आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य **एवं**
माननीय श्री मनोज कुमार अग्रवाल ,लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI MAHAVIR SINGH, JM AND HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकरअपील सं./ I.T.A. No.170/Mum/2017
(**निर्धारण वर्ष** / Assessment Year:2009-10)

M/s. Capri Global Advisory Services Pvt. Ltd. 1B, 1st Floor, Court Chambers 35, Sir V.T. Road, New Marine Lines Mumbai-400 020.	**बनाम**/ Vs.	**Dy. Commissioner of Income Tax-1(1)(1)** Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AACCP-2478-C**		
(पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

आयकर पील सं./ I.T.A. No.515/Mum/2017
(**निर्धारण वर्ष** / Assessment Year:2009-10)

Asstt. Commissioner of Income Tax-1(1)(1) 579, Aaykar Bhavan Mumbai-400 020.	**बनाम**/ Vs.	**M/s. Capri Global Advisory Services Pvt Ltd** 1B, 1st Floor, Court Chambers 35, Sir, V.T. Road, New Marine Lines Mumbai-400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. **AACCP-2478-C**		
(पीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

Assessee by	:	Jitendra Jain/Mahesh Rajora-Ld.ARs
Revenue by	:	Abhi Rama Kartikeyan - Ld.DR

सुनवाई की तारीख/ **Date of Hearing**	:	18/03/2019
घोषणा की तारीख / **Date of Pronouncement**	:	10/04/2019

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1.1 These cross appeals for Assessment Year [AY] 2009-10 contest the order of Ld. Commissioner of Income-Tax (Appeals)-2, Mumbai, [CIT(A)], *Appeal No. CIT(A)-2/IT-111/2015-16* dated *25/10/2016.*

1.2 The grounds raised by the assessee read as under: -

1(a) The Commissioner of Income Tax (Appeals)-2, Mumbai [CIT(A)] erred confirming the reopening of the assessment by the AO invoking the provisions of Section 147read with section 148 of the Income Tax Act, 1961.
The Appellant submits that the notice issued u/s 148 and reopening of assessment u/s 147 is bad in law, illegal, ultra-vires and contrary to the provisions of the I.T.Act and shall be quashed.

(b) The CIT(A) erred in confirming the action of AO in reopening the assessment u/s 148 of the Act recording factually incorrect reasons for reopening that 'the issue of share premium was not subject matter of verification by the A.O. and therefore no opinion has been formed on the issue in original assessment u/s 143(3).'
The Appellant submits that the issue of share premium has been verified by the AO during assessment proceedings u/s 143(3) hence the reasons for reopening is factually incorrect which renders the assessment proceedings as bad in law, ultra vires and shall be quashed.

(c) The CIT(A) erred in confirming the reopening the assessment u/s 148 merely on the basis of change of opinion on same set of facts which renders the assessment proceedings as bad in law, ultra vires and shall be quashed.

(d) The CIT(A) erred in confirming the reopening the assessment merely on the basis of information received from Investigation Wing without having any satisfaction of AO which constitutes a 'borrowed satisfaction' rendering reassessment proceeding as bad in law and ultra vires and hence same shall be quashed.

1.3 The grounds raised by the revenue read as under: -

i. Whether, on the facts and circumstances of the case and in law, whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the AO did not examine whether the transactions of receipt of share capital / share premium are genuine, the obligation to conduct proper inquiry on facts would shift to Learned CIT(A) in view of the Hon'ble Delhi High Court decision in the case of CIT Vs Jansampark Advertising and Marketing (P) Ltd (ITA No. 525/2014)?

ii. Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in directing the deletion of the sum brought to tax by the AO as unexplained income under Section 68 of the Income Tax Act, 1961 in respect of moneys credited in the books as share capital, including share premium, of Rs 5,20,00,000?

iii. Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in holding that the assessee proved identity, credit-worthiness and genuineness of moneys credited in the books as share capital, including share premium, of Rs.2,85,00,000, just by submitting PAN, acknowledgment of income-tax returns filed, bank statements, the mode of payment etc of share holders, and that the share premium has been received through banking channel ?"

iv. Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in deleting the additions of Rs. 5,20,00,000/-, ignoring the facts brought out by the AO that the investor was merely a conduit having no fixed assets and no credit worthiness and had received the said amount of

