IN THE INCOME TAX APPELLATE TRIBUNAL
"I" Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Shri Pawan Singh (JM)

I.T.A. No. 4252/Mum/2017 (Assessment Year 2007-08)

Estate of Late Shri Vrajlal Chandulal Mehta C/o. Shri Anoop Mehta 92, EL-CID, 13A Ridge Road, Mumbai-400006. PAN : AACPM0814A	Vs.	ACIT CC-3(2) 19th Floor Room No. 1923 Air India Building Nariman Point Mumbai-400 021.
(Appellant)		(Respondent)

Assessee by	Shri Vijay Mehta
Department by	Ms. S. Padmaja
Date of Hearing	14.08.2018
Date of Pronouncement	29.08.2018

O R D E R

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 24.03.2017 passed by Ld CIT(A)-51, Mumbai and it relates to the assessment year 2007-08. The grounds of appeal of the assessee reads as under:-

(a) The learned CIT(Appeals) has erred in confirming reassessment order passed in the name of Mr. Anoop Mehta (legal heir of Late Vrajlal Chandulal Mehta) instead of Estate of Late Vrajlal Chandulal Mehta. The Ld CIT(A) ought to have held that reassessment order passed by the Assessing officer is bad in law.

(b) The Ld CIT(A) has erred in enhancing the income assessed by the AO by Rs.14,49,34,704/- on account of the credits appearing in HSBC account of a company called Investment Lexcor S.A.

(c) The Ld CIT(A) has erred in confirming the action of the AO of not granting credit for taxes of Rs.52,44,128/- paid by the appellant on 31.3.2012 by way of self assessment tax for AY 2012-13. The Ld CIT(A) ought to have appreciated that the income in respect of which the self assessment tax paid has been assessed to tax by the AO for the impugned Assessment year.

(d) The Ld CIT(A) has erred in confirming the action of AO in not taking cognizance of revised Return of income filed by the appellant vide

letter dated 25.3.2015. The CIT(A) ought to have held that the revised return filed by the appellant was valid.

2. The facts relating to the case are discussed in brief. The assessee before us is Shri Vrajlal C Mehta, who expired on 24-04-2005. The assessment year under consideration is assessment year 2007-08. The Government of India received information from the French Government under DTAA in exercise of its Soverign Powers that late Shri Vrajlal C Mehta has held an account with HSBC Bank, Geneva. It was received in the form of Base Note, which contained various details relating to the account holder. The assessee held an account with number BUP_SIFIC_PER_ID 5090140302 PER ID – 34610 PER No.140302. The above said account was linked with Code Profile Client 5090140302. The related concerns, in whose accounts the moneys were held, were also mentioned in the Base Note. The legal heirs of the assessee are Shri Anoop Vrajlal Mehta and Shri Rajesh Vrajlal Mehta. Shri Anoop V Mehta resides in India and Shri Rajesh V Mehta resides abroad.

3. The revenue carried out search and seizure operations in the hands of Shri Anoop V Mehta on 13.09.2011. During the course of search, Shri Anoop V Mehta was shown following three accounts maintained in HSBC Bank, Geneva, Switzerland by Shri Vrajlal C Mehta.

a. Yeel Investments Inc.
b. Euros Invest Ltd.
c. Investment Lexcor S.A.

Accordingly, in the statement taken u/s 132(4) of the Act, Shri Anoop V Mehta was questioned about the bank accounts three companies cited above. He replied that he was aware of company named M/s Yeel Investments Inc. He submitted that M/s Yeel Investments Inc was set up by his father and he is the beneficiary of that company. He expressed ignorance about other two companies stated above.

4. The AO noticed that the peak balance available in the account of M/s Yeel Investments Inc was USD 21,51,725/-, which was equivalent to

Rs.9,46,75,900/-. The peak balance was seen existing in the year 2007. Hence the assessing officer reopened the assessment of AY 2007-08 by issuing notice u/s 148 of the Act on 31.3.2014, i.e., long after expiry of Shri Vrajlal Mehta. It was stated that the above said notice was issued in the name of "Shri Anoop Vrajlal Mehta as Legal heir of Late Shri Vrajlal Chandulal Mehta". In response to the notice, the representative of the assessee Shri Bimal Desai C.A from M/s Chhotalal H Shah & Co., Chartered Accountants filed a letter dated 08-04-2014 stating that the original return of income filed for AY 2007-08 may be treated as return filed in response to the notice issued u/s 148 of the Act. The original return of income was filed for AY 2007-08 in the name of "Estate of Late Shri Vrajlal C Mehta" on 05-02-2008.

