing work only. This is clear from the terms of sanction by the Patna Nagar Nigam dated October 27, 2016. Please see page 1412-1413 of PB IV. As would be observed from the first clause therein, it is specifically provided that the land parcel cannot be used for any other purpose than defined, i.e. paper publishing. Further, the second last clause of the letter clearly provides that the land parcel, under no circumstances, can be used for industrial or commercial purpose and has only defined use of newspaper publishing.

6.50.2 Even as per clause 6 of the Lease deed dated April 18, 1988, the said land could not be used for any purpose other than paper publishing and there were restrictions on carrying on any trade or business on the said land. Relevant extract of the deed is at page 1415 of PB IV. Entire lease deed is at pages 1493-1516 of PB V. Clause 6 is at page 1499.

6.50.3 Attention is also invited to the Recital of the Lease Deed which states that the land is allotted for the purpose of publication of National Herald Qaumi Awaz and Navjivan papers. Please see Page 1494 of PB V.

6.50.4 Indeed, as per the Master Plan of Patna- 2031, the said land parcel falls under institutional zone. Please see page 1414 of PB IV.

6.50.5 From the foregoing, it is humbly submitted that there can be no doubt that the Patna property is an institutional property and not a commercial property.

6.50.6 However, the DVO has completely ignored said factor while arriving at the value of the land. No adjustment has been made by the DVO in respect of the same while arriving the value of the property. It is submitted that appropriate discount on the commercial circle rate should have been applied by the DVO to arrive at the fair market value. Alternatively, the DVO should have considered the allotment rates for the year 2011 for institutional land parcels instead of the circle rates.

6.50.7 Reliance in this regard, is placed on the following decisions:

- *S. N. Wadiyar v. CWT [2015] 62 taxmann.com 289 (SC)(Pages 56-67 of LPB IX);*
- *Ajit J. Mehta v. JCIT [2006] 101 ITD 11 (PUNE) (Pages 68-71 of LPB IX);*
- *AIMS Oxygen (P.) Ltd. v. CWT [2012] 23 taxmann.com 185 (Guj.) (FB) (Pages 72-78 of LPB IX);*
- *CIT v. G. S. Krishnavati Vahuji Maharajkalyanraiji Temple [2003] 131 Taxman 339(Gujarat) (Pages 79-81 of LPB IX);*
- *Gouri Prasad Goenka & Family (HUF) v. CWT [1993] 203 ITR 700 (Cal) (Pages 82-86of LPB IX);*
- *CWT v. Smt. Ballabh Kumari [1986] 24 TAXMAN 396 (RAJ) (Pages 87-88 of LPB IX);*
- *CWT v. K. S. Ranganatha Mudaliar [1985] 21 Taxman 360 (Mad.)(Pages 89-92 of LPB IX).*

6.50.8 Further, the observations of GAA Valuers, registered valuers in this regard is at page 1409 of PB IV, Para 1, 2, 3, 4.

6.50.9 It is accordingly submitted that suitable discount ought to be provided for such user restrictions of the land. 6.50.10As regards this contention, the Ld. DR has reiterated the same arguments as in case of other properties. However, it is submitted that there is clear restriction that the property can only be used for publication (clause 6 – page 1499 of PB V) and that a transfer fee of 25% is payable on transfer(clause 16 – page 1504 of PB V). Hence, it is submitted both the clauses ought to be taken into account.

6.51 Restrictive covenants on the marketability of the property ignored while arriving at the value.

6.51.1 Further, the DVO has ignored that the plot has limited marketability with restrictive market participants. In this regard, kind attention is invited to Clause 16 of Lease Deed dated 18.4.1988 which states that AJL shall not transfer the land except with previous consent of collector, which shall be contingent upon transfer fee of 25%. (Pages 1493–1516 of additional evidence PB V. Relevant clause 16 is at page 1504).

6.51.2 It is submitted that when the land was allotted for specific purpose of newspaper publishing and was restricted to be used for any other trade or business, the marketability of the property is seriously affected. Such restrictive covenants affect the marketability of the plot by not permitting open market sale and restricting any gain from sale of land parcel to the allottee. Unlike openly marketable properties, wherein number of market participants participates to establish the rate, in case of subject property, rate is affected by factors such as effect of the restrictive clauses, regular permissions/sanctions from the government, etc. Appropriate adjustments on the derived market rate ought to have been provided by the DVO for the same, which has been completely ignored by the DVO.

6.51.3 In this regard, reliance is placed on the decision of the Supreme Court in CIT vs. P. N. Sikand (107 ITR 922)(SC)(Pages 47-55 of LPB IX).

6.51.4 Further, observation of GAA Valuers, Registered Valuers in this regard is at Page 1409 of PB IV, Paras 2 and 4.

6.51.5 It is accordingly, submitted that proper discount ought to be provided for such transfer restrictions.

6.52 The land was allotted on 18.4.1988 for a period of 30 years. Hence, as on 2011, only 7 years of lease was pending. In fact, as on today also, the said lease has not been renewed by the relevant authority.

6.52.1 Kind attention is invited to the Lease Deed dated 18.4.1988 at Pages 1493-1516 of PB V, wherein at Page 1495 it is stated that the lease is provided for a period of 30 years only commencing from April 18, 1988. Hence, as on 26.2.2011, only 7 years of lease was left for AJL.

6.52.2 Even today, the said lease which expired in 2018 has not yet been renewed though applied by AJL.
6.52.3 In any case, as on 2011, only 7 years of lease was left, for which no adjustment has been provided by the DVO. It is submitted that the said factor calls for an adjustment while valuing the property.

6.52.4 It would be absurd to value a leasehold land with restrictive covenants and with only 7 years of lease as equivalent to a free hold land.

6.53 Wrong circle rate adopted. The correct circle rate if 720000/decimal and not 750000/decimal.

6.53.1 From Annexure C of the DVO report, it is observed that the DVO has considered Circle Rate of Rs. 7,50,000/decimal or Rs. 18,536.83/Sqm. (Page 420 of PB I). However, as per ready reckoner rate for the period April 2011 to March 2012 (valuation date being 26.2.2011), it would be observed that the applicable circle rate was Rs.7,20,000/decimal or Rs.17,791/Sqm. (Please see page 1420 of PB IV. Better copy at Page 1429). It is submitted that said error should be

rectified for arriving at the value of the property. The Ld. DR has not even objected to this contention of the Appellant.

6.53.2 Observation of GAA Valuers, Registered Valuers in this regard is at Page 1409 of PB IV, Para 7.

6.54 In view of the foregoing, the Appellant humbly submits that the method adopted by the DVO in valuation of the Patna Property is fraught with various mistakes/errors. Accordingly, said report of the DVO ought to be ignored and held to be invalid. Indeed, it is submitted that all the foregoing objections formed part of the observation report of the registered valuer submitted to the AO. However, from the remand report submitted by the AO, it is observed that the AO has not made any adverse comment on said objections whatsoever, which clearly shows that even he agrees with said errors in the DVO's report.

6.55 ERRORS IN VALUATION OF THE LUCKNOW PROPERTY

6.56 The said property has two separate independent built-up structures built on a plot of land. One building is known as Nehru Manzil, which is a poorly maintained dilapidated structure comprising multiple shops. The other building is Nehru Bhawan, known as Indira Gandhi Eye Hospital and Research Centre which is given on lease to Rajiv Gandhi Charitable Trust.

6.57 The Lucknow Property has been valued by the DVO. The DVO report is at pages 412-431 of PB – I.

6.58 As would be observed, at Page 418,

- *DVO has considered circle rate of the land for computation of value. He has considered circle rate as at 1.8.2010 and 5.8.2013 and worked out an average. He has further added 10% for prime location and 10% for two side road., thereby arriving at circle rate of Rs. 30,000 per sqm.*
- *Accordingly, the value of land is arrived at 6469.33 sqm x Rs. 30,000 = Rs. 19,40,79,900/-.*

- *Further, the value of Nehru Bhawan and Nehru Manzil – two building on the plot has been determined using CPWD Plinth Area rates of Delhi 2007 (page 415, para 7.1)*
- *Also, For Nehru Bhawan, depreciation has been computed from 2007 (Page 422) and the value has been determined at Rs. 13,45,57,383/- whereas for Nehru Manzil, it is computed from 1998 (Page 425) and the value has been determined at Rs. 7,72,69,100.*
- *Accordingly, value of Lucknow property is determined at Rs. 40,59,06,400/- (19,40,79,900 + 13,45,57,383 + 7,72,69,100).*

6.59 It is submitted that the valuation done by the DVO has various errors. In this regard, attention is drawn to the observations of the GAA Valuer, Registered Valuers, which is at Pages 1454-1455 of PB IV (GAA Report – pages 1449-1478 of PB IV). The said report was also submitted to the CIT(A) and the same was also sent to the AO for his remand report. However, neither the CIT(A) nor the AO has commented on this report. Further, our arguments before AO is at Page 362 of PB-I, para 2.4.1. The detailed submission for CIT(A) are at pages 1314—1320A (Para 4.1-4.6) of PB-II.

6.60 Contentions:

6.61 As regards the valuation of the land:

6.62 Circle rates have been arbitrarily considered by the DVO even though circle rates of 2011 were available.

6.62.1 It is submitted that the DVO has considered the circle rates of 2010 and 2013 and then arrived at the circle rate of 2011, even though the circle rate of 2011 was directly available. (Please see Page 1460-1461 of PB IV). Further, from Annexure A of the DVO report (Page 418 of PB I), it would be observed that the DVO has considered the circle rate of 'Kaiser Bagh Circle' as available on the valuation date. Further, from the address of the property in question, it is clear that the same is also situated at Kaiserbagh. It is

accordingly, submitted that the circle rate provided in reckoner directly applies to the land and there is no requirement to make any adjustment with regards to location of the property. However, the DVO still has increased the circle rate by 10% on the ground that the property is located in prime location. He has further increased the value by another 10% on the ground that the property has two sides roads. It is submitted that these adjustments are not at called forand the DVO has merely arbitrarily increased the value by making such adjustments.

6.62.2 The observation of GAA Valuers, Registered Valuers in this regard is at Page 1455 of PB IV, Para 1.

6.63 Adjustment to derive circle rate for the land on account of partly tenanted, has been ignored while determining the fair market value. As noted by the DVO, Nehru Bhawan on the land was given on rent to Rajiv Gandhi Charitable Trust, which runs an eye hospital.

6.63.1 It is humbly submitted that DVO himself has noted that the Nehru Bhawan was given on rent. At Page 3 of the Report, Para 6.4,(Page 415 of PB I), he has noted that Rajiv Gandhi Charitable Trust was tenant of the property. However, for the purpose of adopting the circle rate of the land, the DVO has ignored said fact. At para 6.6 and 6.7, he states that the details of rent from the property is not relevant. Further, at para 7.2, he states that the most appropriate method is adopted on the basis that the property is self occupied.

6.63.2 It is submitted that when the property has been partly tenanted, it is against the valuation principles to ignore said factor and value the property as if it is self occupied. Existence of tenants impacts the value of land. Accordingly, it is submitted that the basis of valuation of the land adopted by the DVO is wrong.

6.63.3 The observation of GAA Valuers, Registered Valuers in this regard is at Page 1455 ofPB IV, Para 2 and Page 1456 of PB IV, Para 11(a)

6.64 Adjustment to derive circle rate for the land on account of partly sold has been ignored while determining the fair market value. 9 shops in Nehru Manzil were sold as on the valuation date.

6.64.1 It is submitted that a portion of Nehru Manzil was sold by the company and the same was not in possession of the company. In this regard, attention is invited to page 1453 of PB IV, wherein in description of the Nehru Manzil Property, it is stated that nine shops out of 210 shops were sold and were not in the possessions the company and were locked. Also please see page 1465 of PB IV for the diagramme depicting he shops not in possession of AJL. It is submitted that when a portion of the property is sold, it creates negative lien on the same which impacts its marketability. Accordingly, proper adjustment ought to be provided while computing the market value of the land.

6.64.2 In this regard, the observation of GAA Valuers, Registered Valuers is at Page 1455 of PB IV, Para 3 and Page 1456 of PB IV, Para 11(b).

6.65 Adjustment to derive circle rate on account of Limitation on utilization of available FSI on the land has been ignored while determining the fair market value.

6.65.1 As per the sanctioned plan, the FAR at the time of sanctioning was 300, however, it had been reduced to 200 as per amendment in building bye-laws in the year 2011. Please see pages 1472 and 1473 of PB IV. The said factor has not been considered by the DVO in his valuation.

6.65.2 The observations of GAA Valuers, Registered Valuers in this regard is at Page 1456 of PB IV, Paras 10 and 11(d).

6.66 Proper adjustment due to half constructed, poorly maintained, dilapidated structure should be provided while computing the value of land since it is creates marketability of the land.

6.66.1 As discussed in detail later, one of the buildings on the property, Nehru Manzil, was half constructed and in dilapidated state. Presence of such a property on the land creates negativity and affects the marketability of the property. Accordingly, appropriate adjustment should be provided to take the impact of the same on the value of the land.

6.66.2 Observation of GAA Valuers, Registered Valuers in this regard is at Page 1456 of PB IV, Para 11(e).

6.67 It is submitted that the DVO has not factored in any of the foregoing adjustment while valuing the land which makes the valuation unreliable and incorrect.

6.68 As regards valuation of Nehru Manzil:

6.68.1 It is submitted that various adjustments due to specific factors of the building has not been considered by the DVO while arriving at its value. In this regard, attention is invited to page 1453 of PB IV, wherein description of the Nehru Manzil Property has been given. As would be observed therefrom,

- *the property is a dilapidated structure;*
- *The building is not equipped with necessary MEP (Mechanical, Electrical, and Plumbing) services;*
- *Only three floors (lower ground floor, upper ground floor and first floor) exists in the building whereas as per the sanction plan, approval was obtained for basement, ground floor and 14 upper storey structure;*
- *There are total of 210 nos. of shops divided on the ground floors. The first floor of the structure is a vacant hall with no partitions.*
- *Portion of the property was sold. Accordingly, nine shops are not in the possessions the company and were locked. Please see page 307 of the additional evidence paper book IV.*
- *Since the construction of the building was stopped in 1986-87 and the same could not be completed,*

completion certificate was never obtained for the property.

6.68.2 It is submitted that the DVO has not property considered any of the foregoing factors, while computing the value of Nehru Manzil. The same is discussed as under:

6.69 Improper adjustment for incomplete structure. Even though only RCC structure was complete, DVO has computed the value of complete structure. The DVO has provided discount of only 22%, which is very low. As per the GAA Valuers, it should be atleast 40%.

6.69.1 The DVO adopted the rate for a fully constructed building for the structure which is just half constructed and dilapidated. Further, in the computation the DVO has also loaded a factor for electrical installations. In case of the given structure where no electrical installation work is carried out loading such hypothetical cost is erroneous.

6.69.2 From Annexure A2.1 of the DVO report (Page 426 of PB I), it is observed that the DVO has applied a discount of 22% for unfinished work on the property. It is submitted that the discount applied by the DVO is grossly understated. As is clear, only RCC superstructure of the property was constructed, which too was in dilapidated condition. The said structure was not equipped with necessary MEP (Mechanical, Electrical, and Plumbing) services. The building had inferior finishing. Please see pages 1457-1458 of PB IV for the photographs of the property. Even the completion certificate from the local authority is not obtained for the same, which has adverse impact on marketability. When compared to the sanctioned plan, only 40% of the cost was incurred to build this structure, which too is in bad state. Hence, considering these factors, it is submitted that 22% discount provided by the DVO is incorrect. Also, by adding the load for electrical installations the DVO has hypothetically added 78% towards electrical fittings which are non-existent.

6.69.3 Observation of GAA Valuers, Registered Valuers in this regard are at Page 1455 of PB IV, Paras 8 and 9.

6.70 No adjustment provided in respect of sold portion of the property

6.70.1 Besides, DVO report fails to capture the portion of the property, which is sold. As stated earlier, 9 shops in the building were sold by the company. These sold portions is neither occupied nor in possession of the company. This creates a negative lien, which reduces the market value drastically. Hence, a discount ought to have been provided for the same. Besides, even the area considered by the DVO should be reduced by the area of sold shops.

6.70.2 The Diagramme of shops not in possession of AJL is at page 1465 of PB IV.

6.70.3 Further, the observation of GAA Valuers, Registered Valuers is at Page 1455 of PB IV, Para 3 and page 1456 of PB IV, para 11(b).

6.71 Depreciation has been wrongly considered from the year 1997-98 even though the building was constructed in the year 1987-88

6.71.1 Attention is invited to Annexure A2 of the DVO report (Page 425 of PB), wherein it is observed that the DVO has considered depreciation on the building for the period 1998 to 2011 on the basis that the building was constructed in 1997-98. In this regard, it is submitted that the incomplete structure of the building was constructed by the year 1986-87, after which the construction of the property was stalled. Accordingly, depreciation ought to be provided from that year.

6.71.2 In this regard, the observation of GAA Valuers, Registered Valuers is at Page 1455 of PB IV, Para 4.

6.72 DVO has considered Delhi rates of 1992 for computation of construction cost and not Lucknow:

6.72.1 Attention is invited to Annexure A2 of the DVO Report (pages 415 of PB I, para 7.1, and page 425 of PB I, top of the table), from where it is clear that the DVO has used Delhi

Schedule of Rates published in year 1992 to derive the cost of construction of the structure built in year 1986-1987. No basis whatsoever has been given for the same.

6.72.2 In this regard, the observation of GAA Valuers, Registered Valuers is at Page 1455 of PB IV, Para 7.

6.73 For the Basement, excessive rate has been applied. The plinth area rate taken by the DVO (Rs. 3586.8 per sqm) is arbitrary and high since the correct rate is Rs. 2920 per sqm 6.73.1 As is clear from Annexure A2.1 of the DVO report (Page 426 of PB I), though for the lower and upper ground floor (mentioned as ground floor and first floor in the report), the DVO has considered the rate of Rs. 2920 per sqm, for the basement, he has considered rate of 4020 sqm, which is incorrect. In this regard, attention is invited to page 1470 of PB IV, wherein provided is the extract of the plinth are rates as on 01-1992. As would be observed, the rate applicable in only Rs. 2920 per sqm.