Rs.5,20,00,000/-on 17/03/2009 which was given to the assessee company on same date?

v. *Whether on the facts and circumstances of the case and in Law the Ld.CIT(A) was correct in deciding the issue in favour of assessee by relying on the decision of Hon'ble ITAT in the case of M/s. Green Infra Vs. ITO (ITA NO 7716/MUM/2012),without appreciating the legal position that the said issue had not attained finality since departments appeal filed u/s 260A against the said decision was still pending before Hon'ble Bombay High Court?*

vi. *Whether, on the facts and circumstances of the case and in law, the CIT(A) was justified in allowing the appeal of the assessee by relying on the decision of Apex court in the case of CIT Vs Lovely Exports Pvt Ltd 216 CTR 195(SC) without appreciating that the facts in the instant case were different than those in the case relied upon, as in the instant case, the AO did not sit idle but made investigations with the share holder before making an adverse inference and hence the case law relied upon is not applicable in this case?"*

As evident from respective grounds of appeal, the assessee is challenging the reassessment proceedings on legal grounds whereas the revenue is challenging the relief granted by Ld. first appellate authority, on merits, against quantum additions.

2.1 Facts in brief are that the assessee being *resident corporate entity* stated to be engaged in *financial advisory services, trading and investment in shares* was subjected to reassessment proceedings for the impugned AY u/s 143(3) *read with Section 147* on 20/03/2015 by Ld. Deputy Commissioner of Income Tax-Circle-1(1)(1), Mumbai [AO] wherein the assessee was saddled with certain addition of Rs.520 Lacs on account of *Share Premium and Share Capital.*

2.2 The original assessment for impugned AY was already completed u/s 143(3) on 30/12/2011 wherein the income was determined at Rs.88.43 Crores as against returned income of Rs.87.69 Crores e-filed by the assessee on 26/09/2009. The same was re-determined at Rs.87.75 Crores on 05/09/2013 after giving effect to the appellate order of first appellate authority.

2.3 Subsequently, the reassessment proceedings were triggered against the assessee by issuance of notice u/s 148 dated 27/03/2014 on the ground that the assessee was in receipt of S*hare Premium* during the year which was not justified by the assessee and therefore, the same was believed to be the assessee's undisclosed income. In response, the assessee offered original return filed u/s 139(1) and also requested for the reasons recorded for reopening the assessment, which were duly furnished to the assessee. Subsequently, statutory notices u/s 143(2) & 142(1) were issued directing the assessee to file the requisite details.

2.4 During reassessment proceedings, it transpired that the assessee issued 52000 equity shares of face value of Rs.100/- each at a premium of Rs.900/- per share to an entity namely *Orbit Lifeline Private Limited* which led to an aggregate increase of Rs.520 Lacs in *Share Capital & Share Premium.* Upon going through the financials of the said entity, Ld. AO came to a conclusion that the said entity was merely an accommodation entry provider with no genuine business. The valuation report furnished by the assessee to justify the share premium was also disregarded alleging the same to be bogus piece of document to cover up real nature of the transaction. Reliance was placed on the decision of Hon'ble Bombay High Court rendered in *Major Metals Ltd. Vs. Union of India [19 Taxmann.com 176]* to upheld the applicability of Section 68 to such transactions. It was also concluded that the assessee failed to justify high premium of Rs.900/- per share and also failed to prove the creditworthiness of the investor company. Finally, not convinced with assessee's explanations & submissions, the aforesaid amount of Rs.520 Lacs was added back to the income of the assessee u/s 68 as *unexplained cash credit.*

3.1 Aggrieved, the assessee contested the reassessment proceedings on legal grounds and quantum additions on merit before Ld. first appellate authority with partial success vide impugned order dated 25/10/2016. On legal grounds, it was submitted that the subject matter of reassessment proceedings was already been examined by Ld. AO during scrutiny assessment proceedings u/s 143(3) wherein the assessee substantiated the transactions with proper documentary evidences and therefore, the reassessment proceedings was nothing but review by Ld. AO and therefore, the same were bad in law. Another plea was that the reassessment proceedings were initiated merely on borrowed satisfaction. However, these submissions on legal grounds could not find favor with Ld. first appellate authority, who upheld the action of Ld. AO in reopening the assessment since the reassessment proceedings were triggered upon receipt of information from the investigation wing.