5. At this stage, it is pertinent to discuss about certain developments that happened at the assessee's end. Shri Vrajlal C Mehta had written a Will on 14.12.2002, wherein he has appointed Shri Kerul Sashikant Shah and Shri Hitendra Kantilal Bhansali as "Executors" of the will. After the death of Shri Vrajlal C Mehta, the Will was probated in Hon'ble Bombay High Court on 28-11-2007. Subsequent to search operations conducted in the hands of Shri Anoop V Mehta (son of Shri Vrajlal C Mehta) on 13.09.2011, the existence of bank account in the name of Yeel Investment Inc., came to light. Since the said account belonged to Shri Vrajlal C Mehta, the same was brought to the notice of Executors, so that they could take necessary steps to bring the monies lying in the above said bank account to India. Accordingly, the Executors sought professional help from Shri Bimal Desai, C.A and M/s Desai and Diwanji, Advocates and Solicitors for bringing money into India. As a result, the Executors got remittances from HSBC Bank, Geneva, Switzerland out of the account standing in the name of Yeel Investment Inc to the account of "Estate of Late V.C.Mehta". The executors offered the same to tax for assessment year 2012-13, being the year in which the remittances were received in India. The return of income for assessment year 2012-13 declaring a sum of Rs.12,02,00,546/- as income of "Estate of Late Vrajlal C Mehta" was

filed in March, 2012. The self assessment tax of Rs.3,86,75,859/- was also paid on the above said income on 30-03-2012.

6. It is stated that when Shri Anoop Mehta received notice u/s 148 of the Act on 31.3.2014 for AY 2007-08, he informed the Executors about the same and requested them to take appropriate action as they were in charge of the Estate of Shri Vrajlal C Mehta. Since the Executors did not have information about the details of funds available in the HSBC bank account and also year wise movement of funds, they initially did not offer any additional income in the return filed on 09-04-2014 filed in response to the notice issued u/s 148 of the Act. During the course of reassessment proceedings, various details were called for by the AO. The reasons for reopening for AY 2007-08 was also provided to the Executors on 17-12-2014, where in the assessing officer has proposed to assess income relating to incremental deposits found in the bank account in AY 2007-08. It indicated that revenue has sought to assess income in the year in which deposits were made. The assessee had offered entire income in AY 2012-13. In view of the stand taken by the revenue, the assessee also felt that the deposits found in the financial years relevant to AY 2006-07, 2007-08 and 2012-13 should have been offered as income of the respective years. Subsequently on 16-03-2015, Shri Anoop Mehta was given copy of Base Note. On the basis of information available in Base Note, the Executors filed revised returns of income for AY 2006-07, 2007-08 and 2012-13 in the name of "Estate of late Vrajlal C Mehta", thereby allocating the amount received from the account of Yeel Investment Inc in the three years as detailed below:-

Assessment year	Income	Tax Credit
2006-07	8,00,94,000	2,68,90,153
2007-08	1,57,86,300	52,44,128
2008-09	2,43,20,246	65,41,578
	12,02,00,546	3,86,75,859

As stated above, in the revised return of income filed on 26-03-2015 for AY 2007-08, the assessee "Estate of lage Vrajlal C Mehta" offered a sum of Rs.1,57,86,368/- as additional income and claimed credit of tax of Rs.52,44,128/-, which was originally paid in AY 2012-13. The assessee also paid additional amount of self assessment tax of Rs.33,40,490/- in AY 2007-08 while filing revised return of income for AY 2007-08.

7. In the reasons for reopening for AY 2007-08, the AO had mentioned an amount of USD 21,51,725 equivalent to Rs.9.46 crores, as the amount that has escaped assessment. In the Statement taken from Shri Anoop Mehta during the course of search on 13-09-2011, he had agreed to disclose the amounts lying in bank accounts to the extent of beneficial ownership standing in his name and in the name of his wife, children or any of his business entities. However, Shri Anoop Mehta retracted from his statement by filing a letter dated 19-01-2012, wherein he stated that the funds belong to Shri Vrajlal C Mehta. It was further stated that an amount of USD 24,68,070 (equivalent to Rs.10.85 crores) shall be declared in the hands of "Estate of Late Shri Vrajlal C Mehta". We noticed earlier that the assessee initially filed return of income declaring an income of Rs.12.02 crores in AY 2012-13 in respect of moneys received from HSBC Account, Geneva, Switzerland. We also noticed that the assessee, then filed revised return of income for AY 2006-07 and 2007-08 thereby shifting part of income declared in AY 2012-13 to the above said two years. In the revised return of income filed for AY 2007-08 on 26-03-2015, the assessee declared an income of Rs.1,57,86,368/-. However, the assessing officer rejected the revised return of income filed for AY 2007-08 by holding that the same has been filed beyond the stipulated time.

8. The AO noticed that, in the revised return of income, the assessee has offered USD 3,56,298.67 as income pertaining to AY 2007-08 and applied conversion rate of Rs.44.306 per USD. Accordingly the assessee has declared a sum of Rs.1,57,86,368/- in AY 2007-08. The AO noticed that above said

amount of USD 3,56,298.67 was the difference between peak balance found in FY 2005-06 and 2006-07. Accordingly the AO also agreed that the income that is required to be assessed in AY 2007-08 is USD 3,56,298.67, which is equivalent to Rs.1,57,86,368/-. Accordingly he assessed the same as income of AY 2007-08 u/s 69A of the Act, even though the reopening was done to assess a sum of Rs.9.46 crores. The assessing officer passed the assessment order in the name of "Shri Anoop V Mehta in his capacity as Legal heir of late Shri Vrajlal C Mehta".