6.73.2 Further, the observation of GAA Valuers, Registered Valuers is at Page 1455 of PB IV, Para 8.

6.74 It is submitted that the DVO has not factored in any of the foregoing adjustment while valuing the land which makes the valuation unreliable and incorrect.

6.75 As regards valuation of Nehru Bhawan:

6.76 No adjustment has been provided for the property being rented out.

6.76.1 It is humbly submitted that DVO himself has noted that the Nehru Bhawan was given on rent. At Page 3 of the Report, Para 6.4,(Page 415 of PB I), he has noted that Rajiv Gandhi Charitable Trust was tenant of the property. However, while valuing the building, the DVO has ignored said fact. At para 6.6 and 6.7, he states that the details of rent from the property is not relevant. Further, at para 7.2, he states that the most appropriate method is adopted on the basis that the property is self occupied (Page 416 of PB I

6.76.2 It is submitted that when it is established that the property is rent, the property ought to be valued by applying rent capitalisation method. In this regard, reliance is placed on the following decisions:

- *CGT v. Hans Raj [2001] 119 TAXMAN 129 (DEL)(Pages 23 of LPB IX);*
- *Smt. Savita Mohan Nagpal v. CWT [1986] 26 TAXMAN 640 (RAJ.)(Pages 24-28 of LPB IX);*
- *CWT v. Seth Gokuldas Pradeep Kumar [1994] 77 TAXMAN 415 (RAJ.)(Pages 29-31 of LPB IX)*
- *Dr. Miss V. Banka v. WTO [1995] 52 ITD 623 (DELHI)(Pages 32-35 of LPB IX).*

6.76.3 The observation of GAA Valuers, Registered Valuers in this regard is at Page 1455 of PB IV, Para 2.

6.77 Depreciation has been wrongly considered from the year 2007 even though the building was constructed in the year 1981.

6.77.1 Attention is invited to Annexure A1 of the DVO report (Page 422 of PB I), wherein it is observed that the DVO has considered depreciation on the building for the period 2007 to 2011 on the basis that the building was constructed in 2006-07. In this regard, it is submitted that the completion of said building was completed in the year 1981.

6.77.2 In this regard, attention is drawn to the inauguration photograph at pages 126 and 1527 of PB V from which it is clear that the property was inaugurated n 15.4.1981. Further supporting documents are at pages 1521 to 1525 of PB V.

6.77.3 Further, the observation of GAA Valuers, Registered Valuers in this regard is at Page 1455 of PB IV, Para 5.

6.77.4 Accordingly, it is submitted that depreciation ought to be provided from the year 1981.

6.78 DVO has considered Delhi rates of 1992 for computation of construction cost and not Lucknow:

Sr.No.	*Remarks*	*Reference Page Nos.*
1	*Observation of GAA Valuers, Registered Valuers*	*Page 1455 of PB IV, Para 7*
2	*Treatment by DVO*	*Pages 415 of PB I, para 7.1, and pages 422 of PB I, top of the table.*

6.78.1 Attention is invited to Annexure A1 of the DVO Report, from where it is clear that the DVO has utilized Delhi Schedule of Rates published in year 2007 to derive the cost of construction of the structure built in year 1981 (Pages 422 of PB I, top of the table). This is also mentioned at pages 415 of PB I, para 7.1. However, no basis whatsoever has been given for the same.

6.78.2 With respect to all the foregoing contentions, the Ld. DR has reiterated that since the Appellant had not raised these objections before the AO or the DVO and not allowed physical inspection, the same cannot be raised at this stage. In this regard, the Appellant reiterates its submissions, namely:

a. The Appellant has no right to give or deny physical inspection of the properties of AJL;

b. The subsequent valuation reports from Registered Valuers have been obtained by AJL and not the Appellant;

c. These reports were given to AO for his remand report on merits. The AO has not given any adverse comments on the errors pointed out in the report.

d. For the errors which the Appellant had pointed out during assessment, the AO obtained comments of the DVO, which were never shared with the Appellant. Hence, the Appellant did not even have any opportunity to rebut to the comments of the DVO based on which all the objections have been dismissed by the AO.

e. As regards the impact of physical inspection, it is submitted that it has no bearing for the purpose of valuing the land especially since inspection happened in 2017 and the valuation date is in 2011 and circle rates have been adopted for valuation. Further, merely because inspection could not be done, it cannot validate the errors in the valuation.

f. It is accordingly submitted that the valuation ought to be revised and corrected for the errors committed by the DVO/AO.

6.78.3 It is submitted that the Appellant has now substantiated the errors pointed out, such as date of construction of the properties, the dilapidated condition of the property, etc. through various evidence and accordingly, the same ought to be considered.

6.79 Besides, the objections with respect to the method of valuation, such as ignoring the rent capitalisation method, considering Delhi rates instead of Lucknow rates, also ought to be considered.

6.80 In view of the foregoing, the Appellant humbly submits that the method adopted by the DVO in valuation of the Lucknow Property is fraught with various mistakes/errors. Accordingly, said report of the DVO ought to be ignored and held to be invalid. Indeed, it is submitted that all the foregoing objections formed part of the observation report of the registered valuer submitted to the AO. However, from the

remand report submitted by the AO, it is observed that the AO has not made any adverse comment on said objections whatsoever, which clearly shows that even he agrees with said errors in the DVO's report.

6.81 ERRORS IN VALUATION OF THE PANCHKULA PROPERTY:

6.82 The Panchkula Property has been valued by the DVO. The DVO report is at pages 386- 399 of PB – I.

6.83 The DVO has computed the value by applying circle rate of Rs. 96,000 to the land. (Page 391 of PB I). Accordingly, the value has been arrived at Rs. 32.25 crores (Rs. 96000 x 3360 sqm).

6.84 It is submitted that the valuation done by the DVO has various errors. In this regard, attention is drawn to the observations of the GAA Valuer, Registered Valuers, which is at Page 1435 of PB IV (GAA Report - Pages 1430-1448 of PB IV). The said report was also submitted to the CIT(A) and the same was also sent to the AO for his remand report. However, neither the CIT(A) nor the AO has commented on this report. Further, our arguments before AO is at Page 362 of PB-I, para 2.3. The detailed submission for CIT(A) are at pages 1338—1340 (Para 1.40-1.47) of PB-II.

6.85 Contentions:

6.86 No basis for adopting Rs. 96,000 as the land rate. Even considering the circle rates for year 2010-11, the rate considered by the DVO at Rs 96000/sqm is very high. 6.86.1 As stated earlier, the DVO has considered rate of Rs.96,000/sqm to derive the value of the land. However, in the report no basis has been provided for the same. As per the circle rate table for Panchkula for the year 2010-11 (please see page 1444 of PB IV), the rate for Sector 6 (in which the land was situated) for year 2010-11 was Rs. 47000/sqm. Accordingly, it is submitted that the rate adopted by the DVO ought to be ignored.

6.86.2 The observation of GAA Valuers, Registered Valuers in this regard is at page 1435 of PB IV, Paras 3 and 6.

6.86.3 The Ld. DR. has referred to the DVO's comment at page 59 of assessment order, Para 12.13, where it is stated that the contention of the Appellant that the rate is Rs. 15000 sqm and not Rs. 96000 sqm. is without any basis and evidence and therefore, to be rejected. However, the Ld. DR has failed to notice that the Appellant has not raised this contention now. As per contention raised at paras (c) and (f) at pages 21-22 of LPB IX, the Appellant's contention is that the circle rate of the land in question for the relevant year is Rs. 47000 sqm (evidenced by ready reckoner at Page 1444 of PBI V) and that the rate of 96000 adopted by the DVO is without any basis and as per ready reckoner (Page 1435 of PB IV, para 3). The Ld. DR has not objected to this contention and accordingly, it is submitted that the same ought to be accepted.

6.87 The land is an institutional land allotted only for the publication activity and had several restrictive covenants, for which discount ought to have been provided.

6.87.1 It is submitted that as per terms and conditions of re-allotment letter dated 28th September 2005 issued by HUDA, clause 14, the plot cannot be used for any purpose other than for which it has been allotted (Please see Page 1439 of PB IV. The complete document is at pages 1517-1520 of PB V.)

6.87.2 Further, as per letter dated 30.10.1992 issued by Estate Officer, HUDA, the specific use of the building so erected on the plot shall be used for Hindi Daily Nav-Jeevan newspapers (Please see Page 1440 of PB IV).

6.87.3 Further, the plot falls in institutional zone as per Revised Master Plan of Panchkula, where it is classified under 'major institution' (Please see page 1441 of PB IV).

6.87.4 It is submitted that with such restrictive covenants attached to the land, the normal rates cannot be adopted for

valuation of the land. Such land valuation would suffer heavy discounting due to its highly restricted user and the same ought to be provided since such covenants restrict the marketability of the land to limited market participants. The courts have consistently held that where there are restrictive clauses
in the property which has depressing effect on the value of the asset, impact should be given to such clauses while valuing the property, since a reasonable buyer would pay for the property after considering the impact of such clauses. Reliance in this regard, is placed on the following decisions:

- *S. N. Wadiyar v. CWT [2015] 62 taxmann.com 289 (SC)(Pages 56-67 of LPB IX);*
- *Ajit J. Mehta v. JCIT [2006] 101 ITD 11 (PUNE) (Pages 68-71 of LPB IX);*
- *AIMS Oxygen (P.) Ltd. v. CWT [2012] 23 taxmann.com 185 (Guj.) (FB) (Pages 72-78 of LPB IX);*
- *CIT v. G. S. Krishnavati Vahuji Maharajkalyanraiji Temple [2003] 131 Taxman 339 (Gujarat) (Pages 79-81 of LPB IX);*
- *Gouri Prasad Goenka & Family (HUF) v. CWT [1993] 203 ITR 700 (Cal) (Pages 82-86 of LPB IX);*
- *CWT v. Smt. Ballabh Kumari [1986] 24 TAXMAN 396 (RAJ) (Pages 87-88 of LPB IX);*
- *CWT v. K. S. Ranganatha Mudaliar [1985] 21 Taxman 360 (Mad.)(Pages 89-92 of LPB IX).*

6.87.5 Further, the observations of GAA Valuers, registered valuers in this regard is at Page 1435 of PB IV, paras 1, 2, 3.

6.87.6 The Ld. DR has by referring to clause 14 of the reallotment letter (Page 1439 of PB IV/Page 1519 of PB V) stated that this is not a restrictive clause and only enabling clause. It is submitted that this is wrong interpretation of the clause and the Appellant reiterates the submissions made earlier in this respect. Further, the Ld. DR has ignored the letter by Estate Officer, HUDA dated 30.10.1992 at Page 1440 of PB IV where the purpose for allotment of land is

clearly mentioned to be erection of building for Hindi Daily Nav- Jeevan Newspaper.

6.87.7 It is accordingly submitted that suitable discount ought to be provided for such user restrictions of the land.

6.88 When the rate at which the land was allotted to AJL is compared with the prevailing market rates for residential and commercial property, it would be observed that the allotment rate is upto 97% less than the prevailing rate for commercial property, which clearly shows that normal circle rate cannot be considered for these types of property.

6.88.1 It is submitted that the land parcel was re-allotted by HUDA to AJL at a premium of Rs.59,39,200/- in year 2005 with amount of Rs. 2,73,000/- already in custody of HUDA by earlier allotment dated 16th December 1981. Thus, the derived allotment land rate for the said property is Rs. 1,850/Sqm, which is 74% less than the collector rate of Rs. 7000/Sqm for residential plots in year 2005 and 97.43% less than the collector rate of Rs. 76000/sqm for commercial plots of nearest sectors notified in year 2005.

6.88.2 Copy of re-allotment letter dated 28.9.2005 showing the allotment price at Rs. 59.39 lacs in the year 2005 is at Page 1517 of PB V.

6.88.3 Further, the rates for residential and commercial properties in the year 2005 is at Page 1443 of PB IV.

6.88.4 Further, the observations of GAA Valuers, registered valuers in this regard is at Page 1435 of PB IV, paras 4 and 5.

6.88.5 Therefore, even if one were to adopt the rate of residential or commercial property, as the land that is valued is an institutional plot, the same should suffer a discount of 74% or 97.43% respectively as the case may be depending on the rate adopted. Hence, appropriate discount should be adopted on commercial or residential circle rate if the

same formed the basis for valuation. It is submitted that the Ld. DR has not even objected to this contention.

6.89 In view of the foregoing, the Appellant humbly submits that the method adopted by the DVO in valuation of the Panchkula Property is fraught with various mistakes/errors. Accordingly, said report of the DVO ought to be ignored and held to be invalid. Indeed, it is submitted that all the foregoing objections formed part of the observation report of the registered valuer submitted to the AO. However, from the remand report submitted by the AO, it is observed that the AO has not made any adverse comment on said objections whatsoever, which clearly shows that even he agrees with said errors in the DVO's report.

6.90 The Appellant humbly submits that considering various inconsistencies, fallacies and errors in the valuation of the benefit u/s. 28(iv) adopted by the DVO/AO, the valuation as adopted by the AO ought to be held invalid.

6.91 During the course of the hearing, the Ld. DR has stated that since the Appellant had not cooperated with the AO/DVO during the valuation of the properties, the Appellant cannot now raise the foregoing objections now. He has argued that objections, if any, can be raised only at the stage of valuation and not thereafter and the same is not permissible in law.

6.92 In this regard, it is firstly submitted that the Appellant has no right to allow or deny inspection for properties of which it is not an owner. Hence, it was not in the hands of the Appellant to permit any inspection. The Ld. DR is completely wrong in saying that the attitude of the Appellant was 'how dare you enter our property'. On the contrary, all the Appellant stated was that it has no authority to permit any person to enter the properties. In any case, tax can be levied only on correct income and if the alleged income as perceived by the department has been computed in an incorrect manner, which is apparent from various documents on records now, ignoring such errors in valuation would lead

to gross injustice to the Appellant and unjust enrichment of the Revenue, which can never be permissible in law.

6.93 Also, since valuation of the properties is to be done as on 26.2.2011 and not current status, and also the same have been done based on circle rates, it is submitted that nothing significant turns on the physical inspection of properties. Besides, most of the objections of the Appellant with respect to this property is with respect to the valuation of the 'land' and not the building. Out of the total value of Rs. 413.40 crores determined by the AO/DVO, value determined for land is Rs.385.12 crores which constitutes around 93% of the total value. The bifurcation of the values determined for land and building is as under:

(Rs. in crores)

Property	*Land*	*Building*	*Total Value*
Delhi	*194.75*	*7.09*	*201.84*
Mumbai	*132.94*	*Nil*	*132.94*
Patna	*5.78*	*Nil*	*5.78*
Lucknow	*19.40*	*21.18*	*40.59*
Panchkula	*32.25*	*Nil*	*32.25*
Total	*385.12*	*28.27*	*413.40*

6.94 As far as land of Delhi is concerned, the DVO has arbitrarily applied comparable sale instance method by considering a completely uncomparable property. Physical inspection of the land has no bearing whatsoever on this step of the DVO. Even if physical inspection is not allowed, it does not enable the DVO to ascribed arbitrary value to the property even though details required for valuation, such as ready reckoner rates, were readily available. Patna, Mumbai and Panchkula properties too were admittedly open pieces of land in 2011. Patna property still is an open land which is fully encroached. In fact since this property is encroached by various slum dwellers, it was as open to inspection to the

DVO as anyone else. Even in case of Lucknow, most of the contentions of the Appellant are with regards to the valuation of land and not the building. It is respectfully submitted that this argument of the Ld. DR ought to be discarded and the errors pointed out in the valuation ought to be considered

6.95 Besides, after receiving the assessment order with the inflated values for the properties, the Appellant has, with the help of AJL and the reports obtained by AJL for its properties from Registered Valuers, analysed the DVO/AO reports and raised objections. Further, all these reports were submitted by the Appellant even before the Hon'ble CIT(A) as additional evidence, which was in turn sent to the AO for his remand report on the merits of the same. Hence, the AO was provided proper opportunity to consider these reports and provide its comments. However, in the remand report, the AO has not given any adverse comments on this report which shows that it has accepted the errors pointed out in the same. Even during the assessment, the Appellant had pointed out various errors in the valuations adopted, all of which have been dismissed by the AO as either not relevant or unsubstantiated. The AO infact obtained comments of the DVO on such objections raised by the Appellant, which were never shared with the Appellant. Solely based on said comments, the AO has dismissed the arguments raised during assessment. Hence, the Appellant did not even have any opportunity to rebut to the comments of the DVO based on which all the objections have been dismissed by the AO. It is accordingly, submitted that the Appellant had no other option but to file additional evidences before the appellate authorities to support its objections. In any case, these objections and evidences are clearly relevant for the purpose of the valuation and which were even placed before the AO for his remand report on merits. It is accordingly submitted that the valuation ought to be revised and corrected for the errors committed by the DVO/AO. Without prejudice to above, if necessary, the Appellant humbly requests that the matter be remanded back to the AO/DVO for considering all the evidences now on record and recompute the fair market value of the properties."

ARGUMENTS ON BEHALF OF THE REVENUE

156. On behalf of the Revenue, Shri G.C. Srivastava, ld. Special Counsel submitted that insofar as the first contention of the appellant that the value of benefit u/s 28(iv), if assessable, has to be determined with reference to shares of AJL acquired by the appellant. He submitted that the activity of the appellant which amounted to *"adventure in the nature of trade and commerce"* started with assignment of loan which was payable by AJL to AICC amounting to Rs.90.21 crores for an insignificant consideration of Rs.50,00,000/- and this adventure concludes with the conversion of this loan to shares of AJL. The net effect of this adventure is nothing but benefit accrued to the appellant in the form of indirect ownership and enjoyment of the underlying assets which immovable properties are held by the AJL. This is more specifically cast doubt and demolishes the purported intention which has been tried to be canvassed because all these acquisitions have happened after the closure of their newspaper publication business. Thus, to contend that AJL was acquired to promote the objects of Young Indian through publication was never a starter and till the initiation of reassessment proceedings,

no such activities were ever carried out and now it is a finding of fact that scope of charity has been demolished by the ITAT that at no point of time, Young Indian carried out any activity from the day of its formation till the cancellation of registration by the ld. CIT (E) and also upheld by the Tribunal.