3.2 However, after considering assessee's submissions on merits, Ld. first appellate authority came to a conclusion that the assessee discharged the onus of proving identity, creditworthiness & genuineness of the transactions and therefore, the impugned additions could not be sustained in the eyes of law. Reliance was placed, *inter-alia,* on the judgment of this Tribunal rendered in *Green Infra Ltd. Vs ITO [159 TTJ 728] &* Hon'ble Apex Court rendered in *CIT Vs. Lovely Exports P. Ltd. [216 CTR 195]* to arrive at the said conclusion. Reliance was also placed on *CBDT instruction No. 2/2015 dated 29/01/2015* and judgment of Hon'ble Bombay High Court rendered in *Vodafone India Services Pvt. Ltd. Vs. Union of India [368 ITR 1]* to conclude that the receipt of share

capital was capital in nature and therefore, the same could not be brought to tax in the hands of the assessee.

3.3 The aforesaid conclusions drawn by first appellate authority has given rise to cross-appeals before us. The assessee, in its appeal, is contesting the validity of reassessment proceedings whereas the revenue is contesting the deletion of additions, on merits.

4.1 The Ld. Authorized Representative for Assessee, taking us through the documents placed in the paper-book and on the strength of certain judicial pronouncements, agitated the validity of reassessment proceedings. The prime arguments revolve around the fact that the stated issue of increase in share capital and share premium was already examined and substantiated by the assessee during original assessment proceedings u/s 143(3) and secondly, there was no independent application of mind by Ld. AO to invoke reassessment proceedings against the assessee and the same were initiated on borrowed satisfaction on investigation wing so as to make fishing / roving inquiries. It has been submitted that Ld. AO was not empowered to review the issues already examined during the original assessment proceedings and the reassessment proceedings were initiated merely on change of opinion, which was impermissible under law. On merits, our attention has been drawn to the documentary evidences submitted by the assessee during original assessment proceedings u/s 143(3) to prove the identity, genuineness and creditworthiness of the investor company and also to justify the share premium commanded by the assessee from the investor company. Reliance has been placed on following judicial pronouncement to support various submissions: -

i) Hon'ble Bombay High Court in Navi Trading Ltd. Vs Union of India [375 ITR 308]

ii) *Hon'ble Bombay High Court in Hindustan Lever Ltd. Vs R.B.Wadkar [190 ITR 166]*

iii) *Hon'ble Bombay High Court in NYK Line (India) Ltd. Vs. DCIT [346 ITR 361]*

iv) *Hon'ble Bombay High Court in PCIT Vs Century Textiles & Industries Limited [167 DTR (Bom) 105]*

v) *Hon'ble Delhi High Court in Unitech Holdings Ltd. Vs DCIT [240 Taxman 70]*

vi) *Hon'ble Gujarat High Court in Cliantha Research Ltd. Vs DCIT [35 Taxmann.com 61]*

4.2 Per Contra, Ld. DR submitted that receipt of information from investigation wing was quite sufficient to trigger the reassessment proceedings and the same were initiated with due application of mind by Ld. AO and therefore, valid proceedings in the eyes of law. It has also been submitted that no opinion was formed by Ld. AO on the stated issue during original assessment proceedings and therefore, there was no question of change of opinion. On merits, the relief granted by first appellate authority has been contested by drawing our attention to the pertinent observations made by Ld. AO in the assessment order which led to the conclusion that the assessee failed to prove the creditworthiness of the investor and genuineness of the transactions. Reliance has been placed on following judicial pronouncement to buttress the submissions: -

i) *Hon'ble Bombay High Court in Dr. Amin's Pathology Laboratory Vs JCIT [252 ITR 673]*