9. The assessee filed appeal before Ld CIT(A) in the name of ""Estate of lage Vrajlal C Mehta" challenging the assessment order passed by the AO in the name of "Shri Anoop V Mehta as legal heir of Vrajlal C Mehta". The assessee challenged the decision of AO in rejecting the revised return of income filed for AY 2007-08 and also in not giving credit for taxes paid in AY 2012-13 in respect of income offered in the revised return of income for AY 2007-08. The Ld CIT(A) upheld the rejection of revised return of income. With regard to the claim for credit for tax amount of Rs.52,44,128/- paid by the assessee in AY 2012-13, the Ld CIT(A) held that the above said amount was paid in respect of AY 2012-13 and hence the same cannot be given credit in AY 2007-08. With regard to the additional amount of tax of Rs.33,40,490/- paid in the revised return of income filed for AY 2007-08, the Ld CIT(A) observed that the assessee has not furnished copy of challan and also did not mention the assessment year for which it was paid. Accordingly he held that no benefit could be given to the assessee as of now and if it is paid for AY 2007-08, the assessee may approach the AO with relevant proof of payment. Accordingly he directed the AO to look into the issue in accordance with law and grant relief as per law.

10. With regard to the assessment of Rs.1.51 crores, Shri Anoop Mehta submitted before the tax authorities that the above said income has been offered by Estate of late Vrajlal C Mehta in AY 2012-13 and later offered in AY

2007-08 in revised return of income. The said submission of Shri Anoop Mehta was rejected by both the tax authorities, as the AO had issued notice reopening the assessment for AY 2007-08 for assessing the above said income. The Ld CIT(A) also took note of the fact that Shri Anoop Mehta had agreed to offer relevant income in AY 2007-08 in his hands in the statement taken during the course of search u/s 132(4) of the Act. Accordingly the Ld CIT(A) upheld the assessment order passed by the AO.

11. The Ld CIT(A) further went on to enhance the income assessed by the AO. The facts that led the Ld CIT(A) to enhance the income are stated in brief. We have noticed earlier, the bank accounts of Vrajlal C Mehta were linked to three companies. Shri Anoop Mehta was questioned about these three accounts during the course of search. In the statement taken u/s 132(4) of the Act, Shri Anoop Mehta accepted only one account, viz., the account standing in the name of Yeel Investments Inc. With regard to other two accounts, he expressed that he does not have any idea about the same. This is evident from the question no.8 & 9 and answer given to it in the statement recorded on 13.09.2011, during the course of search. Subsequently, Shri Anoop Mehta filed a letter dated 19-01-2012 before the Investigation wing, wherein it was specifically stated that other two accounts, viz., M/s Euros Invest limited and M/s Investment Lexor S.A belonged to his brother Shri Rajesh Mehta. In support of the same, Shri Anoop Mehta also filed an affidavit obtained from Shri Rajesh Mehta. Subsequently, during the course of assessment proceedings, the assessing officer again recorded a Statement from Shri Anoop Mehta on 11.03.2015 and in that Statement also, Shri Anoop Mehta reiterated his earlier submission that the two accounts standing in the name of M/s Euros Invest Limited and M/s Investment Lexcor S.A belonged to his brother Shri Rajesh Mehta. This is evident from Question nos.11 to 16a and answer given to them. It is pertinent to note that the AO did not make any addition in respect of these two accounts, claimed to belong to Shri Rajesh Mehta, meaning thereby, the AO has accepted the contentions of the assessee.

12. The Ld CIT(A) took the view the credits appearing in the account of Investment Lexor SA should have been assessed by the AO in the hands of the assessee, as he had beneficial interest in it. The Ld CIT(A) noticed that the incremental peak balance of the above said account pertaining to AY 2007-08 was USD 32,50,907.43 equivalent to Rs.14,49,34,704/-. Accordingly he issued enhancement notice u/s 251(2) of the Act proposing to enhance the income by the above said amount. The assessee objected to the same and reiterated that the above said account (Investment Lexor SA) belonged to Shri Rajesh Mehta and reference was made to the affidavit filed by Shri Rajesh Mehta before the Investigation wing owning up the bank account. It was further submitted that "Estate of late Shri Vrajlal C Mehta" has filed returns of income for AY 2006-07, 2007-08 and 2012-13. An undertaking was given before Ld CIT(A) that the taxes paid in the above said years will not be claimed back and the assessee would stand by the disclosure made by it in the above said returns of income. The Ld CIT(A) dealt with the contentions of the assessee in paragraph 30 of his order. We prefer to extract the same, as it is relevant to the legal ground urged before us by the assessee, which we will be dealing in later:-

> *"30. In this regard a letter was sent to the Estate of Late Vrajlal Chandulal Mehta dated 20-10-2016 as per which it was clarified to them that assessment was made in the name of Shri Anoop Mehta as Legal Heir of Late Shri Vrajlal Chandulal for AY 2006-07 & 2007-08 against which appeals were filed vide ITA No. 51/2015-16 and 125/15-16 respectively and subsequently notice of enhancement vide letter dated 04-07-2016 was issued in the name of Anoop Mehta being Legal Heir to explain as to why the income should not be enhanced by Rs.27,92,21,467/- (sic.Rs.2,79,21,467/-) and Rs.14,40,34,704/- respectively. It was further clarified to the assessee that there was no mention of name of Shri Rajesh Mehta in the base note as beneficial owner, contrary to the claim of the assessee and therefore claim that these accounts are owned by Shri Rajesh Mehta appears to be incorrect...."*