157. The Appellant being more than 99% owner of the shares of AJL and after this adventure got complete control over these properties. It is significant to note that corporate veil of AJL stands torn to pieces and in fact, no such veil exists. After looking through the design and the manner in which this adventure was undertaken, it leaves no room for doubt that the object of the whole adventure was to get hold of the prime properties of AJL and it would have made no sense for the Appellant to invest in the shares of a company which had already closed its newspaper business after suffering persistent losses. Hence, for arriving at the value of the benefit in terms of Section 28(iv), it is not the value of the shares which is relevant, but the value of the properties which come under the control and for the enjoyment of the Appellant. The contentions to the contrary are not tenable in the given facts.

158. While determining the value of properties which came to the direct/indirect ownership, control and enjoyment of the Appellant, the A.O. referred the matter to a technical expert like District Valuation Officer ("DVO") under Section 142A of the Act. A very critical aspect of the matter needs to be highlighted here. The DVO gave a number of opportunities to the Appellant to allow physical inspection of the properties so that proper valuation could be done. However, the Appellant taking one or the other pretext did not allow physical inspection of the property. It's subsidiary company, i.e., AJL also did not allow any physical inspection. The DVO brought these facts to the notice of the Appellant, however no attempts were made to allow the statutory authority to discharge its official functions in a proper manner. After the valuation was done and the matter came in appeal, the Appellant came forward with a lot of additional evidence before CIT(A) which could have been filed before the DVO if the Assessee had chosen to cooperate, but was not done.

159. He submitted that, this raises a very fundamental question, that if an assessee deliberately and knowingly shown defiance of law and procedure, then the adverse inference must

necessarily follow and it would really be a travesty of justice if the Appellant is allowed to get away with such non-cooperative postures and then allowed to lead evidence at their sweet will. Further, when A.O. makes certain observations in the order of assessment or the CIT (A) makes certain observations, in the light of such non-cooperation, the Assessee cannot be permitted to go on raising one or the other objection or leading one or the other evidence. This fact situation permeates through the valuation of all the properties involved i.e., the properties situated in New Delhi, Mumbai, Panchkula, Lucknow and Patna.

160. The other contention of the Appellant was that the valuation of the benefit has to be done in terms of Rule 11UA and not by referring the valuation of the properties to the DVO under Section 142A of the Act. He submitted that Rule 11UA does not come into operation in this case for the obvious reason that Rule 11UA applies only for transactions appearing in Section 56(2)(x) / 56(2)(viia) of the Act. It cannot have any application to the valuation of benefits arising under the business head and particularly under Section 28(iv) of the Act.

161. He also pointed out that Rule 11UA deals with 'fair market value of a property other than immovable property'. In this case, we are concerned with the benefit arising to the Appellant by way of control and enjoyment of the immovable properties held by AJL and not of the shares of AJL. Hence, the decisions referred to by the Appellant are wholly out of context and proceed on the assumption as if the issue involved is the value of shares of AJL.

162. The Appellant has further submitted that the DVO ought to have given deduction for tax out-go, deduction for liabilities etc. All these adjustments proceed on the assumption that what is to be valued is the value of shares. In valuing immovable properties of the Appellant, these are irrelevant aspects.

163. The Appellant also contends that the properties ought to be valued on the basis of rent-capitalization method. In this regard, it is respectfully submitted that these are commercial properties and can be exploited in more than one way. The decisions cited by the Appellant namely, CGT v. Hans Raj, Savita Mohan Nagpal v. CWT and Seth Gokuldas Pradeep Kumar in this

regard are inapplicable for the reason that, in those cases, what was involved was a valuation of a gifted property and further that the said property comprised a flat and a shop and the properties were tenanted for a very long time. Such facts do not exist in the present case and if the property is open to commercial exploitation in more than one way, the land and building method was rightly adopted by the DVO.

164. On the issue that the inconsistencies pointed out in the valuation report of the DVO were not considered by the DVO/A.O./CIT(A), he submitted that the order of assessment as also the order of the DVO clearly points out the lack of cooperation on the part of the Appellant in the course of these proceedings. The denial of opportunities of physical inspection and failure to furnish the relevant documents have been highlighted in detail by the A.O. in Para 12.5. The objections raised by the Appellant before the A.O. stand examined and considered in Para 12.7 and thereafter. The CIT(A) has not admitted the evidence for the reason that the Appellant failed to satisfy the appellate authority as to why these pieces of evidence could not be furnished before the assessing authority. However,

he called for the remand report and has considered the objections on their merits wherever and to the extent it was possible by him.

165. With the afore-said background, Mr. Srivastava made his counter-submissions to the objections raised by the Appellant with regard to individual properties :-

S.No.	Property Situated at	Submissions
a	Mumbai (It may be noted that the current photos and a video of the present property of AJL situated in Mumbai was shown to the Hon'ble Bench)	• The Appellant has referred to the decision of CWT v. Dr. H. Rahman, 189 ITR 307 (All) to contend that the report of the valuation officer is binding on the A.O. and therefore the A.O. could not have departed in the present case from the value of adopted by the DVO. It is submitted that the reference to the DVO in this case was made under Section 142A of the Act and therefore the valuation report, unlike the Wealth Tax Act is only advisory in nature and not binding on the A.O. Reference in this regard may be made to the decision in the case of M/s MFAR Hotels Ltd., Cochin v. The ACIT, Cochin, ITA No. 66/ Cochin /2017. • The Appellant contends that the property in Mumbai is an

		open piece of land and therefore the rate which is applied for a commercial building is wholly incorrect. It was also submitted that the construction on the said plot of land started only in February 2013 and as on 2011, it was an open land only. In this regard, it is submitted that the rates notified by the authorities of Maharashtra, refer to only land with different kinds of usages. This is not a rate of building, but of land only. In a land and building method, the cost of construction is separately determined. Therefore, this contention of the Appellant has no force. • The Appellant has stated that the A.O. has taken rate of a different zone. It may be pointed out that as on 2011, the property was falling in zone 29/167. There was no demarcation like '8 or 8A' as has been done now. In any event, it makes no difference to the value of property for the reason that the property, even after correction, remains very close to the western expressway and even comes closer to Bandra railway station. This would yield a higher value. There is no

		merit in suggesting that the land will have a lower value for the reason that at a much later point of time, an amendment was made to indicate that the land falls in zone 29/166 and not in zone 29/167. • The Appellant has pointed out that a mandatory deduction of 15% to the rate applied ought to have been given. It may be brought to the notice of the Hon'ble Bench that the 15% mandated deduction is available for such open land which have not been assigned any usage rights. In this case, the property was already given usage rights and therefore the Appellant would not be entitled to such deduction. • The Appellant has further contended that the property was allotted to them for specific purpose and therefore, it cannot be put to any other use. This would substantially bring down the value of the property. According to the Appellant, these restrictive clauses have depressing effect on the value of the property. Reference is made to a number of decisions referred to on Page 12 of LP-

		IX. It is submitted that the Appellant had discontinued the activity of publication of newspaper in 2008. Thereafter, the property was not used for the purpose for which it was allotted. AJL itself was using the property for non-institutional purposes and had given the property a commercial character. The usage of the property could be changed by the Appellant or the prospective buyers with the permission of the relevant authorities. The property is in fact being used for commercial purposes as on date, despite the discontinuance of publication business in 2008. • The Appellant states that no adjustment has been given by the A.O. for transfer restriction on the property and the fact that a percentage of premium is payable to the government. Reliance is placed on the decision of the Hon'ble SC in the case of P.N. Sikand. It is submitted that the restrictive clause on Page 1535 of LP-V puts only a condition that the property would not be put for any other use without the consent of the state government. It doesn't say that it cannot be put to any

		other use. As a matter of fact, the land has been put to commercial use post the date of valuation. So, as regards the payment of 50% of net income to the government, it has to be kept in mind that no evidence has been led before the A.O. to show that any such payment was due or has been made to the state government after the closure of the publication business in 2008, till the valuation date or thereafter when constructions were made on the said land and the land was put to commercial use. Thus, the clauses in the agreement which merely confer a certain enabling right on the lessors, which may or may not be acted upon, does not ipso facto give right to deductions to the value of the land. • Lastly, the objection of the Appellant that the additions were made without giving any show-cause notice with regard to the final value adopted by the A.O. In this regard, this objection appears to be incorrect. Attention is drawn to Para 13 of the assessment order where the A.O. has extracted the show-cause notice and it is clearly mentioned that the FMV as determined by the valuer was recomputed considering circle

		rate as prevalent in the area at Mumbai where the property is located. Attention is also invited to show-cause notice dated 13.11.2017 followed by 21.11.2017. Their reply was duly considered by the A.O.
b.	Delhi	• The Appellant has stated that the A.O. has committed an error in not giving deduction for 50% of the unearned increase payable to L&DO on the transfer. It is submitted that the land is given 'for the purpose of construction of building for commercial purposes.' There are restrictions only to the extent that the building shall not be used for running of a cinema or restaurant or any other activity which may be noisy, noxious or offensive. (Reference may be made to Page 1485 of LP-V). Therefore, this is not really any effective restriction on the commercial use of the building. As regards the provision relating to payment of 50% of unearned increase, it is submitted that the same is payable only at the time of transfer of the rights. (Reference may be made to Page 1487 of LP-V). This is a payment stipulated in the event of a specific eventuality i.e., the transfer of the leasehold rights. In the

		present case, no such transfer has happened since the grant of rights to AJL as early as in 1967. These restrictions on the transfer of rights are unascertainable in nature and are dependent on future policies of the government from time to time as well as conduct of the Assessee. While determining the value of a benefit of a property on a given date, considerations of a hypothetical transfers etc. cannot be taken into consideration. These would amount to notional adjustments, without the stipulated eventuality being in sight. • A subtle distinction has to be kept in view, with regard to the determination of FMV of a property to arrive at the value of benefit arising to the Assessee, as a result of an adventure in the nature of trade. The value here is not being determined for the purposes of determination of capital gains or determination of actual amount of investment in the property etc. • The Appellant has stated that it has been allotted the property for newspaper publication business and it is not readily marketable. It is also

		contended that the usage restriction should have been suitably adjusted. It is submitted that the preamble to the perpetual lease itself stipulates that the building has been constructed for commercial purposes. There are in fact no restrictions on the use of the property except to a very limited extent as pointed out above. The observation of the Appellant that there are restrictions on sale of the property is also not tenable because the only restriction is that the property cannot be sold without the permission of the Lessor. It is reiterated that the FMV is being determined to arrive at the value of benefit coming to the enjoyment of the Appellant and not a notional benefit that they would derive from selling the property. Looking to the nature of restrictions placed on the usage of property, the A.O. has rightly denied any adjustment for the same and for the same reason i.e., the peculiar facts of this case, the decisions referred to at Page 6 of LP-IX are not applicable. • The Appellant has also objected to the fact that rates

		of 2008 were adopted with a 21% increase every year. They have also claimed that ready-reckoner for the year was available and therefore, the same should have been taken. The DVO had given full opportunity to the Appellant and no such ready-reckoner was made available either before the DVO or the AO. • The Appellant has objected to comparable sale instances taken by the DVO. The DVO has clearly stated in his report that there are no clear available sale instances in that area and therefore the rate for the nearby area has been taken and suitable adjustment has been made thereto. • As regards the difference in the area, this aspect was already raised before the DVO and the DVO has pointed out that since physical inspection of the property was not allowed, the area of mezzanine floor was added to the ground floor. When the building is being used for commercial purposes, the area of mezzanine floor will also have a commercial floor, may be with some differential.
c.	Lucknow	• The Appellant has contended

		that the DVO should have provided adjustment for the property being rented out and some portion of the property having been already sold. It is submitted that none of these objections were raised before the AO or the DVO. Besides, the DVO has not adopted rent-capitalization method for valuing the property. He has gone by the land and building method. The value of land and building does not change in the given circumstances. • The limitation of utilization of the property has already been dealt with while dealing with other properties and is not being repeated herein for the sake of brevity. • The other objection of the Appellant is that there were certain encroachments on the property which has not been considered. According to DVO, these so-called encroachments had no significant bearing on the valuation as the bona fides of these claims was not open for verification. The Appellant during the course of proceedings before the A.O., also did not lead any evidence to suggest that these could have had any bearing on the final value of the property.
d.	Patna	• The limitation of utilization of

		the property has already been dealt with while dealing with other properties and is not being repeated herein for the sake of brevity. • The other objection of the Appellant is that there were certain encroachments on the property which has not been considered. According to DVO, no such encroachments existed on the property
e.	Panchkula	• The Appellant has contended that the rate adopted by the DVO is very high. In this regard it is submitted that this objection has already been considered by the DVO/AO. The land rate is based on the rate notified by the district authorities. • The limitation of utilization of the property has already been dealt with while dealing with other properties and is not being repeated herein for the sake of brevity.

DECISION ON GROUNDS NO.7, 8 & 9 WITH RESPECT TO VALUATION OF PROPERTIES

166. We have heard the aforesaid arguments of both the parties, gone through the entire gamut of valuation, relevant material placed before us including the additional evidences filed

by the appellant and the objections raised based on those additional evidences which have been referred to herein above.

167. We have already held above that the appellant company by taking over the AJL had earned the benefits of the properties held by the AJL and such benefits had accrued and arisen during the year. This accrued benefit to the appellant was underlying value of these shares by way of right to enjoy all the benefits embodied in the commercial assets held by the AJL at several locations in the country as well as direct or indirect enjoyment of substantial income from such business assets. AO has held that value of benefit is represented by Fair Market Value (for short 'FMV') of the business properties, exploitation whereof would yield benefit of such assets as exist on the date of taking over of the AJL by the assessee. The FMV has been defined under section 2(22B) in relation to the capital assets to mean the price the capital asset would fetch on the sale in the open market on the relevant date and if price is not ascertainable then such price has to be determined in accordance with the rules made under this Act. The AO has proceeded with determination of FMV by making reference to the DVO in exercise of powers 142(2A), who

has submitted his detail report to the AO. AO has discussed the entire background, entire circumstances and the events which took place during the course of reference at the stage of DVO who conducted the valuation. One very important fact which has been noted down by the AO is that the DVO also has been requesting the appellant to give access for inspection of the property specifically the property owned and held by AJL in Delhi, i.e., 5A, Herald House, Bahadurshah Zafar Marg, New Delhi, wherein the DVO was denied even access to enter the building. Further even in other properties at other stations, DVOs were denied access by the appellant a fact which has been also strongly contended by the Ld. Special Counsel for the Revenue that such an act of the assessee in denying the DVOs to carry out their official duty should be condemned and adversely viewed. Once they have denied the DVO the access for the inspection and now they are trying to bring in additional evidences to object to the DVO's valuation report. If they would have participated before the DVO and produced the details as required then perhaps appellant should have made out a case for submitting any expert report from a different registered valuer. This has been main objection of the revenue to justify the filing of additional evidence by the

appellant. However, we are not going into this aspect, but certainly the act of the appellant in denying the inspection of properties to the DVO or participating during the asset valuation proceedings is certainly not acceptable.

168. Be that as it may, we shall now deal with the valuation of the FMV by the AO and DVO as well as objections raised by the appellant before us in relation to all the proreties.

169. Before we proceed on the valuation for determining the FMV for the purpose of determining the benefit derived to be taxed u/s 28(iv), one of the contentions raised before us was that since the benefit is with reference to the shares of AJL acquired by the appellant and there is no prescribed method u/s 28(iv), therefore, rules under the same Act, i.e., Rule 11UA (provided for the purposes of section 56(2)) has been prescribed for valuation of the shares, therefore, the shares should be valued in accordance with the provisions of Rule 11UA. In support, a valuation report has been filed wherein the value of the AJL shares as per Rule 11UA prior to the transaction of conversion of loan into shares, is arrived at a negative figure of Rs.770.09. The value per share of AJL as per Rule 11UA post the transaction of

conversion of loan of shares has been given at Rs.2.01 per share, thus, total value received or assessed is only an amount of Rs.18.32 crores.

170. The aforesaid contention raised by the ld. Sr. Counsel on behalf of the assessee is not acceptable on the facts of the present case, because here the acquisition of shares is only a step in the scheme devised by the interested parties for taking over the AJL and consequently, the underlying assets in the form of immovable properties held by the AJL in prime locations of the country. We have already held that it is a part of adventure in the nature of trade. Here again, it is reiterated that the appellant company had acquired/received receivables of Rs.90.21 crores from AICC and sold/exchange the same to AJL for the shares of an equal value of the said company. This acquisition of shares is only of an event in the chain that constituted an adventure in the nature of trade. Here, the appellant never targeted the shares of a loss-making defunct company whose business has already been stopped. In a third party scenario and in a comparable transaction, no person or entity would have invested in the shares of such a non-operational and non-income generating

company. The shares here have been acquired only to get control and beneficial enjoyment of the underlying immovable properties located in the prime cities of the country. This is precisely is the reason why we have held that it is a benefit that the appellant has derived from this adventure. Since the benefit did not arise in the form of shares, therefore, any reference to Rule 11UA is wholly out of context and, therefore, the adjustment sought for on that account is also irrelevant.

171. Another contention which has been raised is that, *firstly*, what has been acquired was shares of AJL and the effect has not been given for tax outgo at the rate of 30%; *secondly*, deduction for liabilities of the company; and *lastly*, deduction for liquidated since shares are unlisted. This contention of the appellant is also not tenable in view of our finding given above, because the benefit has not arisen in the form of mere acquisition of shares of AJL albeit the properties held by the AJL which was gained as benefit. Once the shares are not the subject matter of valuation then there is no question of such deduction.

172. Now, we come to the property-wise valuation done by the AO and the objections raised by the appellant in that regard.

DELHI PROPERTY (5A, HERALD HOUSE, BAHADURSHAH ZAFAR MARG, NEW DELHI.)