5.1 We have carefully heard the rival submissions and perused relevant material on record. Since the assessee's appeal contest the very jurisdiction assumed by Ld. Assessing Officer to reopen the assessment and goes to the root of the matter, we take up the same first. The undisputed position that emerges is that AY under appeal is AY 2009-10 and the original assessment was completed u/s 143(3). The reassessment proceedings have been initiated vide issuance of notice u/s 148 dated 27/03/2014 which shows that the reassessment have

been triggered within a period of four years from the end of the relevant assessment year and therefore, the rigors of first proviso to Section 147 of the Act viz. *failure on the part of the assessee to fully and truly disclose all material facts necessary for the assessment,* were not applicable to the fact of the present case. The only requirement to be fulfilled in such a case was that Ld. AO had *reasons to believe* that certain income escaped assessment in the hands of the assessee. At the same time, Ld. AO is not empowered to review the already concluded issues u/s 143(3) and review in the garb of reassessment was not permissible under the law. Further, mere *reasons to suspect* could not substitute *reasons to believe*. The Hon'ble Apex Court in the case of ***CIT Vs. Kelvinator of India Ltd. [320 ITR 561]*** has succinctly put the legal proposition in the following manner: -

> *"Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain preconditions and if the concept of "change of opinion" is removed, as contended on behalf of the Department, then, in the garb of reopening the assessment, review would take place. One must treat the concept of "change of opinion" as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1st April, 1989, the Assessing Officer has power to reopen, provided there is "tangible material" to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief".*

5.2 Proceeding further in the above backdrop, at the outset, we deem it fit to reproduce the reason recorded by Ld. AO to reopen the assessment which have been placed on *page no. 204* of the *paper-book*: -

REASONS FOR RE-OPENING
M/s. Capri Global Advisory Services Pvt. Ltd.
(Earlier Known as Money Matters Advisory Services Ltd.)
PAN No. AACCP2478C
A.Y.2009-10

The assessee, M/s Capri Global Advisory Services Private Ltd. (Earlier known as M/s Money Matters Advisory Services Ltd) having PAN AAACI7387P, is an assessee of this circle. The assessee for the A.Y.2009-10 has filed a return of income on 26.09.2009 declaring income at Rs.87,69,58,332/-. in this case, assessment u/s 143(3) of the I.T. Act was completed on 30.12.2011 assessing total income at Rs.88,43,36,030/-
From the records, it is seen that during the F.Y.2008-09 relevant to A.Y.2009-10 assessee has shown receipt of share application money amounting to Rs. Nil. Where as information has been received from investigation wing that share premium was Rs.46,800,000/-. The issue of share premium was not a subject matter of verification by the A.O. and therefore no opinion has been formed on the issue in original assessment u/s 143(3). At the same time the, the assessee has also not filed complete details showing the nature of this share premium
(justification for the excess premium received in comparison to the intrinsic value of the share).
In view of the above facts, I have reason to believe that income, in the garb of share application money received in this case has escaped assessment in terms of provisions of section 147 of the I.T.Act.
Notice u/s 148 is therefore, issued in this case.

The perusal of above reveal that the Ld. AO was not clinched with any new tangible material so as to initiate the reassessment proceedings against the assessee since upon perusal of *records,* Ld. AO came to a conclusion that share application money was reflected as *Nil* in the financial statements as against the information received from the investigation wing that the assessee received certain share premium during the impugned AY. However, the factum of mere receipt of share premium by assessee during impugned AY could not lead to a conclusion that there was escapement of income in the hands of the assessee unless some basic material on record substantiate the same. No *prima-facie* case was made out by Ld. AO as to how the receipt of share premium constituted unexplained cash credit in the hands of the assessee which has led to escapement of income for the impugned AY. The revenue has placed on record *form for recording the reasons for initiating proceedings under Section 148 and for obtaining the approval of The Addl. Commissioner / Pr. Commissioner of Income Tax* along with Annexure containing *reasons recorded for re-opening of assessment* to