13. The ld CIT(A) took the view that the income of Rs.1,57,86,300/- was accepted by the present assessee (Shri Anoop Mehta, legal heir of Late Vrajlal C Mehta) in respect of present assessment year as is evident from the undertaking dated 17.10.2016 though given in the hands of Estate of Late Shri

Vrajlal Chandulal Mehta, **which is one and same thing.** He further noticed that Shri Anoop Mehta agreed to offer income to the tune of USD 2151725 as his undisclosed income to the extent of beneficial ownership standing in his name, his wife, children or any business entity belonging to him. Accordingly the Ld CIT(A) took the view that Shri Anoop Mehta has agreed to offer USD 21,51,725 in his hands as undisclosed income. The Ld CIT(A) further noticed Mrs. & Mr Anoop Mehta are beneficial owners of all the three accounts found in HSBC, Geneva. However Mrs. & Mr. Rajesh mehta are noted as beneficial owners of accounts standing in the name of M/s Euros Invest Ltd and M/s Investment Lexor SA. [which is contradictory to what was stated by Ld CIT(A) in paragraph 30 extracted above]. The Ld CIT(A) also noticed that Shri Anoop Mehta is the sole beneficiary of residual estate as per Will executed by Shri Vrajlal C Mehta and hence is entitled to receive funds lying to the credit of undisclosed bank account in HSBC, Geneva. Accordingly the Ld CIT(A) took the view that the peak credits lying in the bank accounts are liable to taxed in the hands of Shri Anoop Mehta. With regard to the claim of the assessee that the above said two accounts (M/s Euros Invest Ltd and M/s Investment Lexor SA) belonged to Shri Rajesh Mehta, the Ld CIT(A) observed that the assessee failed to furnish any credible evidence to support the said claim. Accordingly, by placing reliance on the statement given by Shri Anoop Mehta during the course of search as well as on the fact that, as per the will of Shri Vrajlal C Mehta, Shri Anoop Mehta is the sole beneficiary of residual assets, the Ld CIT(A) held that the amount of Rs.14,40,34,704/- standing in the name of M/s Investment lexor SA is liable to assessed in the hands of Shri Anoop Mehta only. Accordingly he enhanced the income by Rs.14,40,34,704/-. The Ld CIT(A) also initiated penalty proceedings u/s 271(1)(c) of the Act in respect of the above said addition.

14. Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal. The Ground No.1 urged by the assessee is a legal ground, which reads as under:-

"The ld CIT(A) has erred in confirming reassessment order passed in the name of "Mr. Anoop Mehta (legal heir of Late Vrajlal Chandulal Mehta)" instead of "Estate of Late Virajlal Chandulal Mehta". The Ld CIT(A) ought to have held that reassessment order passed by the Assessing Officer is bad in law."

We have noticed earlier that the assessee Shri Vrajlal C Mehta has expired on 24.04.2005. We have also noticed that he has written a Will and has also appointed Executors. The Will was probated in Hon'ble High Court of Bombay on 28-11-2007. The Executors were filing return of income for the "Estate of late Shri Vrajlal C Mehta". The details of HSBC Bank accounts maintained in Switzerland came to the notice of the Revenue only in 2011. One of the legal heirs of late Vrajlal C Mehta residing in India is Shri Anoop Mehta and he was subjected to search operations on 13.9.2011. In the statement taken from Shri Anoop Mehta u/s 132(4) of the Act, Shri Anoop Mehta admitted existence of a bank account in the name of Yeel Investment Inc., in HSBC, Switzerland and agreed to offer the peak amount of deposit in his hands to the extent he, his wife, his children and his business concerns are beneficiaries. However, subsequently he retracted from his statement through the letter dated 19-01-2012 and submitted that the undisclosed income shall be offered by "Estate of late Vrajlal C Mehta", as the Executors are incharge of the Estate of late Vrajlal C Mehta. There is no dispute that the bank account in the name of M/s Yeel Investments Inc., available in Switzerland belong to late Vrajlal C Mehta and what is assessed in AY 2007-08 is the incremental amount of peak balance over the immediately preceding year available in that account.

15. We have noticed earlier that the Executors have been filing return of income under the name "Estate of late Vrajlal Mehta". In response to the notice issued by the AO u/s 148 of the Act also, they filed return of income and also subsequently revised return of income (wherein Rs.1.57 crores was offered) was filed under the name "Estate of late Vrajlal Mehta".

16. The AO had issued the notice u/s 148 of the Act to "Shri Anoop Mehta in the capacity of Legal Heir of late Shri Vrajlal C Mehta." Accordingly he has completed the assessment also under the name "Shri Anoop Mehta in the capacity of Legal Heir of late Shri Vrajlal C Mehta".

17. We have noticed earlier that the Ld CIT(A) has taken the view that "Shri Anoop Mehta, Legal Heir of late Vrajlal C Mehta" and "Estate of late Vrajlal C Mehta" are one and the same thing. The assessee's contention is that both represent different taxable entities and hence both cannot be equated.

18. Accordingly it is contended by the assessee that the right person to be assessed is "Estate of late Vrajlal C Mehta" and not "Anoop Mehta as legal heir of late Vrajlal C Mehta", in the facts and circumstances of the present case.