173. AO referred the matter to the DVO to determine the valuation of 5A, Herald House, Bahadurshah Zafar Marg, New Delhi who determined the FMV at Rs.201.84 crores as on 26.02.2011. DVO determined the FMV of the land by adopting the comparable sale instance method and the value of the built up area on the land was determined on the basis of CPWD Plinth Area Rates for Delhi as in 2007 as a base 100 duly updated by cost inflation index, while allowing depreciation taking into account the age of structure. The DVO has taken plot No.5, Tolstoy Marg, New Delhi as a comparable sale instance to determine the FMV on 26.02.2011 for the reason that the property is situated in a same classified zone and a comparable location and appropriate adjustment has been made to iron out any possible difference in the properties between two locations. This was confronted to the appellant by the AO. The appellant has filed its objections which have been noted in page 57 of the assessment order in the following manner:-

- *The Value of Rs. 14,45,000/- per square meter is a gross exaggeration based on a 3* Multiple applied to a property on Tolstoy Marg which itself is in far better location and*

commercially far more valuable than the property being valued.

- *DVO has taken Rs. 4,81,669.64 per square meter assuming that this is a residential property and has used a multiplication factor of 3* for commercial use. Instead of using this approach, the DVO should take comparable commercial properties in that area.*

- *Plot No.5 Tolstoy Marg is at a distance of approx. 4 km. from the property being valued and is a significantly more commercially attractive locality with higher far than the property being valued. Therefore, not comparable.*

- *Tolstoy Marg building transaction took place on 10.03.2008 that is 35 months prior to the date of valuation of this property. This period (2008-2011) is inflated by DVO at the rate of 21% per annum which is exorbitant and not in line with market inflation which is much less, i.e. closer to 5% per annum.*

- *Plot size (land area) as given in Para 5.1 and in Annexure B is = 1347.696 square meters. The constructed Area on the Ground Floor 1779.08 square meters as given in Annexure Ai and used for calculation purposes by DVO is factually incorrect as it is physically impossible for the Ground Floor to have 32% higher area than the plot size itself. This is clearly erroneous.*

- *The cost of construction are factually incorrect. As per Govt. of Delhi Gazette Notification No. F.l(281)/Regn. Br./HQDiv.com/09/45 dated 4, February 2011 the cost of construction for "A" category properties is Rs. 14,960 per square meter multiplied by factor for the building completed in the years 1960-69 that is 0.6 which would come Rs. 8,976 per square meter. The values taken by DVO are wrongly exaggerated and inflated and are 2.5-3* the relevant value.*

- *DVO Report omits the reports in public domain on the Restrictive Clauses which are reported to apply to this property.*

- *Electrical installation, Water Supply and Sanitary Installation rates vary according to DVO report and are lower for basement and higher for ground floor and upper floors. This is clearly erroneous.*

174. The objection of the appellant was forwarded to the DVO who has given his response which is reproduced as under :-

- *The method adopted is appropriate in absence of the detailed physical inspection being permitted by the assessee.*

- *As per Revenue Department, Govt. of NCT of Delhi notifications, minimum land Rates of commercial lands are adopted 3 times of residential land rates.*

- *No comparable sale instance is available in this office for a commercial property in that area.*

- *The property under reference is located on Bahadur Shah Jafar Marg, which is a very wide road and very close to ITO Chauraha, one of the most prominent places in Delhi. The Tolstoy Marg is much narrower than Bahadur Shah Zafar Marg.*

- *CBDT guidelines provides for 18% to 24% per annum increase. Accordingly, 21% per annum has been adopted.*

- *As per the information contained in your letter dtd. 13.07.2017, Megganine Floor Area was 7376.22 Sqft and the Ground Floor Area was 11773.69 Sqft. The Assessee did not permit inspection. Under the circumstances, Megganine floor*

area was added to the Ground floor area and valuation report was prepared accordingly.

- *The calculations given by the Assessee are based on the minimum rate of construction for stamp duty purposes. The valuation report however is based upon the CPWO plinth area rates.*

- *The basements are normally used for parking and/ or storage purposes. Hence as per practice, lower rates of Electric Installation, Water supply & Sanitary Installation etc. are adopted for basements than upper floors. A normal practice has been adopted in valuation report, in absence of the property inspection.*

- *It is not clear as to how part tenancy impacts the FMV of the property."*

175. The AO, after considering the objections of the appellant as well as the comments of the DVO has taken the value of the property at Rs.201.84 crores.

176. First objection raised by the appellant is that DVO ought to have considered the circle rate instead of adopting 'comparable sale instance method' especially in the absence of any proper comparable instance and contended that the ready reckoner rates for the concerned property was readily available and circle rates for Delhi were released vide Notification dated

04.02.2011 which also falls within the same month i.e. valuation date.

177. Its matter of fact that the property at 5A, Herald House, Bahadurshah Zafar Marg, New Delhi is situated at one of the most prime locations of Delhi, wherein various high value commercial establishments are there, with a very high market value of rentals and huge commercial viability. For such places, the circle rates are only representative of the value purely for the purpose of stamp duty and no-way especially in Delhi, the circle rates in various zones are indicative of true or actual market value of the property. The circle rate only provides for a uniform rate for a very vast area and extends to those areas also which may have areas or localities having higher or lower commercial value or depends upon actual market value in open market of the given locality. For instance, in the same zone, there will be high potential commercial area and also other areas which do not have either any commercial potentiality or locational advantage or are residential or institutional or underdeveloped pockets. In such a situation, circle rate cannot be the benchmark to determine the FMV of the property in Delhi. Then in such a situation, comparable sale instance certainly gives a far better indication of

the actual realizable value of the property (in the proximity of the said property in the same zone). Even if we take the sale instance adopted by the DVO at Tolstoy Marg which is a residential property, the same was sold and transacted at a much higher price than the rate of prescribed circle rate of the area. This itself goes to prove that, the circle rates are not FMV, specifically in such zones of Delhi with the very posh residential localities and those having very high commercial value which cannot be benchmarked with the circle rates. On the contrary, the property 5A, Herald House, Bahadurshah Zafar Marg, New Delhi is situated at very high commercial area of Delhi with big commercial establishment and offices. This property is on perpetual lease and, therefore, it has a very high potential market value in the open market in that area. It would be very difficult to fathom that such a huge property with vast land area and a lot of built-up area having been rented to big corporate entities, it would be too difficult to believe that FMV of the property should be valued at a circle rate which is applicable for a vast zone consisting of different localities including, residential, and under developed pockets and with no or low commercial value which has been contended before us to be adopted.

177.1 It is very interesting to note here that, nowhere either in the written submissions nor in the course of hearing or as a matter of fact in the registered valuer's report, has the appellant come out with, what should be the value of the said property, according to them. Instead of that, they have sought to point out various objections and infirmities in the DVO's valuation report rather than giving what would be FMV of such property according to them. At least, the appellant should have come up with certain proper valuation benchmark and to compare so as to determine the FMV of the said property with suitable justification rather than merely pointing out various objections and defects in the DVO's report.

178. The valuation is always based on fair estimate which is in turn based on certain calculations and workings under prescribed formulas and methods either as per CPWD rate or as per comparable sales instance method etc. In the absence of any value shown by the appellant, it is very difficult to either accept various objections raised by the assessee on DVO's report or to accept contention that the circle rate alone should have been

adopted, which in Delhi for most of the zones are not determinative of actual market rate which are manifold higher.

179. Here in this case, it needs to be appreciated that only the basement and first floor of the property was earlier allocated to specific use for publication business prior to the closure of newspaper business and there are no other restrictions which disables the appellant for renting out on high commercial value. Even these restrictions are open to waiver with the consent of the lessor and it is not very uncommon to find changes in the said land use. For the remaining part, the only restriction is that it may not be used for hotel/ restaurant and other commercial uses are in fact permitted.

180. The Appellant has contended that there is a ban on the transfer of the property and further that in the event of the transfer 50% of the unearned increase would have to be given to L&DO. Reference was made to Clause (III)(13) of the Perpetual Lease Deed dated 10.01.1967 which provides that the land cannot be transferred without approval and L&DO shall be entitled to a claim of 50% of the unearned increase. Reliance has been placed on the decisions of Hon'ble S.C. in the case of **CIT v.**

P.N. Sikand, 107 ITR 922 (SC) where it was held that where there is a restrictive covenant on the property, the fair market value of the land would have to be reduced by the unearned increase stipulated in the lease deed.

181. After considering the submissions of the Appellant and also of the Revenue in this regard, we find that it is incorrect to suggest that there are any worthwhile restrictions on the use of the property. The DVO, while inspecting the premises, found as a matter of fact that the property was being used as a commercial property without any such restrictions as are sought to be argued at this stage. Besides, the restrictions, if any, are only to the extent that the building shall not be used for running a cinema or a restaurant or any activity which is noisy or offensive. These are very normal restrictions and this does not suggest that the character of the property would change for the purposes of valuation. Looking at the nature of restrictions placed on the use of the property, as discussed above, it is very clear that the nature of the property remains commercial and it does not render any other character nor does it support the arguments of the Ld. Senior Counsel for the Appellant that the DVO should have

treated as a non-commercial property and ought to have applied a multiplying factor of two and not three.

182. As discussed above, the nature of the property being commercial, situated in a highly commercial area of Delhi, the DVO has rightly applied the multiplying factor '3' to take into consideration these factors. In the absence of any effective restrictive clause, the cases relied upon by the Ld. Senior Counsel for the Appellant are not applicable and the plea deserves to be rejected and we do accordingly. The judgment relied upon by the appellant on CIT v. P.N. Sikand (supra) is not applicable on facts as here it is not a transfer of the property to a different owner albeit AJL continued to be owner and value is to be seen as benefit arising to YI as discussed above.

183. Now coming to the other limb of the argument that 50% of the unearned increase is payable to L&DO, it is found that the same is payable only at the time of transfer of the ownership. In the first place the clause only stipulates the entitlement of the Lessor. As a matter of fact, there are no such instances of transfer in this case for all these years. The rights of the authority are of unascertainable nature and are dependable

on future policies of the government from time to time as well as the conduct of the assessee. In the peculiar facts of this case, no credit for the same is permissible at the point of working out benefits which the Appellant derives from these set of transactions which are in the nature of an adventure in the nature of trade. The 50% unearned increase which is payable to L&DO does not alter or reduce the price of the property. It is at best how the sale price is to be appropriated. The seller will get the full price of the property not withstanding that he has to part with a part of that price to some statutory authority. But this parting of unearned increase arises only in a situation where the ownership of the property is getting transferred to a third party. In the facts of this case which are very peculiar, there is no transfer of ownership. By a devise, which is colourable in nature, the Appellant has taken over complete control over AJL and after piercing the corporate veil, one may find that the Appellant is in complete control and enjoyment of this property. The legal ownership may still vest with AJL hence it is not a case where in considering the value of the benefit flowing to the Appellant, there is any case for deduction of 50% of unearned increase being payable, if at all, to L&DO.

184. It is precisely for the above reason that the case of P.N. Sikand (supra) would not be applicable. In the case of P.N. Sikand (supra) the Hon'ble Supreme Court was examining the value for wealth tax purposes where the ownership vested with the assessee. In the present case, legal ownership vests with AJL but control and enjoyment comes at a benefit to the Appellant. We are of the view that the Appellant cannot get any benefit from the aforesaid decision. The contentions made in this regard are therefore rejected.

185. The Appellant has also objected to the fact that the sale instance of a property at Tolstoy Marg is taken which is not the right comparable. We have taken into consideration the observation of the DVO to the effect that there were no clear available sale instances in that area and therefore the rate for the nearby area has been taken and suitable adjustment has been made thereto. We do not find any infirmity in this approach of the DVO. As pointed out earlier, neither the Appellant nor the registered valuer whose services were taken to raise objections against the value determined by the DVO has indicated any value to the property which according to them was the right value on

the given date. No sale instance has been pointed out to suggest that the DVO should have taken this sale instance and not that sale instance. In the absence of any instance which could have been relevant, it would not be correct to point fingers at the sale instance which the DVO could find out and rely on, and make an unsubstantiated argument that the approach of the DVO was not correct. It has already been pointed out that both, Bahadur Shah Zafar Marg and Tolstoy Marg fall in the same zone i.e., Zone A. The nature of property is commercial. The DVO has already given a discount of 5% for these factors. Under these circumstances, we do not find any merit in these contentions and these are accordingly rejected.

186. The action has been taken by the L&DO for the reason that it was not being used for press activity rather, it was used for other commercial purposes, without their "consent". It appears that the authorities were not even informed of the gross violations and hence the authorities initiated the action. However, this would not suggest that the property was not open for commercial use or the multiplying factor needs to be lowered on

that account. The contentions of the appellant in this regard are not tenable.

187. As regards the objection of the appellant that the area of the ground floor has not been correctly taken, the Assessing Officer has already pointed out that due to non-cooperation by the assessee and lack of relevant details, the area of mezzanine floor was clubbed with the first floor. However, it makes no difference to the total value of the property.

188. Thus, we hold that *firstly*, the circle rate which has been proposed by the appellant to be applied here in this case for valuing the property is not acceptable, because circle rate are not the right benchmark in all cases for determining the actual market value of property in Delhi especially where the property is located. Here it is found as a matter of fact that even in the sale instance of residential property at Tolstoy Marg, the sale rate was many times higher than the circle rate. In any case, Bahadurshah Zafar Marg and Tolstoy Marg fall in the same zone i.e., Zone – A for the purpose of circle rate and if the property at Tolstoy Marg has been sold at a much higher price than the circle rate, then ostensibly the circle rate cannot be held to be

applicable for the property at Bahadurshah Zafar Marg. Bahadurshah Zafar Marg also which is near to ITO and has big commercial establishments having high commercial value, therefore, the value of Bahadurshah Zafar Marg at any day would never be much lower than the Tolstoy Marg.

189. Insofar as the appellant's objection to 21% of increase to the value from year to year applied by the DVO, we find that the DVO has taken this basis on the basis of CBDT Circular as cited by him in his report which states that monthly increase of 1.5% or 2% may be adopted which works out to be in the range of 18% to 24% of annual average, which DVO has taken at 21% which appears to be justified.

190. The contention that DVO has erroneously made 21% increase per year by adopting the rate of sale of Tolstoy Marg property which was sold in the year 2008 for arriving at the value in the year 2011, we do not find any reason for such objection because, *firstly*, Bahadurshah Zafar Marg is a much better location having very high commercial value and in any case, DVO has given suitable discount of 5% for this reason. The DVO has also pointed out that this was the nearest sale instance available.

191. Thus, considering the entire facts and material on record and in the absence of appellant itself giving any FMV, we do not find any infirmity in the valuation of the DVO which has been adopted by the AO and **accordingly the valuation of Rs.201.84 crores for the Delhi property, i.e., 5A, Herald House, Bahadurshah Zafar Marg, New Delhi is confirmed**.

PATNA PROPERTY

192. Regarding Patna property, the DVO has determined the FMV of the commercial plot of land at Rs.5,77,52,700/-. The only objection which has been raised is that no adjustment on account of encroachment of land has been given in the valuation report. The DVO has rejected the claim on the ground that there was no encroachment of land. Now this has been demonstrated before us by various additional evidences in the form of letters where the appellant has written letters to Authorities to the State Government of Bihar for getting the premises vacated which has been encroached. Another objection has been raised that it is leasehold property, therefore, the value should have been reduced.

192.1 Here in this case, property was allotted to the AJL for publication of newspaper which itself has a commercial purpose, however, the activity of the newspaper publication of the AJL was discontinued in April 2008 itself, therefore, the property was, in fact, not being used for the purpose for which it was allotted. Therefore, it is for this reason, commercial rate has been applied. However, insofar as the objection of the appellant that property was encroached and therefore, some deduction should have been given. Since it would be purely an estimate, therefore, we think it would be proper if 15% deduction is allowed on the rate determined at Rs.5,77,52.700/- for the encroachment as well as to take into account that it was leasehold land which though has been extended from time to time until this date the property is still under the ownership of AJL. **Accordingly, the valuation of the property for Patna is determined at Rs.4,90,89,795/-.** The appellant gets relief to that extent.

PANCHKULA PROPERTY

193. The DVO has determined the FMV of the property situated in Sector 6, Panchkula, Haryana and has taken into account the rate of land as notified by the State Government

along with CPWD plinth area rate. The DVO determined the FMV of the land as on 26.02.2011 at Rs.32,25,60,000/-. The objections of the appellant were that firstly, the rate of Rs.96,000/- per sq.mtr. is highly inflated and as per the circle rate of Panchkula for 2010-11, the rate for Sector 6, Panchkula was Rs.47,000/- per sq.mtr. The contention of the appellant before the AO was that rate should be Rs.15,000/- per sq.mtr. on which DVO has held that same seems to be without any basis. Now, before us, it has been stated that in the relevant year, circle rate was Rs.47,000/- per sq. mtr. Another contention has been that it is an institutional property with usage restrictions.

194. After considering the facts and material on record, we find that insofar as circle rate of Rs.47,000/- per sq.mtr. for Sector 6, Panchkula, nowhere it has been pointed out by the appellant that it is for commercial establishments or for commercial purpose which, here in this case, is allotted for publication of newspaper which now has stopped its operations. Thus, the land was purely available for commercial usage and purposes and the DVO has applied circle rate for commercial purposes along with CPWD plinth area rate. Thus, we do not find

any infirmity in the valuation done by the DVO and **accordingly, we uphold the valuation of Rs.32,25,60,000/- in respect of Panchkula property.** The contention with regard to restrictive use of the property is not tenable for the reasons given herein above.

VALAUTION OF NEHRU BHAWAN AND NEHRU MANZIL OF LUCKNOW PROPERTY

195. The DVO has determined the valuation of the properties at Lucknow known as 'Nehru Bhawan' and 'Nehru Manzil' constructed in the year 2006-07 and 1997-98 at Rs.40,59,06,400/- and Rs.64,23,51,100/- as on 26.02.2011 & 13.07.2017 respectively. The land of both the properties have been valued at circle rate notified by the State Government and FMV of building was determined on the basis CPWD plinth area rate at the relevant point of time. As observed by the AO, the DVO has made the valuation in the following manner :-

- DVO has considered circle rate of the land for computation of value. He has considered circle rate as at 1.8.2010 and 5.8.2013 and worked out an average. He has further added 10% for prime location and 10% for two side road., thereby arriving at circle rate of Rs. 30,000 per sqm.