submit that detailed reasons were recorded to initiate the reassessment proceedings against the assessee for the impugned AY. However, in our opinion, no cognizance of the same could have been taken in view of the fact that the said approval has been signed by the sanctioning authority only on 31/03/2016 whereas notice u/s 148 was already issued to the assessee on 27/03/2014 and re-assessment was framed on 20/03/2015. Secondly, nothing could be placed on record to establish that the detailed reasons recorded by revenue as given in the attached *Annexure* were ever supplied to the assessee. Therefore, the only reasons recorded for re-opening, which were to be considered so as to adjudicate the jurisdictional issue, were the reasons dated 27/03/2014 as supplied to the assessee and as extracted by us here-in-above. It is trite law that reasons once recorded could not be altered, modified, substituted or amended subsequently so as to justify the reassessment proceedings since the primary requirement that Ld. AO had *reasons to believe* was to be seen only with reference to the reasons recorded at the time of initiating the reassessment proceedings and nothing else. Upon careful perusal of reasons, it has already been observed that no new tangible material came into the possession of Ld. AO which suggested escapement of income in the hands of the assessee and secondly, no reasonable belief was formed by Ld. AO to arrive at a conclusion that certain income escaped assessment in the hands of the assessee.

5.3 Another factor to be noted is that original assessment was already framed in scrutiny assessment u/s 143(3) and the assessee, in response to Ld. AO's queries raised during those proceedings, had vide its submissions dated 29/11/2011 & 21/12/2011, furnished following details / documents in support of these transactions: -

i) *Details of addition to share capital during the impugned AY including number of shares issued and premium thereupon along with name of the investor company, address and PAN*
ii) *Assessee's bank statement for relevant period evidencing receipt of share application money through banking channels*
iii) *Return of Allotment filed by the assessee in Form No. 2 with Registrar of Companies indicating date of share allotment as 17/03/2009*
iv) *Payment Challan in support of filing of Form No. 2*
v) *Audited financial statement of the Investor Company for the impugned AY indicating investment made by the investor in assessee company in the form of share capital*
vi) *Assessee's own audited financial statements*

In its financial statements, the assessee had duly reflected the receipt of *share capital and share premium* in the *Balance Sheet and Schedules thereto,* which is evident from the material on record. After perusal of all these documents, Ld. AO, framed assessment u/s 143(3) on 30/12/2011 without making any addition in respect of share capital or share premium. The perusal of aforesaid factual matrix reveals that Ld. AO had raised specific queries on the issue of addition in share capital and share premium and had called for various details, which were duly furnished by the assessee which is quite evident from submissions made by the assessee on 29/11/2011 & 21/12/2011 during original assessment proceedings u/s 143(3). Since the details called for by Ld. AO were duly furnished by the assessee, nothing more could have been called from the assessee to substantiate these transactions including justification of share premium and therefore, the onus casted upon him, in this regard, was duly discharged during original assessment proceedings itself. Therefore, the argument that no opinion was formed by Ld. AO during original assessment proceedings, in our opinion, would hold no legs to stand. To emphasis, review in the garb of reassessment was not

permissible under law and reassessment proceedings upon mere change of opinion could not be sustained.

5.4 Our observations as well as conclusion draws strength from various case laws cited by Ld. AR before us, which have already been enumerated in *para 4.1* above. To be more precise, on similar facts & circumstances, Hon'ble Bombay High Court in the case of ***PCIT Vs Century Textiles & Industries Limited [99 Taxmann.com 205]*** observed as under: -