19. The Ld A.R submitted that the Income tax Act has also recognised the legal position discussed in the preceding paragraph and accordingly provided two different provisions, viz., sec.159 and sec.168, for the assessment of the income of deceased assessee earned during his life time and income earned post his death. The relevant provisions read as under:-

> *"Sec. 159 (1) Where a person dies, his legal representative shall be liable to pay any sum which the deceased would have been liable to pay if he had not died, in the like manner and to the same extent as the deceased."*
>
> *"Sec.168 (1) Subject as hereinafter provided, the income of the estate of a deceased person shall be chargeable to tax in the hands of the executor—*
>
> *(a) If there is only one executor, then, as if the executor were an individual; or*
>
> *(b) If there are more executors than one, then, as if the executors were an association of persons;*
> *and for the purposes of this Act, the executor shall be deemed to be resident or non-resident according as the deceased person was a resident or non-resident during the previous year in which his death took plce.*
>
> *(2).....*

(3) Separate assessments shall be made under this section on the total income of each completed previous year or part thereof as is included in the period from the date of the death to the date of complete distribution to the beneficiaries of the estate according to their several interests."

The Ld A.R submitted that the above said provisions clearly demarcate the liability of legal representatives and executors. The Ld A.R submitted that as per provisions of sec. 159 of the Act, the legal representatives are liable to pay tax on the income accrued to the deceased till the date of death of the assessee, which the deceased person would have paid had he been alive. He further submitted that as per provisions of sec. 168 of the Act, the income accruing to the deceased for the period subsequent to his death has to be treated as the "income of Estate of deceased assessee" and shall be taxable in the hands of the Executors in his capacity of an executor. If the concerned asset has already devolved on the legal heir under inheritance, then the said asset shall become property of the legal heir in his own right and the income arising there from shall be assessed on the legal heir in his individual capacity.

20. Explaining further, the Ld A.R submitted that a deceased person cannot earn any income after his death. However, his assets can continue to earn income. Hence the provisions of sec. 159 of the Act provide for assessment of income till the date of his death in the hands of legal representatives and the provisions o sec.168 of the Act provide for assessment of income accruing subsequent to his death. If the assets had already been divided between the legal heirs as successors of the deceased, then the legal heirs shall become owners of those assets in their own right and the income arising from those assets shall be assessable in the hands of legal heirs as their respective income. Accordingly, the Ld A.R submitted that the income pertaining to AY 2007-08 is the income accrued on the assets of the deceased post his death and hence question of assessing the said income in the hands of late Shri Vrajlal Mehta through his legal representative shall not arise as per the provisions of sec. 159 r.w.s. sec.168 of the Act. In support of this contention, the Ld A.R placed his reliance on the following case law:-

(a) Arvind Bhogilal vs. CIT (105 ITR 764)(Bom)

(b) K.Kunhi Mohammad Hajee vs. State of Kerala (93 ITR 193)(Ker)

(c) Income tax Officer vs. Maramreddy Sulochanamma (79 ITR 1)(SC)

(d) CIT vs. Mrs. Usha D Shah (127 ITR 850)(Bom)

Accordingly, the Ld A.R submitted that the assessing officer was not correct in law in assessing the income in the hands of Anoop Mehta as legal representative of late Vrajlal C Mehta. Accordingly he submitted that the assessment ought to have been passed in the name of "Estate of late Vrajlal C Mehta".

21. The Ld CIT-D.R, on the contrary, strongly supported the order passed by the tax authorities. The Ld CIT-D.R submitted that the deposits found in HSBC bank, Geneva, Switzerland was assessed as undisclosed income of late Vrajlal C Mehta u/s 69A of the Act, as this amount would have been obviously placed in HSBC account by late Vrajlal C Mehta before his death. Hence it is income of late Vrajlal C Mehta and hence the assessing officer has rightly assessed the same in the hands of legal heirs of deceased assessee. The Ld D.R further submitted that the impugned HSBC bank account is not part of the Estate mentioned in the Will, against which probate was obtained from Hon'ble Bombay High Court. Accordingly the Ld CIT-DR submitted that these HSBC bank accounts cannot be considered to be part of Estate of Late Shri Vrajlal C Mehta.

22. Further clause 6 of the Will specifically provides that the rest and residue of the estate which will consist of cash on hand and items of daily personal wear is bequeathed to his son Anoop Vrajlal Mehta and daughter-in-law Devaushi Anoop Mehta in equal shares. Since these HSBC bank accounts have not been mentioned in the will, even though they were deposited before the death of Vrajlal C Mehta, yet they will devolve upon the legal representatives only. Therefore the assessment of the same would fall within the purview of sec.159 of the Act, as the deceased would have been liable to

pay tax on that income, had he been alive. Accordingly she submitted that the AO has rightly assessed the income in the hands of Anoop Mehta as legal representative of late Vrajlal C Mehta.