- Accordingly, the value of land is arrived at 6469.33 sqm x Rs. 30,000 = Rs. 19,40,79,900/-.
- Further, the value of Nehru Bhawan and Nehru Manzil – two building on the plot has been determined using CPWD Plinth Area rates of Delhi 2007.
- Also, For Nehru Bhawan, depreciation has been computed from 2007 and the value has been determined at Rs. 13,45,57,383/- whereas for Nehru Manzil, it is computed from 1998 and the value has been determined at Rs. 7,72,69,100.
- Accordingly, value of Lucknow property is determined at Rs.40,59,06,400/- (19,40,79,900 + 13,45,57,383 + 7,72,69,100)

196. First objection of the appellant before us is that DVO has considered circle rates of 2010 and 2013 and then arrived at the circle rate of 2011, even though the circle rate of 2011 was available. Moreover, DVO has taken the circle rate of Kaiser Bagh Circle as available on the valuation date. However, we do not find any significant difference in the circle rate of 2010 and 2013 and circle rate of 2011. The circle rate applied is of Kaiser Bagh circle, zone in which the property of the appellant was situated. The DVO has increased circle rate by 10% on the ground that the property was situated at prime location which is evident as it has

two side roads. There is no infirmity if the DVO has increased 10% of the circle rate if the area is situated in a better location i.e., two side roads and commercial use.

197. Another contention is raised that this property was given on rent to Rajiv Gandhi Charitable Trust and, therefore, the most appropriate method would be Rent Capitalisation method and the factor of existence of tenant should be taken into consideration. This objection does not have any merit. Moreover, the DVO has adopted the land and building method by taking the FMV by taking circle rate of the land and CPWD plinth rate for construction.

198. However, there is one more important objection raised by the appellant that a certain portion of Nehru Manzil was sold by the company and same was not in its possession. Nine out of two hundred shops were sold and, therefore, the value for the portion of the property which was not in possession of AJL is to be deducted. This contention of the appellant deserves to be accepted and accordingly, we direct the AO that while giving effect to this order he will give proportionate deduction for the

shops which were already sold and the balance value of the property should be adopted as per the DVO's report.

199. One of the objections raised is that proper adjustment has not been made for half constructed and poorly maintained and dilapidated structure of the property and should be computed while taking consideration of the status of the land as it impacts marketability of the said property. Further, it was pointed out that construction of building of Nehru Manzil was stopped in 1986-87 and same could not be completed. All those factors should have been taken into consideration. We find that DVO has given 22% discount on the unfinished property which, according to the appellant, was not correct because the said structure is not equipped with necessary infrastructure and mechanical & plumbering services. Even the completion certificate from the local authorities was not obtained. Even if we accept all the contentions, which have been raised then again no quantification has been given by the appellant that how much deduction the appellant has contemplated nor the same has been mentioned by approved registered valuer.

200. However, in the interest of justice and taking note of all such objections, we hold that instead of 22% deduction, a deduction of 30% should be given. Accordingly, the appellant would get relief of extra 8% on the value adopted by the DVO on the valuation adopted for Nehru Manzil.

201. There is another objection which merits acceptance by us that the depreciation has been wrongly considered from year 1997-98, whereas the building was constructed much earlier. It has been shown before us that building was constructed in the year 1986-87 and not in 1997-98, therefore, we agree that depreciation of the building should be allowed from year 1986-87. Thus, the AO is directed to compute the valuation as done by the DVO subject to following deductions :-

(i) Allow proportionate deduction for shops which stood sold prior to the date of valuation;

(ii) Instead of giving deduction of 22% as done by the DVO on partly constructed building, give deduction of 30%; and

(iii) **Depreciation should be allowed from AY 1986-87**.

MUMBAI PROPERTY

202. Regarding valuation of Mumbai property, the appellant has raised various objections before us. Here in this case, it is pointed out that when the matter was referred in the first instance DVO had determined the valuation of the property at Rs.29,47,18,000/-. Again in his second report, he has valued the property at Rs.30,08,82,000/- as on 26.02.2011. The valuation of the DVO arriving at Rs.30,08,82,000/- was as under :-

Table - 8

Date of Valuation : 26.02.2011			
S. No	*Description*	*Value (in Rs.)*	
1	*Total area of land (in sqm)*	*3,478.40*	*(A)*
2	*FSI Permissible in the locality*	*1.00*	
3	*Permissible FSI on the plot (in sqm)*	*3,478.40*	*(B)*
4	*Less RG @ 15%*	*521.76*	*(C)*
5	*Permissible FSI on the plot (in sqm)*	*2,956.64*	*D)= (B)-(C)*
6	*TDR Potential 1 on (A)(in sqm)*	*3,478.40*	*(E)*
7	*Total FRI including TDR available for commercial development (in sqm)*	*6,435.04*	*(F)=(D)+ (E)*
8	*Derived FSI (land rate) (in*	*69,440.00*	*(G)*

	Rs./sqm), based on sale instances		
9	*Value of Plot (in Rs.0*	*446,849,578*	*(H)=(F)X(G)*
10	*Deduct for :*		
(i)	*Cost of acquisition of TDR (3478.40 x 3900 x 10.76) (in Rs.)*	*145,967,578*	*(I)*
11	*Fair Market Value of the land as on 26.02.2011*	*300,881,600*	*(J)= (H) – (I)*
	FMV	*30,08,82,000*	

203. However, the AO found various infirmities not only in the method of valuation but also in the value adopted by the DVO looking to the various factors which have been highlighted by him in the impugned order. Firstly, he stated that the land was situated in highly posh commercial area of Bandra within one km. radius of Bandra Railway Station and along the Western Express Highway. He also observed that the land belonging to the appellant measuring 3478 sq.mtr. located in the posh locality of Mumbai was much lower as compared to land measuring 3360 sq.mtr. located at Panchkula, Haryana where market rate is much higher where, DVO has adopted valuation of

Rs.32,25,60,000/-. Various other defects have been highlighted by him in page 54 of his order which are as under :-

- *The DVO, in the first report, had computed the total FSI (total area of land + TDR potential) of land of 4,869.76 sqm whereas in the second report, the same DVO had computed total FSI of land at 6,435.04 sqm. However, the DVO has not explained reason for taking two different FSI of the same plot of land meant for commercial complex/ shops.*
- *In the first report, the ova had taken circle rate for open land (not for commercial complex) instead of circle rate for land earmarked for commercial complex/ shops whereas the impugned land was for development of commercial complex/ shop.*
- *The DVO Mumbai even after certifying that impugned property of land was located in prime office area of Bandra, Near Western Express Highway and was meant for construction of commercial complex had determined the FMV taking into account the prevailing rate of sale of MIG residential flats located in non-posh area of Bandra and had made back calculation by ignoring notified circle rates for different category of land namely open land (not for residential commercial purpose), land for residential complex, land for offices and land for commercial complex which could be used without any amendment. The ova had also erred in not taking into account a fact that the comparable properties were not only residential flat but were not located in posh commercial area where impugned land was situated.*

204. Thereafter, ld. AO called for the circle rate of different types of lands located in the area from Joint District Registrar, Mumbai who informed that different lands situated in the area had different values which is as under :-

Type of Land	*Circle Rate – in Rs. per sqm as on 26.02.2011*	*Circle Rate – in Rs. per sqm as on 13.07.2017*
Open land (not falling in following categories	*71,200/-*	*1,69,000/-*
Land for residential complex	*1,18,800/-*	*2,89,900/-*
Land for office	*1,50,200/-*	*3,10,900/-*
Land for commercial complex/ shop etc.	***1,91,100/-***	*3,76,700/-*
Land located in industrial area	*1,32,500/-*	*2,89,900/-*

205. Finally, the AO has computed the valuation after taking the FSI and treating it to be commercial property of the land in the following manner :-

Total FSI of the land *(15% deduction of FSI as allowed by the DVO Mumbai was rejected for the reason that such deduction was without any basis in case of land for commercial complex)*	*6,956.8 sq.mtr.*

The circle rate for the land for commercial Complexes as on 26.02.2011	*Rs.1,91,100/- per sq.mtr.*
The circle rate for the land for commercial Complexes as on 13.07.2017	*Rs.3,76,700/- per sq.mtr.*
Total FMV of the plot (6,956.80x1,91,100) as on 26.02.2011	*Rs.132,94,44,480/- per sq.mtr*
Total FMV of the plot (6,956.80x1,91,100) as on 13.07.2017	*Rs.262,06,26,560/-per sq.mtr*

Accordingly, Assessing Officer has computed the FMV of Mumbai property at Rs.132,94,44,480/-.

206. The contention raised by the appellant is that AO could not have gone beyond the DVO report and determined his own value of the said property. In this regard, certain decisions were also relied upon which have been incorporated above. First of all, the report of the valuation officer is binding on the AO only in the Wealth-tax Act and not under the Income-tax Act and nowhere in section 142A any such condition has been provided that AO is bound by the Valuation Officer report. It is only advisory in nature. On the contrary, ld. Special Counsel on behalf of the Revenue has quoted decision of ITAT Cochin Bench in the case of MFAR Hotels vs. ACIT in ITA No.66/Cochin/2017 where the Tribunal has held that reference to the DVO in the case which is made u/s 142A is only advisory unlike the Wealth-tax

Act and AO is not bound by DVO's report. Further, while determining the value of this property by us, a big fallacy has been noted in DVO's valuation without keeping in mind the high potential and location and usage of the land, which we will be discussing in succeeding paras.

207. Another objection of the appellant is that AO has incorrectly applied the rate of a land plus built-up area assuming that it is a constructed property, even though it is undisputed fact that Mumbai property was only an open piece of land in the year 2011. The AO has applied the highest rate mentioned in the ready reckoner to the value of the property wherein as per the description in the ready reckoner, for the specified zones mentioned the rate of open land per sq.mtr. and rate of land plus building per sq.mtr. built up. These are two separate and distinct rates depending upon the nature of property. Once there is no built-up construction on the land, the AO has erroneously applied the rate of land plus built-up area. In fact, DVO has considered the rate of Rs. 71,200/- applicable for the open land. He also drew our attention to the circle rates for the 2011 as

notified by the Maharashtra Government and also the circle rates for 2016 and 2013.

208. Another important fact which has been brought on record that zone which has been taken by the DVO is **'29/167'** which is not correct because later on there was correction of zone and now the property falls in zone **'29/166'** for which the circle rate is lesser. Further our attention was also drawn to letter dated 30.05.2017 of the Municipal Corporation of Greater Mumbai wherein they have admitted the wrong classification of zone for the Mumbai property and the correct zone of the said property is 29/166. He pointed out that the rate of 2013 has been stated to be Rs.61,200/- which is the rate of open land and rate of 2016 has been stated to be Rs.85,200/-. Thus, the rate of wrong zone should not be applied instead of the rate of correct zone and that too of rate for the open land be applied. Further, he also brought to our notice that AJL vide letter dated 15.02.2017 to Dy. Director Town Planning, Mumbai asking for correction of the ready reckoner with regard to zone and Municipal Corporation of Greater Mumbai has passed an order dated

30.05.2017 acknowledging that there was wrong classification of zone and the right zone is 29/166.

209. Before us, maps were also filed showing the location of two different zones though dividing line for both the zones was by way of Western Expressway Highway. Thus, it has been submitted that in view of the correction of the amended zone, the value of the open land if at all should have been adopted for that zone.

210. Other objections as given by the appellant have already been noted above.

211. After considering the aforesaid submissions and the entire gamut of facts and material on record, we find that it is not in dispute that the property is located in a very posh and commercial area of Bandra East where there are huge commercial establishments found on the date of inspection. During the course of hearing, certain photographs were also shown by the Revenue through video presentation that as on date, there is huge building standing on the said plot of land named as **"AJL House"** with two storey basement and nine

storied building which has been rented to JSW Steel and other commercial entities by AJL. The total constructed area as on date is 1,01,920 sq. mtr. as per the information given by the AJL itself which is in the public domain. What is relevant is to note that the said land had always had a huge commercial value and later on, the AJL did made a huge commercial office complex which has been given on rent to big corporate houses. This shows that property had a huge commercial potential even for land usage on the date of valuation.

212. Another fact is that though in the year 2011, the aforesaid property was classified in the zone 29/167 and it was subsequently kept in a different zone, i.e., 29/166 in the year 2017, which fact has now been brought before us by the Appellant. We find it little surprising that the property which all through had been in one particular zone and then suddenly in 2017, it has been shifted to a different zone even though both the zones are in a very close proximity. Both the zones are highly commercial containing huge commercial establishment as on date also. When the property was allotted to AJL in 1980s it was in same zone 29/167 and continued to be so several decades

thereafter and then it has been re-classified under a different zone in year 2017 with lesser value. In any case we are not persuaded by this new classification of the year 2017, as the subject matter of valuation date is 2011 when it was in zone **'29/167'** and therefore, rate as given for this zone will be applicable. Thus, this contention of the appellant is rejected.

213. Though we agree that on the valuation date, it was an open land and no construction was carried out which only started in the year 2013, when the appellant got the permission for the commencement certificate to construct the property and completion certificate was obtained in the year 2016. As per the lease deed on which our attention was drawn, it is very clear that the land was open use for commercial purpose i.e., for publication of newspaper which itself was the business of the AJL, and it had the full potential for exploiting for commercial use and also open for change of use by paying of certain fee/charges to the State Government. Thus, all throughout, the property had a commercial value attached to it. Even the DVO has noted that at the time of inspection, the land plus building was constructed and it had all potentials of the commercial use

by the appellant. As in the case of earlier properties, for this property also, nowhere the appellant has submitted its valuation report nor indicated as to insofar as what should be the FMV of the said property so as to compare its veracity and compare it with the AO's valuation, albeit it has only pointed out various objections on the valuation as done by the AO on various grounds.

214. Now, the dispute is with regard to the fact that the AO has adopted the rate of land plus building instead of open land. The AO has taken rate of Rs.1,91,100/- per sq.mtr. being the rate for land and building of the construction at the ground floor for commercial purpose use. One thing which is glaring and unfathomable to our prudence that, for open plot the value is shown at Rs. 66,000/- per sq. mtr and for construction of ground floor for commercial shop is. Rs.1,91,100/- per sq. mtr. It means the cost of construction is almost 3 times the land value which by any standard is unacceptable in normal circumstances in real estate. It is a matter of fact in prime locations the value of land is far more than the cost of construction. What is relevant to note here that the rate of open land has not been defined as per its

usage or commercial potentiality. It has been mentioned as “open land”. This can be for either residential, institutional, schools, commercial or for many other usage. The value of the land is determined by its usage and its commercial potential. Here it is an undisputed that AJL’s land was for commercial purpose and in a very high potential commercial area. In fact, later on AJL has constructed a huge commercial 10 storied building and has given it on rent to big commercial establishments and corporate and one such portion has been given to JSW Steels. So even if it was an open land in the year 2011, then also on that day the land had huge commercial value and potentiality, therefore, it cannot be valued as just open land for any use as determined by DVO. This also gets strengthen by the fact that in year 2013, AJL got permission to construct and build huge commercial building, which means that land had potentiality of high commercial value even in the year 2011. This factor has not been considered at all nor when at the time of inspection it was clearly visual that already a huge commercial building of 10 storied was on a verge of finishing which itself go to show that land was of high value. Valuation is otherwise always an exercise of fair estimate taking into consideration the marketability of the property and potential

of the property, area, usage and market demand especially in very high commercial zones where the property is situated. Thus, we are not agreeable to DVO's valuation and AO was justified in rejecting the valuation of the DVO.

215. Even if we accept the contention of the appellant that there was no construction of the land in the year 2011, the only adjustment that the appellant would be entitled to, is that the cost of construction should get reduced from the value adopted by the AO. Now the cost of construction for estimate purpose for reducing the cost of construction, we are taking the CPWD plinth rate of construction of ground floor with full FSI which we have taken from official guideline from the site of CPWD Website **(www.cpwd.gov.in)** and same is calculated in the following manner:-

Calculation of cost of Construction

Sl.No.	**Description**	
		Ground Floor of Floor Height 3.35 M
1	**2**	**3**
	Floor Height	**3.35**

1	RCC Framed structure of floor height 3.35 Mtrs	23500
	(A)	23500
2	Add for services	
(a)	Internal Electrical Installations @12.5% of (A).)	2938
(b)	Internal water supply & sanitary Installations@ 4% (A).	940
(c)	External Services connections 5% of (A).	1175
3	Fire Fighting and alarm	
(d)	Sprinkler with automatic alarm system	1250
4	Total DPA Rates as on 01.10.2012	29803

Area of land including FSI = 6956 Sqm

Assuming ground coverage 60% for proposed building, area of ground floor construction for commercial spaces

= 4173.6 Sqm

S.No.	Description	Qty.	Unit	Rate (in Rs.)	Amount (in Rs.)
(A)	Building				
(a)	Ground Floor of Floor Height	4173 .600	Sqm.	29803	124383714

	3.35 M				

Cost of construction at ground floor in 2012 = Rs.12,43,83,714 (Twelve Crore Fourty Three Lakhs Eighty Three Thousand Seven Hundred Fourteen)

Thus, cost of construction comes to Rs.12,43,83,714/-, say **Rs. 12,50,00,000/-**

216. The appellant has contended that 15% deduction is available to the land of more than 2000 sq.mtr. which has been considered by the DVO but erroneously rejected by the AO. However, we find that AO rejected this contention of the DVO looking to the fact that land in question was for commercial purposes and at a very high commercial value on which later on, huge commercial complex was built up running into 10 storied, therefore, such ad hoc deduction would not be applicable here. It may also be pointed out that while working out the cost of construction above, we have taken the area of the land @ 60% only for the reason that certain part of land may have to be left open for common facilities and activities. This deduction itself takes care of the objection.