> ***11.*** *The undisputed position in the present case is that the regular assessment was completed under Section 143(3) of the Act and the re-opening has been issued within a period of four years from the end of the relevant Assessment Year. Thus, the rigour of the first proviso to Section 147 of the Act is not to be satisfied for issue of a reopening notice i.e. failure to disclose all material facts truly and fully necessary for assessment. It is also not disputed that in the regular assessment proceedings, queries were raised in respect of claim under Section 80IC of the Act and the same were responded to by the Respondent-Assessee resulting in reduction of claim for deduction under Section 80IC of the Act. In the above facts, it is self-evident that the Assessing Officer was conscious of the claim of deduction made by the Respondent-Assessee under Section 80IC of the Act which led to the enquiry. It is for the Assessing Officer to decide the extent and nature of enquiry in respect of claim under Section 80IC of the Act. Therefore, when the Assessing Officer has taken a conscious decision of making enquiry under Section 80IC of the Act then it is not open to him to turn around and claim that certain aspects of the claim under Section 80IC of the Act were not considered by him. It is undisputed as pointed out above, Section 80IC of the Act was a subject matter of enquiry and this resulted in disallowance of Rs. 11.49 Crores out of the claim for Rs. 33.67 Crores made by the Respondent under Section 80IC of the Act. The decision of this Court in Export Credit Guarantee Corpn. of India Ltd. (supra), in our view, would have no application to the present facts as in that case admittedly during the regular assessment proceedings, the Assessing Officer has not applied his mind to the issue sought to be raised in the re-opening proceedings. In the aforesaid decision, it was held that the Assessing Officer has ignored relevant material in arriving at an assessment contrary to law. It was also found as a fact in the above case of Export Credit Guarantee Corpn. of India Ltd. (supra) that no query was raised during the course of the regular assessment proceedings. Thus, the occasion for the Assessing Officer to apply his mind to the claim by the Respondent-Assessee in that case, did not arise. As against the above in this case the Assessing Officer consciously considered the claim for deduction under Section 80IC of the Act as is admittedly evident from the issues raised during the regular assessment proceedings. This by itself would be evidence of the fact that the Assessing Officer had occasion to apply his mind to the claim for deduction under Section 80IC of the Act during the regular assessment proceedings and had taken a view on the claim of deduction under Section 80IC of the Act.*
>
> ***12.*** *Moreover, we find that the reasons in support of the impugned notice is not premised on the fact that he had not applied his mind to the claim for deduction under Section 80IC of the Act during the regular assessment proceedings in respect of the income/receipts which were*

not derived from its paper and pulp unit to claim benefit under Section 80IC of the Act. It proceeds to exclude the above income from the claim for deduction on account of omission by the Assessing Officer during the regular assessment proceedings. This is different from non-application of mind to claim for deduction under Section 80IC of the Act. As held by this Court in Hindustan Lever v. R.B. Wadkar [2004] 268 ITR 339/138 Taxman 40 (Bom.), the reasons in support of the reopening notice has to be read as it is. No additions and/or inferences are permissible. Moreover, the power under Section 147/148 of the Act is not to be exercised to correct mistakes made during the regular assessment proceedings.

***13.** In the above facts, the view taken by the impugned order of the Tribunal is a view in accordance with the decision of the Apex Court in Kelvinator of India Ltd. (supra). Thus, the question as proposed does not give rise to substantial question of law. Thus, not entertained.*

As evident, the aforesaid decision of jurisdictional High Court has been rendered after considering the decision of Hon'ble Apex Court rendered in ***CIT Vs. Kelvinator of India Ltd. [320 ITR 561]*** **&** ***Hindustan Lever Ltd. Vs. R.B.Wadkar [268 ITR 339].*** The *Special Leave Petition* filed by the revenue against the above decision has already been dismissed by Hon'ble Apex Court as reported in *99 Taxmann.com 206* dated 05/10/2018. Similar propositions have been laid down in the other case laws being relied upon by Ld. AR. So far as the revenue's reliance on the decision rendered in *Dr. Amin Pathology Laboratory Vs. JCIT [supra]* is concerned, we find the same to be distinguishable on facts since in that case, it was undisputed position that Ld. AO overlooked certain items during original assessment proceedings which were noted subsequently and therefore, it was a case of no opinion formed during original assessment proceedings. However, in the present case, specific queries were raised upon the issues during original assessment proceedings, which were duly explained / documented by the assessee and Ld. AO, after due application of mind, accepted the assessee's claim.

5.5 The totality of above facts leads us to an inevitable conclusion that the reassessment proceedings suffered from jurisdictional defect and Ld. AO could not be clothed with second inning to review the already

concluded issues in original assessment proceedings. Therefore, the reassessment proceedings could not be sustained under law. We order so. The assessee's appeal stands allowed.

6. The revenue, in its appeal, has challenged the deletion of quantum additions on merits. Since we have already quashed the reassessment proceedings on legal grounds, delving into the same would be merely academic exercise in nature and would serve no fruitful purpose and therefore, not delved upon. In view of the same, the appeal stands dismissed, being *infructuous.*

7. The assessee's appeal stands allowed whereas revenue's appeal stands dismissed in terms of our above order.

Order pronounced in the open court on 10th April, 2019.

Sd/-	**Sd/-**
(Mahavir Singh)	**(Manoj Kumar Aggarwal)**
न्याि◌क सदस्य / **Judicial Member**	लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 10/04/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai.**