23. Reiterating her stand, the Ld D.R submitted that the HSBC bank accounts do not find place in the Will of late Vrajlal C Mehta and hence what is not mentioned in the will cannot be considered as an asset forming part of the Estate. Further the Bombay High Court has probated the will with the condition that any further assets and liabilities over and above what is mentioned in the will shall be brought to the notice of the High Court. However the assessee has not clarified as to whether the HSBC bank accounts were brought to the notice of Hon'ble Bombay High Court or not. Accordingly the Ld CIT-DR contended that the HSBC bank accounts do not form part of Estate and hence the deposits made therein are taxable only in the hands of legal heirs on behalf of the assessee. In this regard, the Ld D.R also referred to sec. 248 of Indian Succession Act, 1925 , wherein it is stated that the probate is limited to purpose specified in the will. Further she submitted that sec.317 of Indian Succession Act prescribes the duties of an Executor or Administrator. It reads as under:-

> *Inventory and account – (1) An executor or administrator shall, within six months from grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may appoint, exhibit in that Court an inventory containing a full and true estimate of all property in possession, and all the credits and also all the debts owing by any person to which the executor or administrator is entitled in that character; and shall in like manner, within one year from the grant or within such further time as the said Court may appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.*

The Ld CIT-DR submitted that the HSBC banks were not brought to the notice of Hon'ble High Court and on that count also these bank accounts cannot considered to be part of Estate. Accordingly she submitted that the assessing officer was right in passing the assessment order in the hands of legal heirs of

Late Shri Virajlal C Mehta. The Ld D.R submitted that the assessee cannot take support of various case laws relied upon by him, as they are distinguishable.

24. The Ld CIT-DR submitted that Shri Anoop Mehta did not object to the assumption of jurisdiction by the assessing officer. Hence, under the provisions of sec. 124 of the Act, he is precluded from objecting to the assessment. Further the provisions of sec. 292BB of the Act also saves the assessment. The Ld CIT-DR further submitted that it is Anoop Mehta as legal heir is the person, who can be considered as aggrieved by the orders of tax authorities and hence he alone could have filed appeal before the Tribunal. However, the appeal has been filed by "Executor of late Vrajlal C Mehta", who does not have locus standi to file the appeal. Accordingly the Ld CIT-DR submitted that the present appeal is liable to be dismissed on this ground alone.

25. The Ld CIT-DR further submitted that the Tribunal has got a duty to correct the errors, if any, occurred in framing of assessment. Accordingly she submitted that tribunal should not annul the assessment and should restore it to the file of AO, if the assessment order is found to be not in accordance with the law. In support of above said contentions, she placed her reliance on the following case law:-

(a) CIT vs. Jansampark Advertising & Marketing (375 ITR 373)(Delhi)
(b) Kapurchand Shrimal vs. CIT (131 ITR 451)(SC)
(c) CIT vs. Roshanlal and Smt. Chaturi Bai (134 ITR 145)(Delhi)
(d) Kamalesh Kumar Mehta vs. CIT (106 ITR 855)(Cal)
(e) CIT vs. Manohar Lal Nagpal (139 ITR 157)(P & H)
(f) CIT vs. Chamdra Mohan Verma (244 ITR 430)(All)
(g) CIT vs. Hukam Singh (276 ITR 347)(P & H)
(h) Skylight Hospitality LLP (Delhi HC and SC)

26. The Ld A.R, in the rejoinder, submitted that the legal heirs can be assessed only in respect income earned by an assessee prior to his death. He submitted that a dead person cannot earn any income. The assets held by him may generate income. Hence there cannot be any assessable income in the hands of any deceased individual, which is liable to be assessee in the hands of legal heirs as legal representatives. He submitted that the balance lying in HSBC bank account has only been received by the Executors only on behalf of Estate of late Shri Vrjlal C Mehta. Hence the Executors has filed return of income in the name of Estate of late Shri Vrajlal C Mehta offering the receipts as its income, initially in AY 2012-13 and subsequently part of income was offered in AY 2006-07 and 2007-08. The taxes have also been paid by them only. He submitted that, if the deposits cannot be considered as part of "Estate" and if it is considered to have devolved upon the legal heirs by inheritence, then the legal heirs shall become owners of assets in their own right and hence the impugned income should have been assessed in the hands of the legal heirs in their individual capacity. Accordingly he submitted that income could have been assessed either in the hands of "Estate of late Vrajlal C Mehta" or in the individual hands of the legal heirs. Certainly it could not have been assessed in the hands of the deceased assessee through the legal heirs.

27. The Ld A.R submitted that the provisions of sec. 124(3) deals with territorial jurisdiction only and hence reliance placed by Ld CIT-DR in sec. 124 is misplaced. He further submitted that the provisions of Hindu Succession Act, relied upon by Ld CIT-DR, deals with the procedural aspects. He further submitted that the various case laws relied upon by the Ld DR are not applicable to the facts of the present case, as they have been rendered in different context. He submitted that in all those cases, right person was assessed and there were only procedural errors. In the instant case, there is no procedural irregularity, but it is a case of assessment on a wrong person. Hence the error is jurisdictional error, which goes to root of matter.

28. With regard to the contentions of Ld CIT-DR that the Estate of late Vrajlal C Mehta does not have locus standi to contest this appeal, the Ld A.R submitted, by placing reliance on the following case law, that any person aggrieved by the order passed by the tax authorities is entitled to file appeal:-

(a) Kikabai Abdulali vs. ITAT (32 ITR 762)(Bom)
(b) CIT vs. N.Ch.R Row & Co. (144 ITR 557)(Cal).