217. Before parting, it would be relevant to mention here that while valuing the property one has to see the location, commercial potentiality as of date and value in open market even at the valuation date the property had potential of good price or not. This is purely an exercise of estimate which is based on certain parameters and guidelines. The rate of open land which has been mentioned does not mention as to whether the said amount is for commercial use or incidental use or for residential use or for any other purpose. If a land has potential use and ultimately it has been used for commercial purpose by the appellant, the method in which we had upheld the valuation is more reasonable. One very important fact which we have already discussed above and is again reiterated that, the rate of open land is around Rs.66,000/- per sq.mtr. but the rate of land with building for commercial use is Rs.1,91,000/- per sq.mtr. or so which is nearly three times of the rate of open land. This huge differential rate cannot represent only the value of building on the land. Obviously, the potential usage of the land (for commercial purposes) is the factor which gives it such higher value. This is an important factor which justifies our view that for arriving at a fair value for the property, the cost of

construction as embedded in the rate for **"land and building for commercial use"** ought to be deducted. A property in Bandra East admeasuring approximately 3478 sq. mtr. even in the year 2011 would never be at such a low price Rs.30 crores.

218. Thus, in the facts and circumstances of the case, the valuation of Mumbai property instead of Rs.132,94,44,480/- is valued at **Rs.120,44,44,480/-** by reducing the cost of construction of a ground floor (as noted hereinabove) as rate applied by AO was for land plus ground floor shopping complex.

219. In view of the aforesaid discussion on the valuation of the properties, the values of the five properties are as under:

(i) Delhi Property, 5A, Herald House, Bahadurshah Zafar Marg, New Delhi, is valued at **Rs.201.84 crores**;

(ii) Patna property is valued at **Rs.4,90,89,795/-;**

(iii) Panchkula property is valued at **Rs.32,25,60,000/-;**

(iv) Lucknow property is valued subject to our directions given to the AO; and

(v) Mumbai property is valued at **Rs. 120,44,44,480/-**

Accordingly, the aforesaid additions are confirmed.

GROUND NO.10

220. In this ground, the appellant has challenged the addition of Rs.1 crore received from Dotex as unexplained cash credit u/s 68 of the Act. We have already discussed in detail various chain of events wherein one of the important link was the loan taken of Rs.1 crore from a Kolkata based company, namely, Dotex. Even prior to the receiving of alleged loan, already AICC has assigned the loan which was payable by the AJL in its books to the appellant company immediately after its formation for a sum of Rs.50,00,000/-. Even the shares were allotted before the actual money was credited in the accounts of the appellant company. Out of sum of Rs.1 crore, Rs.50,00,000/- was paid to AICC towards purchasing of the asset in the form of loan and was disclosed in the financial statement as application of income towards its charitable objects.

221. Assessing Officer had noted that there were enquires conducted by the Investigation Wing and the findings of which has been summarized by him in paras 8.10 & 8.11 to which our attention was drawn at the time of hearing by Shri Srivastava that, Dotex was one of more than 50 paper companies which

were floated and controlled by entry operators, namely Mr. Sunil Bhandari and Mr. Sunil Sanganeria to provide accommodation entries. Dotex was used for providing accommodation entries of loan/share capital by earning commission from 1% to 5% of cheque amount. The AO observed that during the course of assessment proceedings, the assessee was required to prove the identity, genuineness and creditworthiness of Dotex by filing all the relevant evidences and to substantiate the entire transaction. The assessee in response had filed following documents before the AO vide letter dated 07.06.2017:-

- *Name, Address, PAN, Company Identification Number, email id, phone number, fax number of the lender.*
- *Letter from Dotex dated December 24, 2010 giving the said loan, which provides all the details of the loan such as date of taking loan, mode of payment, terms and conditions for taking loan and repayment thereof, etc.*
- *Confirmatory letter from Dotex dated May 2, 2011, confirming the balance of loan and outstanding interest as at March 31, 2011.*
- *Letter dated April 25, 2015 from Dotex acknowledging the repayment and full settlement of the loan by the Appellant.*
- *Copy of loan account as reflected in the books of the Appellant;*
- *Form 16A issued in respect of TDS deducted on the interest, Form 27A, Quarterly statement of TDS and proof of deposit of TDS deducted for interest accrued for the year under consideration i.e. FY 2010-11.*

222. AO has incorporated the relevant explanation as well as evidences filed before him and his observations in brief are as under:-

> *"20.1 In this case during the course of assessment proceedings, the assessee has filed only the following documents/ evidence in order to discharge its initial onus u/s 68 of the Act :*
>
> - *A copy of letter addressed to the assessee without even mentioning address of the assessee that it had advanced loan of Rs.1 crore for a period of one year on interest @ 14% per annum as evident form the following scanned copy of the confirmation letter.*
> - *M/s. Dotext Merchandise Pvt. Ltd. had paid a loan of Rs.1 crore to the assessee through banking channel.*
>
> *A careful scrutiny of the confirmation of creditors has revealed following important facts :*
>
> - *The letter dated 24.12.2010 did not bear address of creditors and even name of authorized signatory was not mentioned. The lender company gives a confirmation on a plain paper and does not seem to possess a letter head of its own.*
> - *Even PAN of the creditors was not mentioned in the letter.*
> - *The letter did not even bear the address of the assessee.*
> - *The advance of Rs. 1 crore was given only for the period of one year and loan was to be returned on 23.12.2011. However, the loan was repaid only in FY 2015-16 when the investigation proceedings were continuing and the assessee was confronted with the facts that M/s Dotex Merchandise Pvt. Ltd. was a paper company engaged in providing hawala entries.*
> - *The loan was subject to demand Promissory Note. However, no evidence that the assessee had actually*

issued demand promissory note was filed during the course of assessment proceedings.

- *As per confirmation, loan was given on 24.12.2010 by cheque, however, it is evident from the bank statement that the loan was credit 0 an a/c of the assessee only on 15.02.2011 and during the course of assessment proceeding the assessee had failed to explain if the loan was given as per confirmation through cheque on 24.12.2010 why it took 51 days to reach the assessee?*

223. Insofar as assessee's contention that assessee had actually paid interest on loan of Rs.1 crore, the AO after examining the audited profit & loss account and balance sheet noted following facts:-

> *"It is evident from the audited P&L A/c and balance sheet as on 31.03.2011 that the assessee had claimed deduction of interest of Rs. 1,72,603/- in P&L A/c. However, the amount of Rs.1,72,603/- was disclosed as "'interest accrued" but not due on inter corporate loan under "Schedule 6 Current Liabilities & Provisions" of the balance sheet. During the course of assessment proceedings, no evidence that interest of Rs. 1,72,603/- actually paid to the creditors was filed except for an evidence of TDS of Rs. 17,260/- on 19.03.2012. It is pertinent to mention here that as per the copy of the confirmation, the assessee had agreed to pay interest @ 14% per annum to creditors. Accordingly, the interest of Rs. 3,50,000/- for the period from 24.12.2010 to 31.03.2.11 was required to be paid after deducting TDS of Rs. 35,000/- and as against the same the unproved claim of interest payment of Rs. 1,72,603/- was made along with claim of TDS of Rs. 17,260/-. In this context, scanned copy of balance sheet for the year under consideration is placed below."*

224. Thus, Assessing Officer deduced that there was contravention of terms and conditions of the alleged confirmation and assessee had not paid interest @ 14% per annum during the year under consideration but as soon as investigation started against assessee on 01.11.2012, it had deducted TDS on some amount and ultimately at much later date returned the loan just to cover its tract. AO has mainly harped upon investigation which has been started against assessee on 01.11.2012 and there was gap of five years by when assessee filed a petition before the Metropolitan Magistrate and all the act of deduction of TDS of loan or return of loan after a gap of five years to a shell company located in Kolkata were only events sequel to the investigation. At no point of time, the appellant had furnished any evidence to prove the source of income and advance of loan of Rs.1 crore on 24.12.2010. Then he has referred to various case laws and judgments of Hon'ble Delhi High Court and has given his conclusion and analyzed in para 20.7 & 20.8. Accordingly, he has treated entire sum of Rs.1 crore as unexplained cash credit u/s 68.

225. Before us, ld. Sr. Counsel for the appellant, Mr. Soparkar submitted that, various additional evidences were submitted before the ld. CIT (A) to prove further onus regarding genuineness of the loan, however ld. CIT (A) despite calling for remand report has simply rejected the evidences as well as the explanation given by the assessee. Before us, he has pointed out that the appellant during the assessment stage as well as the first appellate stage had submitted following documents in respect of loan taken from Dotex :-

Sr.No.	Documents/Details	Page No.
i.	Name, Address, PAN	Page 244 of PB I
ii.	Company Identification Number, email id, phone number, fax number of the lender.	Page 248, 247 of PB I
iii.	Letter from Dotex dated December 24, 2010 giving the said loan, which provides all the details of the loan such as date of taking loan, mode of payment, terms and conditions for taking loan and repayment thereof, etc	Page 246 of PB I
iv.	Confirmatory letter from Dotex dated May 2, 2011, confirming the balance of loan and outstanding interest as at March 31, 2011.	Page 247 of PB I
v.	Letter dated April 25, 2015 from Dotex acknowledging the repayment and full	Page 248

	settlement of the loan by the Appellant.	of PB I
vi.	Copy of loan account as reflected in the books of the Appellant	Page 249 of PB I
vii.	Form 16A issued in respect of TDS deducted on the interest, Form 27A, Quarterly statement of TDS and proof of deposit of TDS deducted for interest accrued for the year under consideration i.e. FY 2010-11.	Pages 250-253 of PB I
viii.	Details of year wise interest accrued and paid by the Appellant since inception till the date of repayment, along with the bank statement showing payment of interest	Page 256-261 of PB I
ix.	Bank Statement showing the transaction of loan of Rs. 1 Crore on 15.2.2011.	Page 277 of PB I
x.	Form 16A for all years	Pages 262-274 of PB I
xi.	Notarized copy of promissory Note issued by the Applicant to Dotex	Page 713 of PB II
xii.	Various communications between the Appellant and Dotex extending the term of the loan from time to time.	Pages 714 to 724 of PB II
xiii.	Dotex Merchandise Private Ltd. Letter to Young Indian with Envelope	Page 804-805 of PB II

226. From the foregoing documents, he submitted that, it is clear that all the transactions of receipt of loan, payment of

interest as well as repayment of loan was done by the parties through banking channel. Even in the STR report reproduced by the Ld. DR (Page 59-62 of the Revenue PB I), it is mentioned that loan was received by the Appellant through a cheque drawn on ICICI Bank. Further, the loan document, confirmation letter, confirmation of repayment, bank statements, promissory note, balance sheet of the lender, etc. have also been reproduced by the Appellant. Hence, all the documents proving the genuineness of the loan has been submitted by the Appellant. The Appellant has also provided the name, address, PAN, contact details, etc. of Dotex during the assessment. Hence, identity of the lender has also been proved beyond doubt. Further, the Appellant has also submitted the Audited Financial Statements of Dotex for the year ended March 31, 2011, wherefrom it would be observed that the lender had an authorised share capital of Rs. 2 crores and reserves and surplus of Rs. 31.19 crores. Further, for FY 2010-11, the lender had earned interest income of Rs. 58.52 crores and had taxable profits as the donation of Rs. 1 crore appearing in its Profit and Loss account is not an allowable deduction under the Act. Hence, it was a tax paying company. Therefore, from the

financials of the company, even the credit worthiness of the lender has been substantiated without doubt.

227. He submitted that, despite the foregoing documents and details submitted by the Appellant, the AO as well as the Hon'ble CIT(A) has treated the loan as an unexplained cash credit on the ground that the onus has not been discharged by the Appellant. While coming to this conclusion, various allegations have been made by the AO, which have also been relied by the Ld. DR. The said allegations and the Appellant's reply thereto has been illustrated before us in the following manner:

AO's allegation	*Appellant's reply*
The letter dated 24.12.2010 from Dotex (page 246 of PB I) did not bear the address and PAN of the creditor (Appellant) and that the name of the authorised signatory was not mentioned in the letter – page 89, para 20.1 of the assessment order	*There is no legal requirement that the letter issued by the lender should mentioned the address and PAN of the borrower. The PAN and address of the lender has anyways been provided to the AO. The subsequent letters submitted in the same reply in fact bears the address and other details of the lender.*
The confirmation letter of Dotex is on plain paper and does not seem to possess a letter head	*Confirmation letter is at page 247 of PB I. It clearly bears letterhead.*

of its own. (Page 91 of the assessment order)	
Even though the loan was for only 1 year, the loan was repaid only in FY 2015-16, when the investigation proceedings were continuing and the Assessee was confronted with the facts that Dotex was a paper company engaged in hawala entries. (Page 91 of the assessment order) *The AO has further alleged that the Appellant has claimed taking loan of Rs. 1 crore from Dotex on 15.02.2011 which has not returned back till investigation against the assessee on this issue was completed and no interest was paid on such loan till investigation had reached finality. (Para 8.10, Page 30 of the order).* *He also states that non-repayment of loan and interest were violation of terms of loan, for which surprisingly no action was taken by the lender. (Page*	*The Appellant had during the reassessment proceedings, in its reply dated June 7, 2017 clearly stated that even though the loan was initially taken was one year, the term of the loan was extended from time to time (Page 244 of PB I). Hence, the allegation of the AO that repayment of loan in FY 2015-16 was in violation of the terms of the loan is without any basis. In fact, even though the principal amount of the loan was repaid by the Appellant in FY 2015-16, the Appellant had been timely paying the lender the interest on the loan. The chart of payment of interest by the Appellant to the lender was also submitted to the AO vide letter dated June 13, 2017. (Page 254 of PB). Hence, with this understanding between the Appellant and the lender, the question of the lender taking any adverse action against the Appellant on violation of terms of the loan does not arise. Various communications between the Appellant and Dotex extending*

33 of the order). *The AO has stated that the Appellant has not paid any interest on loan until completion of investigation against it and that no reasonable explanation was given for not repaying within one year as was initially agreed between the parties. He indicates that such non-payment amounts to violation of terms of loan for which the lender should have taken actions. (Page 33 of the order).*	*the term of the loan from time to time has been submitted during CIT(A) proceedings (Page 714 to 724 of PB II). Hence, the hypothesis of the AO that the Appellant had repaid the loan only when it was confronted about the transaction is a misbelief and unproved allegation.*
The loan was subject to demand promissory note. However, no evidence that the assessee had actually issued demand promissory note was filed during the course of assessment proceedings. (Page 91 of the assessment order)	*The Appellant had issued the demand promissory note to the lender in accordance with the terms of the loan. The AO never asked the Appellant to submit said promissory note during the reassessment proceedings. Hence, the question of the Appellant submitting the same to the AO did not arise. Copy of the same is provided as additional evidence to CIT(A). Page 713 of PB II*
As per confirmation, the loan was given on 24.12.2010 by cheque, however, it is evident from the bank statement that	*The AO has not asked this specific query to the Appellant during the reassessment proceedings. Accordingly, the*

the loan was credited to the bank account of the assessee only on 15.02.2011 and during the course of assessment proceedings the assessee had failed to explain if the loan was given as per confirmation through cheque on 24.10.2010 why it took 51 days to reach the assessee? (Page 91 of the assessment order)	*question of the Appellant giving any explanation in this respect does not arise. The Appellant was incorporated only in AY 2011-12 on November 23, 2010. Accordingly, the bank account of the Appellant could not be opened before February 2011. It is for this reason that the cheque could be encashed only on February 15, 2011. This is also clear from the bank statement already submitted to the AO vide submission dated June 13, 2017.*
TDS on interest for AY 2011-12 was paid in FY 2015-16 (Para 20.2 page 91 of the assessment order	*The Appellant had deposited said TDS in FY 2011-12 itself along with interest. (Page 250-253). Said documents were available even with the AO.*
Interest on loan was also not paid by the Appellant. No proof of payment of interest has been submitted by the Appellant(Para 20.2 page 91 of the assessment order)	*Bank statements showing all payments of interest since inception was provided to the AO vide letter dated June 13, 2017. Page 256- 261 of PB I. Hence, this statement of the AO is incorrect.*
Interest amount for AY 2011-12 @ 14% should be Rs. 3,50,000, as against which 'the unproved claim of interest payment of Rs. 1,72,603 has been made by the assessee'. (Para 20.2 page 91	*The loan of Rs. 1 crore was received by the Appellant on 15.2.2011. Accordingly, interest for the period 15.2.2011 to 31.3.2011 (45 days) on Rs. 1 Crore at 14% works out to be Rs. 1,72,603/-*

of the assessment order)	*(1,00,00,000*14%*45/365), which is the amount accrued as interest payable for AY 2011-12. TDS was also deducted on the same and the sum was paid through banking channel. (Page 256 read with page 257 and 250 of PB I)*
For AY 2012-13 and AY 2013-14, the balance sheet disclosed amount of 'interest accrued but not due on inter corporate loan' at Rs. 1,55,343/-, where the interest claimed in profit and loss account is Rs. 14,00,000/-. (page 92 of the assessment order, last para)	*From the details submitted (vide letter dated June 13, 2017) it is clear that out of Rs. 14,00,000/- for both the years, the Appellant had paid interest of Rs. 11,04,657/- vide cheques dated 25.03.2012 and 20.12.2012, respectively and accordingly, it is for this reason that only balance amount of Rs. 1,55,343/- was appearing as outstanding in the books of the Appellant for these two years.*
Only part evidence of TDS were filed and no evidence regarding payment of interest to the creditor. (Page 93 of the order, first para)	*The Appellant has filed the bank statements evidencing payment of interest for all the years (Page 256 to 261 of PB I). Also form 16A issued by the Appellant have been submitted to the AO. (Page 262 to 274 of PB I). Hence, this is statement is untrue.*
The assessee did not file confirmation of the creditors that it had actually received the	*The Appellant has filed the confirmation from Dotex regarding repayment of loan*

interest.	*along with interest (Page 248 of PB I). Further, the bank statements furnished by the Appellant are sufficient proof to indicate that the interest 177 3 Mr. R. P. Goenka, the founder of the RPG group, was a member of the Rajya Sabha for many years. was actually paid by the Appellant. In fact, from the perusal of the bank statements, it would be noted that the entries itself disclose Dotex as the payee.*
The Appellant has not paid interest for the year under consideration, but as soon as the investigation started against the assessee on 1.11.2012, it had deducted TDS on some amounts and ultimately returned the loan just to cover its track. (Page 93 of the order, 2nd para)	*The allegation of the AO is baseless and incorrect. As per AO, the investigation against the Appellant had started on 1.11.2012. As against this, as per the details provided to the AO, which is backed by the evidentiary documents, interest for AY 2011-12 was paid by the Appellant on 25.03.2012 (Page 256 of PB I), which is way before the initiation of investigation. Also, TDS on said amount was deducted and deposited with the Department on 19.3.2012 along with applicable interest aggregating to Rs. 19,849(Page 253 of PB I).*
The loan was in fact interest	*As explained above, the said*

free loan till investigation started by the Income Tax Department in the year 2012 (Page 33 of the order)	*allegation is based on only conjecture and surmises and is without any basis.*
The AO has observed that the loan of Rs. 1 crore was given to a newly incorporated company with a small capital base of Rs. 5 lac, without any guarantee. (Para 8.10, page 30 of the order)	*The Appellant is a section 25 company with charitable objects Further, the lender company, Dotex is a part of RPG group of companies, a reputed business house. Hence, it is not surprising that the RPG3 group with a view to support the objects of the Appellant agreed to advance loan to the Appellant. Indeed, in terms of letter dated 24.12.2010, the Appellant has provided on demand promissory note to the lender as a reassurance towards repayment of loan.*
The AO has relied on some purported internal investigation report in relation to Dotex and stated that 'it is undisputed fact that Mr. Sunil Bhandari and Mr. Sunil Sanganeria were not only directors of M/s Dotex Merchandise Pvt. Ltd. but were directors of 50 other Kolkata based companies. Many of these companies have been found engaged in the business of providing accommodation	*Firstly, the Appellant has not been provided a copy of any such investigation report alleging foregoing points for its consideration and submissions. It is settled law that the information gathered behind the back of the assessee cannot be used against him unless and until an opportunity of rebutting the same is given to the assessee. See: PCIT vs. Laxman*

entries as notice during the course of survey by the Income Tax Department'. (Para 8.10, Page 30 of the order). At page 33 of the order, he further states that the copies of bank account of companies controlled by above referred assessee had proved that these companies were engaged in business of accommodation entries typically contains deposit of cash and issue of cheque of equivalent amount.	*Industrial Resources Limited (397 ITR 106)(Del)(Page 151-155 of LPB X).* *In fact, even the Hon'ble CIT(A) has not alleged that Dotex is a paper company and not relied on any such investigation report in the appellate order, and rightly so, since in absence of said report on record and without providing the same to the Appellant was its comment, the same cannot be relied by the Revenue.* *Further, for the year under consideration Dotex is RPG group company and accordingly, the allegations of the AO based on the premise that said company belonged to persons who were involved in providing accommodation entries is completely misleading. The facts relied by the AO is contrary to the facts placed on record by the Appellant.* *The AO has applied the general reports relating to certain group of companies to Dotex. He has referred to the bank accounts of certain*

	companies controlled by abovementioned individuals to conclude that even Dotex was engaged in the same activity, without providing any factual proof that even Dotex was engaged in said activities. It is humbly submitted that merely because some companies have been found to be engaged in accommodating entries activity does not automatically lead to the conclusion that even Dotex was engaged in said activities, much less does it prove that the loan taken by the Appellant fell is that category. From the assessment order, it not clear that said report also gave any specific findings in respect of Dotex. The AO has merely cursorily referred to said report to say that similar companies have been found to be engaged in accommodating entries activity. *Further, even the STR report was not shared with the Appellant. It has now been filed by the Ld. DR. However, on perusal of the same, nothing turns even from the STR report.*

228. Thus, when details such as name, address, pan, etc., were furnished by the assessee, then the burden shifts to the Assessing Officer to investigate into the creditworthiness of the share applicants. If the AO fails to do so, the burden is not discharged by the AO and therefore, addition cannot be sustained. To discredit the documents produced by the assessee on the aforesaid aspects, there has to be some cogent reasons and materials for the AO and he cannot go into the realm of suspicion.

229. Based on the above, Shri Soparkar submitted that none of the allegations of the AO are factually correct and in fact, the appellant has proved beyond doubt all the ingredients of section 68 by placing all the relevant documents. The AO had not made any independent enquiry but the genuineness of the loan when all the details were furnished before him even at the first appellate stage before him. Once all the basic particulars i.e. name, address, PAN, etc. were filed, the burden shifts to the AO to investigate into the creditworthiness of the share applicant and if the AO fails to do so, then burden of the AO does not discharge, therefore, addition cannot be sustained. In support, he strongly relied upon the judgment of **Hon'ble Supreme Court in the case**

of CIT vs. Orissa Corporation (P.) Ltd. 159 ITR 78. Apart from that, he has also relied upon the following judgments :-

(i) *Ranchood Juvabhai Nakhava 21 taxmann.com 159 (Guj.)*
(ii) *Dwarkadhish Investment Pvt. Ltd. (330 ITR 298)(Del.)*
(iii) *CIT vs Value Capital Services (P) Ltd (307 ITR 334) (Del)*
(iv) *CIT v. Kamdhenu Steel and Alloys Ltd (361 ITR 220)(Del), SLP dismissed vide order dated 17.09.2012 (SLP No. CC 15640/ 2012)*
(v) *CIT v. Gangeshwari Metals (P) Ltd. (361 ITR 10)(Del)*
(vi) *ACIT v. Shyam Indus Power Solutions (P.) Ltd. (90 taxmann.com 424)(DelhiT)*
(vii) *CIT v. Pragati Co-operative Bank Ltd. 278 ITR 170 (Gujarat*

230. He further submitted that all the investigations reports/STR report relied upon by the AO was never shared with the appellant which is clear violation of principles of natural justice and, therefore, such information gathered behind the back at the threshold cannot be utilized against the appellant. In support of this contention, he has relied upon following judgments :-

(i) Suraj Mall Mohta and Co. v. A.V. Visvanatha Sastri [1954](26 ITR 1)(SC)
(ii) Dhakeshwari Cotton Mills v. CIT [1954](26 ITR 775, 783) (SC)
(iii) PCIT vs. Laxman Industrial Resources Limited (397 ITR 106)(Del

231. One important line of argument which Shri Soparkar has canvassed before us is that Dotex belonged to a very reputed group of RP Goenka which is a very reputed business house. The annual report of the company for FY 2010-11 clearly shows that during the year the shares of the company were transferred to RPG Group. The RPG Group had various listed companies under its flagship including Ceat Limited and RPG Life Science Ltd. He also drew our attention to the list of companies under the flagship of RPG group which also includes Dotex. Thus, it cannot be held that said company belongs to the persons who were involved in providing accommodation entries. Nowhere the AO by making his allegations with regard to bank accounts of certain companies controlled by so-called accommodation entry providers concluded that even Dotex was engaged in the same activity without providing any factual proof that Dotex was engaged in said activities. In any case, simply because some companies have been found to be engaged in accommodation entries do not automatically lead that even Dotex is engaged in such activities. In case, AO had any doubt then he should have made his own enquiries to come to his conclusion. No step has

been taken by the AO and has simply rejected the documentary evidences filed by the assessee based on certain information and enquiries conducted earlier which were never confronted to the assessee. He also referred to relied upon the judgment of **Hon'ble Delhi High Court in the case of CIT vs. Laxman Industrial Resources Ltd. ITA 169/2017 and Fair Finvest Ltd. 357 ITR 146 (Delhi)**.

232. Though we will deal with the arguments on behalf of the Revenue in the succeeding paragraphs, however we deem it proper to deal with the rebuttal made by the ld. Sr. Counsel on the arguments taken on behalf of the Revenue which are as under :-

> *"7.28 During the hearing, the Ld. DR has relied on the order of the AO and stated that since as per the investigation report, Dotex is a paper company, the addition made by the AO should be upheld. However, it would be appreciated that after the order of the Hon'ble CIT(A), the order of the AO is now merged with that of the appellate order and on perusal thereof, it would be noted that the whole theory of Dotex being a paper company finds no place in the order of CIT(A) and rightly so, as the investigation report is not even on record. The Hon'ble CIT(A) has dealt with the issue as to whether the Appellant has discharged its onus; however, it makes no reference to any investigation report nor does it go into the issue as to whether Dotex is a paper company or not. At para 5.5.14, the Hon'ble CIT(A) mentions that Dotex is a dummy company, but the said statement is based on the*

financial statements of Dotex and not the allegations of certain entry operators managing the company, etc. as alleged by the AO. Accordingly, it is submitted that the entire allegation of Dotex being a paper company no more survives in the present case.

7.29 The Ld. DR has referred to a decision of the Kolkata ITAT in case of DCIT vs. Dotex Merchadise Pvt. Ltd. (I.T.A. No. 1602/Kol/2016) to support his contention that Dotex is a paper company. He has referred to the reasons recorded by the AO in that case, which is reproduced at Para 6 of the order to state that even in Dotex's own case, the reasons recorded mentions it to be a paper company. The Ld. DR has further mentioned that the AR in that case has relied on the said reasons. In this regard, it is firstly submitted that the Ld. DR has erred in passing the reasons recorded in the said decision as facts. The said decision cannot be relied upon by the Ld. DR, since the facts mentioned in the reasons recorded by the AO for reopening of the assessment, are at best, only allegations and the same have not even been subject to any verification since the reassessment itself was quashed by the ITAT. Hence, the reasons mentioned in the said decision are wholly irrelevant as one cannot rely upon reasons recorded which have not even culminated into assessment.

7.30 The Ld. DR has also erred in stating that the AR in that case has relied on the reasons recorded. As is clear from the starting line of Para 6, the AR in that case has relied on the order of the CIT(A) who has quashed the reassessment and not the reasons recorded by the AO. It is accordingly submitted that reliance of the Ld. DR on the said decision is entirely misplaced.

7.31 Be that as it may, the Appellant also submits that the alleged facts mentioned in these reasons (para 6 of the ITAT order) are that:

(i) Dotex was registered as paper/shell company by an entry operator named Shri Binod Kumar Jaiswal.

(ii) In 2005, this company was purchased by one Shri Uday Shankar Mahawar, another entry operator.

(iii) In March, 2010, Shri Mahawar sold this company to the RPG group and Shri Rajendra Jha and Shri Sunil Bhandari who are the employee of the RPG Group become the directors of M/s. Dotex Merchandise Pvt Ltd.

(iv) Even Shri R. P. Goenka himself was the director of this company from 12/10/2011 to 28/03/2013.

7.32 As against the above, the allegations of the AO in the present case, at page 88 of the assessment order, para 18 is that Dotex was one of more than 50 paper companies floated, controlled and used by Mr. Sunil Bhandari and Mr. Sunil Sanganeria to provide accommodation entries.

7.33 On comparison of the two allegations, it is clear that allegations of the AO in this case are different from the allegations which were made by the AO in Dotex's case. Different persons have been identified by both the AOs as the persons who floated and controlled the company. Mr. Sunil Bhandari is alleged to be an entry operator by the AO, whereas in the Dotex's reasons, he is mentioned to be an employee of RPG Group. These discrepancies and contrary allegations, clearly show that the allegations based on which the AO has treated Dotex as paper company in the present case, especially without providing the copy of the investigation report to the Appellant, cannot have any validity.

7.34 Besides, in the reasons quoted in Dotex's order, it is also mentioned that RPG Group acquired this company in March 2010. As against this, the Appellant has taken the loan from Dotex in December 2010 and the cheque was enchased in February 2011. Hence, it is submitted even if the company

was a paper company in earlier years, it is clear that at the time the Appellant took loan from this company it was an RPG Group company. It is submitted that RPG, being a well wisher of the Appellant, has agreed to provide this loan to the Appellant. In fact, the reasons in Dotex's order even state that Mr. RPG himself for the director of this company from 2011 to 2013. It would be appreciated that even during this period, the loan taken by the Appellant was subsisting and renewed time and again by Dotex. It is submitted that regardless of the past of the Company, which too is not substantiated, it is clear that for the years under question, this company did not belong to any entry operators. It belonged to the RPG Group, in which even Mr. RPG became a director. Accordingly, it is submitted that the entire basis on which the section 68 addition has been made by the AO is untenable.

7.35 The learned DR has further stated that from the letters of Dotex, it is not clear as to who is the signatory signing the documents, which creates doubt about the veracity of the documents. In this regard, if the identity of the signatory was an important basis for the AO to verify the documents, the AO ought to have sought the said information from Dotex before summarily discarding the same. It is certainly not in the hands of the Appellant to provide that information. Besides, it is not clear as to how just that information could change the view of the AO when the Appellant has already provided everything it could in respect of the loan transaction. What advantage would the Department get if it got the name of the signatory. The Appellant has cited above plethora of decisions where it is settled that after the details are already provided by the assessee, the Department should have enquired with the lender. Without actually undertaking the said process, the AO is not justified in making additions based on mere conjectures and surmises.

7.36 The Ld. DR has further pointed out that from the Balance Sheet of Dotex, it is clear that it has only interest income, which shows that it was not engaged in the any business. It is submitted that the said argument is untenable. There is no general rule that every company which interest company automatically becomes a paper company. If such conclusions are drawn, then all the banks and finance companies would be looked at as paper/shell companies. In fact, from the Financials of Dotex, it is clear that it has earned taxable income and it is a tax paying company.

7.37 The Ld. DR has further stated that merely because the payments were made and received in cheque/banking channels is not enough for determining the genuineness of the loan. It is submitted that in the present case, the Appellant has not only shown that the payments have been made through banking channels but has also produced all the documents on record which demonstrate the identity, genuineness of loan and credit worthiness of the lender. However, the AO has completely ignored all the evidence.

7.38 The Ld. DR. has for this proposition relied on the decision of the Supreme Court in PCIT vs. NRA Iron and Steel Pvt. Ltd (2019)(15 SCC 529). However, in the said decision, it would be observed that the AO had made independent and detailed enquiry, including survey of the investors to verify the credit worthiness of the parties and based thereon arrived at the conclusion that they were non-existent or lacked credit worthiness (Para 11 of the order). However, in the present case, it is clear that the AO has not made any enquiry whatsoever. Hence, without taking proper steps, the AO cannot now discard the evidences filed by the Appellant by stating that merely because the payments are made through banking channel, it is not sufficient evidence.

7.39 The Ld. DR has further stated that even if RPG Group had taken over the company, it does not matter. In this regard, it is submitted that the said fact matters because it directly discredits and contradicts the allegation of the AO that the Company was owned by two entry operators. The company may or may not have been owned by entry operators in the earlier years; however, it is clearly on record that for the year in which loan was taken by the Appellant, this was an RPG group company and not a company belonging to the two operators referred to by the AO. In any case, even if these facts do not matter, it is not clear as to what more could the Appellant have provided to the AO to convince him that this is a genuine loan.

7.40 The Appellant has met each and every allegation of the AO with respect to the documents filed by it. As pointed out above, all the allegations of the AO about it not deducting TDS, or not paying interest, on making payments only after investigation started etc. are factually incorrect. None of these facts have been controverted by the Ld. DR and the only argument is that Dotex is a paper company, which too is not supported by any document.

7.41 It is accordingly submitted that the addition made by the AO u/s. 68 is completely baseless and ought to be deleted. In view of the foregoing, the Appellant humbly submits that the addition u/s. 68 ought to be deleted."

GROUND NO.11

233. This ground against the disallowance of interest of Rs.1,72,603/- paid on loan to Dotex has been stated to be consequential.

REVENUE'S CONTENTIONS

234. Before us, Shri Srivastava on behalf of the Revenue submitted that the AO has referred to enquiries which are made specifically in respect of loan transaction between appellant and Dotex which revealed the following important facts :-

- *It was an undisputed fact that Mr. Sunil Bhandari and Mr. Sunil Sanganeria were not only directors of Dotex, but also directors of 50 other Kolkata based companies, many of which were found engaged in the business of providing accommodation entries (which was noticed during the course of survey by the Income Tax Department).*
- *The modus operandi involved issuance of cheques by these Kolkata based companies in lieu of cash payments of equivalent amount by the beneficiary (the Appellant in the present case). These companies also charged commission for issuing cheques which varied from 1% to 5% of the cheque amount. The cheque payment was then shown as loan by these companies in the books of account of the beneficiary, who never returned back the said loans for the simple reason that the loan represented the laundered money of the beneficiary.*
- *The Appellant had claimed taking a loan of Rs. 1 crore from Dotex on 15.12.2011, which had not been returned back till the investigation against it was completed and no interest was paid on such loan till the investigation had reached finality.*

235. Based on this, the AO has come to the conclusion that amount of Rs.1 crore represented the appellant's own laundered money for the following reasons :-

- *Dotex, a company known to be engaged in the business of providing accommodation entries had claimed giving loan of Rs. 1 crore to the Appellant.*
- *Directors of Dotex were the directors of 50 other companies which were engaged in similar business in complete violation of the provisions of Companies Act which stipulate the norm of having a whole-time director in only one company.*
- *The loan of Rs. 1 crore that was given to the Appellant, a newly incorporated company with a small capital base of only Rs. 5 lakhs, without any guarantee. In fact, the Appellant made a provision for payment of interest of Rs. 1,72,603 (which was less than the agreed interest rate of 14% per annum) on this loan in its Balance Sheet for the year ending on 31.03.2022.*
- *No TDS had been made on such alleged payment during the year under consideration. A perusal of the return of the Appellant filed with the Registrar of Companies ("ROC") for A.Y. 2013-14 showed unsecured loan of Rs. 1 crore from Dotex was standing as it was not repaid. This non-return of alleged loan of within stipulated period of one-year and non-payment of interest of 14% per annum was in contravention of the terms and conditions of the alleged loan.*
- *Surprisingly, even after the violation of terms and conditions of the agreement, no action was taken by the lender.*
- *In reality, the alleged loan of Rs. 1 crore was interest free loan till investigation was started by the Income Tax Department in the year 2012. The paltry sum of TDS was made following enquiry by the Income Tax Department. No prudent businessman would give the loan to any unrelated party without expecting any return on such investment.*
- *The copies of bank account of companies controlled by the Appellant had provide that these companies were engaged in the business of accommodation entries, which typically contained deposits of cash and issue of cheque of equivalent amount.*