In both the cases, it has been held that the right of appeal to Tribunal is not confined technically to party who is party to appeal, but it is a much wider right which can be exercised by any person who becomes liable to pay tax by any order against which appeal is preferred. He submitted that, in the instant case, the Estate has received money from HSBC accounts and hence it is liable to pay tax. The Ld A.R further submitted that the Ld CIT(A) has also observed in page 39, paragraph (d) of his order that it is the primary responsibility of the executors of the Will to clear all the tax dues of Shri Vrajlal Mehta as applicable on all the incomes/properties standing in his name before they are distributed. Hence it has got locus standi to prefer appeal against the order passed by the tax authorities.

29. We have heard rival contentions on this issue and perused the record. With regard to the question of locus standi of "Estate of late Vrajlal C Mehta" in filing this appeal, we agree with the contentions of Ld A.R. The money relating to the income assessed by the AO has been received by the Executors and it is they who have to pay tax on it. Further, what was assessed in the year under consideration by the AO was the income declared by "Estate of Late Vrajlal C Mehta" in the revised return of income filed for AY 2007-08, even though the AO had rejected the same. In response to the notice issued u/s 148 of the Act, only Estate of Vrajlal C Mehta has filed return of income and not "Anoop Mehta, Legal heir of late Vrajlal C Mehta". The said return has been acted upon by the assessing officer, but the assessment order was passed in the name of "Anoop Mehta, legal heir of late Vrajlal C Mehta". In view of the

above said facts and in accordance with the law laid down in the case laws relied upon by the Ld A.R, we hold that the appeal filed by the Executors in the name of "Estate of late Vrajlal C Mehta" is valid.

30 There is no dispute with regard to the fact that Shri Vrajlal C Mehta has expired on 24-04-2005. However, the year under consideration is AY 2007-08 and what is assessed is the amount of deposits found in HSBC account, Geneva, Switzerland during the financial year 1.4.2006 to 31.3.2007 maintained in the name of Yeel Investment Inc. Since Shri Vrajlal C Mehta was not alive during this period and hence he could not have made the deposits during the above said period. The Ld A.R, during the course of arguments, clarified that the amount of deposits found in the financial year under consideration may represent income accrued on the deposits made during his lifetime by Vrajlal C Mehta. The question that arises in this situation is - in whose hands, the income pertaining to AY 2007-08 could be assessed?

31. The impugned income has been declared by the executors in the name of "Estate of late Vrajlal C Mehta" in the revised return of income. The original return of income was also filed in the above said name only against the notice received u/s 148 of the Act. We have noticed that the AO has, however, issued notice to Shri Anoop Mehta as legal representative of Vrajlal C Mehta.

32. We shall first refer to the arguments advanced by Ld CIT-DR in support of the assessment order passed by the AO. The Ld CIT-DR has contended that the amount of deposit assessed in this year was made by Shri Late Vrajlal C Mehta and hence it was rightly assessed in the hands of the legal heir. In our view, there is a flaw in this argument of Ld CIT-DR. We have earlier noted that Shri Vrajlal C Mehta has expired on 24.4.2005. As contended by Ld A.R, Shri Virajlal C Mehta can be considered to have made deposits only upto the date of his death only. Any deposits found in the bank accounts after the date of death could not have been made by him. With regard to the nature of deposit,

there is no material available on record to show exact nature of the same. The Ld A.R submitted that it could be accrual of income out of the deposits made earlier. Be that as it may, what is assessed as income in the year under consideration is the amount of deposit found in the bank account in the name of M/s Yeel Investment Inc. Hence, for all practical purpose, the nature of income may not be relevant here. Since the deposits were found during the financial year 1.4.2006 to 31.3.2007, i.e., subsequent to the date of death of the assessee, these deposits could not have been made by Shri Vrajlal C Mehta, as contended by Ld CIT-DR.

33. The Ld CIT-DR also submitted that the HSBC bank accounts do not find place in the Will created by Shri Vrajlal C Mehta. It also did not find place in the probate also. Accordingly, she contended that what is available in the Will alone shall form part of the "Estate". The Ld CIT-DR also referred to certain provisions of Indian Succession Act, 1925 to highlight that the Probate is limited to purpose specified in the Will and the Executors are foisted with certain duties to give details of distribution of assets to the Court. We have noticed earlier that the Will was executed by Shri Virajlal C Mehta on 14-12-2002 and the probate was obtained on 28-11-2007. The existence of HSBC bank accounts came to light only in 2011. After that it is the Executors, who have taken steps to get the money lying in the bank account transferred to the Estate Account. It is the executors, who have filed returns of income and have also paid the income tax out of those funds. The legal heirs have not disputed the right of the Executors to get the money transferred from Switzerland to India. In fact, Shri Anoop Mehta has given in writing to the revenue that he has informed the Executors about the HSBC bank accounts and also requested them to make arrangements for transfer of money to India. The Ld CIT(A) has also observed in page 39, paragraph (d) of his order that it is the primary responsibility of the executors of the Will to clear all the tax dues of Shri Vrajlal Mehta as applicable on all the incomes/properties standing in his name before they are distributed. Hence, it is nobody's case that the deposit

found in HSBC account was not forming part of assets of "Estate of late Vrajlal C Mehta". The provisions of Indian Succession Act, which have been relied upon by Ld CIT-DR, deals with procedural aspects of dealing with the assets and liabilities of the Estate. As per the Will of Shri Vrajlal C Mehta, it is the duty of the Executors to distribute the assets in accordance with the directions given in the Will. Since the impugned income has accrued after the date of death of Shri Vrajlal C Mehta and since the Executors have taken responsibility to get the funds and distribute them, in our view, it may not be correct to contend that the same does not form part of the Estate.