- *No reasonable explanation for not demanding return of loan of Rs. 1 crore by Dotex and non-returning of loan by the Appellant within the stipulated period of one year was explained.*

236. Shri Srivastava in his brief right up has given the details of evidences produced by the appellant and the observations of the AO which, for the sake of ready reference, are reproduced herein :-

S.No.	Evidence produced by the Appellant/Claim of the Appellant	Observations of the JAO
a.	A copy of letter addressed to the Appellant without even mentioning address of the Appellant, that it had advanced a loan of Rs. 1 crore for a period of one year on interest at 14% per annum, through banking channels.	• A careful scrutiny of the confirmation of creditors has revealed the following important factors: - • The letter dated 24.12.2010 neither bore the address of the creditors nor the name of the authorized signatory was mentioned. The lender company gave confirmation on a plain paper and did not possess a letter head of its own. • Even the PAN of the creditor was not mentioned in the letter. • The letter did not even

		bear the address of the Appellant. • The advance of Rs. 1 crore was given only for a period of one year and loan was to be returned on 23.12.2011. However, the loan was repaid only in F.Y. 2015-16 when the investigation proceedings were continuing and the Appellant was confronted with the facts that Dotex was a paper company engaged in providing hawala entries. • The loan was subject to demand Promissory Note. However, no evidence that the Appellant had actually issued demand promissory note was filed during the course of assessment proceedings. • As per confirmation, loan was given on 24.12.2010 by cheque, however, it was evident from the bank statement that the loan was credited to the bank account of the Appellant only on 15.02.2011 and during the course of

		assessment proceeding the Appellant had failed to that explain if the loan was given as per confirmation through cheque on 24.12.2010, why it took 51 days to reach the Appellant. • In view of the above peculiar facts of the case emerging from the confirmation letter, the claim of the Appellant that the creditors had confirmed advancing loan of Rs. 1 crore stood rejected due to lack of genuineness.
b.	Claim that it had paid interest at the rate of 14% per annum of alleged loan to the creditors which was evident from the fact that: - • It had deducted and paid TDS of Rs. 17,260 on interest during F.Y. 2015-16. • The interest was paid till the loan was returned to the creditors on 24.05.2015 (F.Y. 2016-17).	• On examination of this claim of the Appellant with reference to the audited Profit and Loss Account and Balance Sheet, the following important findings came to light: - • It was evident from the audited Profit and Loss Account and Balance Sheet as on 31.03.2011 that the Appellant had claimed deduction of interest of Rs. 1,72,603/- in Profit and Loss Account. However, the amount of Rs. 1,72,603/- was disclosed as 'Interest

		Accrued' but not due on inter-corporate loan under 'Schedule 6-Current Liabilities and Provisions' of the balance sheet. During the course of assessment proceedings, no evidence that interest of Rs. 1,72,603/- actually paid to the creditors was filed except for evidence of TDS of Rs. 17,260/- on 19.03.2012. It was pertinent to note that as per the copy of the confirmation, the Appellant had agreed to pay interest at 14% per annum to the creditors. Accordingly, the interest of Rs. 3,50,000/- for the period from 24.12.2010 to 31.03.2011 was required to be paid after deducting TDS of Rs. 35,000/- and as against the same unproved claim of interest payment of Rs. 1,72,603/- was made along with claim of TDS of Rs. 17,260/-. • Scrutiny of audited Profit and Loss Account and Balance Sheet for A.Y. 2012-13

		and 2013- 14 revealed that the Appellant had disclosed" Interest accrued but not due on inter corporate loan" of Rs. 1,55,343/- , however, interest of Rs. 14,00,000/- was claimed as deduction in Profit and Loss Account. • The only part of evidence of some of the TDS were filed and no evidence regarding payment of interest to the creditors were filed. The Appellant did not file confirmation of the creditors that it had actually received the interest. • It was thus amply clear from the evidence as filed by the Appellant that in contravention to the terms and conditions of the alleged confirmation, the Appellant had not paid interest at 14% per annum during the year under consideration but as soon as investigation started against the Appellant on 01.11.2012, it deducted TDS on some amounts and ultimately returned the loan just to cover its

		track. However, no evidence that interest was actually received by the creditors was filed.
c.	The claim that latter return of impugned loan (taken on 24.12,2010) during F.Y. 2015-16 was sufficient to prove the genuineness of the loan transaction.	• The investigation started against the Appellant on 01.11.2012 by filing a petition before the Metropolitan Magistrate and all the act whether deduction of TDS on interest on loan or return of loan after a gap of 5 years to a shell company located in Kolkata were events as sequel to the investigation. During the course of the assessment proceedings, the Appellant did not furnish any evidence to prove that the creditors had explained source of income to advance a loan of Rs. 1 crore on 24.12.2010 which was a crucial evidence in discharging the onus of the Appellant under Section 68 of the Act.

237. After referring to the aforesaid facts and the observations and the finding of the AO, he submitted that here in this case, the onus was entirely on the appellant to prove the identity, creditworthiness of the creditor and genuineness of the

transaction. As a prelude to his argument, referred to the following important judgments laying down the principles u/s 68 wherein loan/share applicant money has been taken from the entities which are found to be dubious or paper companies by the Income-tax department during enquiry or investigation :-

(i) *Principal Commissioner of Income Tax (Central-1) v. NRA Iron and Steel Pvt. Ltd., (2019) 15 SCC 529;*
(ii) *Sumati Dayal v. Commissioner of Income Tax, Bangalore, 1995 Supp (2) SCC 453;*
(iii) *CIT v. Durga Prasad More, (1971) 82 ITR 540.*

238. Shri Srivastava also brought to our notice the decision of **ITAT, Calcutta Bench in the case of DCIT, Circle 12 (1), Kolkata vs. M/d. Dotex Merchandising Pvt. Ltd. ITA No.1602/Kol/2016** wherein the genuineness of Dotex was discussed and cited relevant extract which are as under :-

> *"Information has been received from the Director of Income Tax (Investigation), Kolkata that a survey operation u/s 133A of the Income Tax Act, 1961 was conducted in the case of Dotex Merchandise Pvt Ltd, and Uday Shankar Mahawar on 22/08/2014 at 12, Ho Chi Minh Sarani, Kolkata-71. It has been gathered through statements and findings of the survey proceedings and post survey investigation that Shri U. S. Mahawar is a bogus entry operator, who provides entry accommodation in the form of bogus billing, bogus unsecured loan, bogus share capital in lieu of commission. He also used to form shell companies and used to sell them after raising huge bogus share capital in them. For doing all these*

activities he earns cash commission from clients. In his statement recorded during the course of survey, Shri U. S. Mahawar stated that the Dotex Merchandise Pvt. Ltd. Was registered in 1994 as paper/shell company by an entry operator named Shri Binod Kumar Jaiswal. Initial capital was only Rs. 5 Lakh with 4,95,200 shares of face value Rs. 1 issue at par. In 2005 this company was purchased by one Shri Uday Shankar Mahawar, another entry operator. In 2005, further 3,56,000 shares of face value Rs. 10/- were issued at a premium of Rs. 90/- per share and on paper Rs. 3.56 crore was raised. This was again only on paper as the subscribers were only other paper companies of Shri Mahawar and the subscription was through circular transactions. In March, 2010 again 12,08,000 shares of FV Rs. 10 were issued at a premium of Rs. 240/- per share and nearly Rs. 31 Crore was raised by the same modus operandi. After this issue the net worth of the company became Rs. 34.52 Crores. Thereafter, in March, 2010 Shri Mahawar sold this company to the RPG group and Shri Rajendra Jha and Shri Sunil Bhandari who are the employee of the RPG Group become the directors of M/s. Dotex Merchandise Pvt. Ltd. It is also found that from 12/10/2011 to 28/03/2013 Shri R. P. Goenka himself was the director of this company. After RPG group purchased this company, entire shareholding was bought back by two companies of RPG namely, Solty Commercial Pvt Ltd and Ritushri Vanijya Pvt Ltd. As expected after the purchase by Sanjeev RPG group, the investment worth Rs. 34 Crores in paper companies shown in the balance sheet of M/s. Dotex Merchandise Pvt Ltd, were sold on paper to the paper companies of Shri Mahawar and sale proceeds was credited in the bank account of Dotex Merchandise Pvt Ltd. As is clear from the statement of Shri Mahawar that the source of the sale proceed is cash provided by Sanjeev RPG Group to Shri Mahawar, who has routed it through different layers of paper companies and cheques

have finally gone from paper companies of Shri Mahawar to Dotex Merchandise Pvt Ltd. Thus there is reason to believe that the income of the assessee company amounting to Rs.34 crores has escaped assessment for the assessment year 2010-11. Proceedings u/s 147 is initiated, issue notice u/s 148 for the assessment year 2010-11."

239. Though these are extracts of reasons recorded for reopening, however, we find that no conclusive finding has been given by the Tribunal on this issue as the Tribunal has dealt only the validity of reopening u/s 148 and not on merits. However, Shri Srivastava has relied upon on certain facts which were noted by the Investigation Wing and also by the AO which are as under:-

- That, the directors of Dotex were involved in forming shell companies and providing accommodation entries.
- Sh. Mahawar, one of the directors, during survey accepted the fact that he was a mere entry operator.
- The funds of the said company were raised through circular transactions.
- After the sale of Dotex the RPG Group in 2010, entire shareholding was brought back by two companies of RPG namely Solty Commercial Pvt. Ltd. and Ritushri Vanijya Pvt. Ltd.
- The investments of Rs. 34 crores in paper companies shown in the balance sheet of Dotex, were sold to the paper

companies of Sh. Mahawar and sale proceeds were credited in the bank of Dotex.

- Sh. Mahawar stated that source of sale proceeds is cash provided by Mr. Sanjeev of RPG Group to Sh. Mahawar who routed it through different layers of paper companies.

240. Shri Srivastava further submitted that even though at later time, Dotex was taken over by RPG Group but it does not *ipso facto* makes the loan genuine and is not sufficient proof to prove the creditworthiness and genuineness of the transaction. The appellant has not been able to discharge the onus that the nature of transaction and mode and manner in which it has been executed and the surrounding circumstances do not establish that Dotex has creditworthiness and transaction was genuine and following facts need to be taken into consideration while adjudicating this issue :-

- The Appellant company had just been incorporated and had a meagre share capital of Rs. 5 lakhs.
- It is not the case that the creditor was known to the Appellant company or was a part of its group.
- Dotex is not into financing or money-lending business. It has no source of income nor any business operations and still the suggestion is that they gave a loan of Rs. 1 crore to the Appellant without any corresponding security,

particularly when the money was being advanced to a Section 25 company which had no activity whatsoever, except raising this loan.

- It doesn't stand to reason as to how a Section 25 company, incorporated in Delhi, within a few days of its incorporation, approaches a company located in another part of the company for a loan of Rs. 1 crore and the said company agrees to give the loan without any security or any risk mitigating factor.
- This loan continued for a period of 5 years without any voice being raised by Dotex at any time for re-payment of the said loan.
- The A.O. has categorically observed that while TDS was deducted, there is no proof that any payment was made to the creditor i.e., Dotex. If no amount was paid, but only tax was deducted, this clearly shows that it is a make-believe affair. TDS then remains only a creation for establishing the genuineness of the loan which was not otherwise genuine.
- It is very interesting to note that Dotex gives a cheque on 24.12.2010 when the Appellant did not even have a bank account. The cheque was encashed only in the month of February, 2011. The date of the cheque of December, 2010 becomes important because that was the point of time when the receivables in the books of AICC were assigned to the Appellant.
- There is no entry of interest in the ledger account of the Appellant.

- The mere fact that payment was made by cheque, by no means can be held to be conclusive. Reference in this regard is placed on the decision of Income-Tax Officer, Ward 1, Division 1, Ernakulam v. Diza Holdings (P.) Ltd., (2002) 255 ITR 573- Para 7.

241. Thus, it is apparent that the nature of transaction itself do not inspire confidence to be regarded as normal transaction entered into between two independent parties. Thus, the order of AO making the said addition u/s 68 and order of ld. CIT (A) confirming the same should be upheld.

DECISION ON GROUNDS NO.10, 11 & 14

242. We have already noted above that the appellant had shown loan in its books of account of Rs.1 crore stated to have been received from Kolkata based company, Dotex. The Assessing Officer has doubted the entire transaction of the loan on various grounds which have been incorporated above. One of the key reasons for casting a doubt on the transaction of loan was that, earlier this company was owned, controlled and managed by established entry providers, namely, Mr. Sunil Bhandari and Mr. Sunil Sanganeria, who were not only the Directors of Dotex, but also various other 50 paper companies operating from Kolkata

which were directly and indirectly managed by them. Assessing Officer has also discussed the *modus operandi* which was unearthed by the enquiry of Investigation Wing in the case of these two entry providers and Dotex. When the AO had required the assessee to establish the nature and source of loan and also to prove the identity, creditworthiness and genuineness of the transaction, the assessee had filed name, address, PAN etc. and also the confirmation letter. However, the AO has dealt with these documents and did not find them satisfactory in light of these inquiries so as to establish the genuineness and creditworthiness of the said company. Before the ld. CIT (A), the appellant had filed various documents to establish the genuineness of the transaction, the list of which has been incorporated above in the foregoing paragraphs which has been filed as additional evidences before us also and same were taken into record by us, because these documents were filed before the ld. CIT (A) who has refused to admit the same despite calling for the remand report.

243. The main contention of the appellant has been that;

- *firstly*, the documentary evidences shows that the money has come through banking channels and in the annual accounts of the Dotex for the year ending 31.03.2011, it had share capital of Rs.2 crores and reserves and surplus of Rs.31.19 crores and it had taxable profits of Rs.1 crore, which fact have neither been dealt with by the AO or by the ld. CIT (A);
- *secondly*, the thrust of the argument of Ld. Sr. Counsel was that Dotex belonged to reputed business house of RPG Group and for this reason, it cannot be treated as a paper company as alleged by the AO;
- *thirdly*, no opportunity was given by the AO and CIT (A) for producing the additional evidences as they have been rejected without any proper reasons;
- *fourthly*, Assessing Officer had not shared the information and material about the Dotex founf during the course of inquiry; and,
- *lastly*, AO has not made any enquiry once these documents were filed by the appellant.

244. We have considered the entire gamut of facts and contentions raised by the parties. One of the contentions raised before us that Dotex belongs to RPG Group, therefore, it is genuine, does not *ipso facto* lead to an inference that the entire transaction is genuine and establishes the credentials of the company which was under scanner though preliminary enquiry of the Investigation Wing, which found that this company was managed and controlled by established entry operators and this company was used for providing accommodation entries. In the later time, during the relevant financial year, this company may have been taken over by the RPG Group, but that does not wash away the finding of the investigation wing. Be that as may be, what is required to be established here whether the company had creditworthiness to advance such a loan or the transaction of loan is genuine or not, especially in light of results of inquiry conducted by the Investigation wing. The documents which have been filed by the appellant company before us in the form of additional evidences need to be substantiated and corroborated by proper enquiry by the AO. All these documents which have been filed by the appellant are merely papers which need proper examination and substantiation by conducting proper enquiry

from the lender company. Dotex should be inquired independently to establish its source of funds and the entire transaction of the loan given to the appellant. Assessing Officer should also provide all the information and material gathered and communicated by the Investigation wing including STR report to the appellant.

245. Accordingly, in the interest of justice, we deem it proper that this matter should be restored back to the file of the Assessing Officer, with the following direction to Assessing Officer:-

- *Firstly*, to examine all the evidences filed by the assessee in the form of additional evidences before us;
- *Secondly*, to carry out necessary inquiries from Dotex and also summon himself or through a commission to the Directors or the Principal Officer of Dotex to explain the source and genuineness of the transaction;
- *Thirdly,* Assessing Officer should confront all the information and material gathered and communicated by the Investigation wing including STR report to the appellant; and;

- *Lastly,* the appellant is also directed to cooperate in such enquiry and lead all such evidence as they consider necessary to establish the credentials and the genuineness of the transaction in support of their explanation given before us.

246. Accordingly, the matter is remanded back to the file of AO for making proper enquiry and adjudicate the issue in accordance with law after giving due opportunity of being heard to the appellant. Accordingly, ground no.10 is allowed for statistical purposes.

247. Consequently, ground no.11 being disallowance of interest is also set aside as the same is consequential to the aforesaid ground.

GROUND NO.13

248. In this ground, the appellant has challenged the disallowance of Rs.50,00,000/- paid for assigning of loan from AJL. It has been submitted before us that, if addition u/s 28(iv) is upheld, then the sum of Rs.50,00,000/- paid by the appellant for earning the alleged business assets ought to be allowed as deduction while computing the alleged benefit.

249. Since we have already upheld the action of the AO insofar as addition made u/s 28(iv), therefore, the claim for deduction of Rs.50,00,000/- for acquiring the aforesaid business assets and to be allowed as deduction is accepted. Accordingly, we direct AO to allow the deduction of Rs.50,00,000/- from the amount held to be taxable u/s 28(iv). Accordingly, ground no.13 is allowed.

GROUND NO.14

250. The appellant has challenged the addition of Rs.1,00,000/- as an unexplained expenditure u/s 69C towards raising of loan from Dotex. From the perusal of the assessment order, we find that it is a purely notional and hypothetical addition made on the hypothesis that assessee might have incurred expenditure as alleged payment of commission for accommodation entry for raising of loan from Dotex. We find that there is no basis at all for giving such hypothetical addition which is not based on any enquiry or any material on record and we concur with the contention of the appellant that such hypothetical addition of Rs.1,00,000/- made u/s 69C cannot be sustained and the same is directed to be deleted.

GROUND NO.15

251. The assessee has challenged the denial of exemption u/s 11. Since registration u/s 12AA has already been cancelled with retrospective effect, therefore, this ground is untenable and same is held as infructuous.

GROUND NO.16

252. The assessee has challenged the levy of interest u/s 234B of the Act which is consequential in nature and accordingly, the same is dismissed.

253. In the result, the appeal filed by the assessee is partly allowed.

Order was pronounced in open court on 31st day of March, 2022.

Sd/-	**sd/-**
(ANIL CHATURVEDI)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 31.03.2022

TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-40, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.