34. Even if we accept the contentions of Ld CIT-DR that the HSBC accounts do not form part of assets of Estate as correct for a moment, then those assets shall devolve upon the legal heirs as per the law. Since the year under consideration falls after the death of Shri Vrajlal C Mehta, the income relating to the impugned deposits has to be assessed only in the hands of legal heirs in their individual capacity, since they have inherited the assets of the deceased in their own right. In that kind of situation also, the assessment in the hands of Late Vrajlal Mehta through his legal heir Shri Anoop Mehta could not be possible.

35. Now we shall deal with some of the relevant case laws on this legal issue. The decisions relied upon by the assessee deals with sec.24B of the Income tax Act, 1922. We are concerned with sec. 159 of the Income tax Act, 1961. The Ld A.R submitted that the provisions of sec. 24B of the Act is akin to sec. 159 of the Act and in this regard he has furnished a comparative chart, which is extracted below:-

Section 24 of the Indian Income Tax Act, 1922

"S. 24(1) Where a person dies His executor, administrator or	"S. 159(1) Where a person dies

other legal representative shall liable to pay Out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge The agricultural income-tax assessed as payable by such person or any agricultural income-tax Which would have been payable by him under this Act If he had not died"	His legal representative Shall liable to pay Any sum Which the deceased would have been liable to pay In the like manner and to the same extent as the deceased If he had not died"

Section 24B(1) is wrongly mentioned as sec. 24(1) in the above chart. A perusal of both provisions would show both are having same effect.

36. Ld AR placed reliance on the decision rendered by Bombay High Court in the case of Arvind Bhogilal (supra). In the above said case, one minor named Arvind was admitted as a beneficiary in a partnership firm named M/s. Bhogilal Leharchand. The year under consideration was A.Y. 1951-52 and the corresponding accounting year was S.Y. 2006 (October 22, 1949 to November 9, 1950). Mr. Arvind attained majority on 22.8.1950 and elected to become full-fledged partner. A fresh deed of partnership was entered on 28.8.1950. Unfortunately Mr. Arvind died on 31.8.1950 in an accident. However, partnership was continued by the surviving partners in accordance with Clause-8 of partnership deed. The accounts of the firm was closed on 9.11.1950 and a sum of ` 2,64,450/- was credited to the account of Mr. Arvind as his share profit for the period from 22.10.1949 to 31.8.1950. The Assessing

Officer included a sum of ` 2,49,459/- being proportionate part of share of profit of Mr. Arvind up to 22.8.1950 (profit pertaining to the period during which he was minor) in assessment of his father as per the relevant provisions of the Income tax Act. Hon'ble Bombay High Court has held that, as per clauses found in the partnership deed, profit accrued to the partnership firm only on the last date of the accounting year. The revenue took support of provisions of sec.24B to contend that the said income can be assessed on the legal heir, as per the provisions of sec. 24B. Hence the question of applicability of provisions of section 24B (which is akin to sec. 159 of Income tax Act, 1961) was examined by Hon'ble Bombay High Court and relevant observations are extracted below :-

> *The second aspect of Mr. Mehta's contention relates to the proper construction of the provisions of section 24B of the Indian Income-tax Act, 1922. On the one hand it has been contended by Mr. Mehta that section 24B was inapplicable to the facts of the present case for the simple reason that no income or profits could be slid to have accrued to Arvind at all till he was alive, for accounts were made up as at the end of S.Y. 2006 on the Divali day and it was only then that any income or profits could, be said to have accrued to the firm or to the individual partners thereof, while, on the other hand, it has been the contention of the revenue that in view of the legal fiction, which has been enacted in section 24B(1) of the Act, the sum of Rs. 2,61,821 could be brought to tax under the said provisions of section 24B. It would, therefore, be necessary to set out the relevant provisions of section 24B. They are as follows;*
>
> *"24B. (I) Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person to the extent to which the estate is capable of meeting the charge the tax assessed as payable by such person, or any tax which would have been payable by him under this Act if he had not died.*
> *.....*
> *Before going to the decided cases it would be necessary to consider the question on a proper reading of the aforesaid relevant provisions of the section. Sub-section (1) of section 24B provides that where a person dies, his heirs and legal representatives are liable to pay, out of the estate of the deceased, the tax assessed as payable by the deceased or any tax which would have been payable under the Act by the deceased if he had not died. In other words, a fiction is created whereby the personality of the deceased is extended for the duration of the entire previous year in which such person has died. According to Mr. Mehta, the legal fiction created by*

the use of the words "if he had not died" is only limited for the purpose of providing a machinery which was absent for taxing the income of a dead person after his death and this legal fiction cannot be extended so as to render what is not an income of a deceased person to be his deemed income and in support of his contention he relied upon an old decision of this court in the case of Ellis C. Reid u. Commissioner of Income-tax AIR 1931 Bom 333 where a lacuna obtaining in the provisions of the Income-tax Act had been pointed out, to remove which the provisions of section 24B came to be enacted. He also relied upon the Statement of Objects and Reasons which has clearly set out the purpose for which section 24B came to be enacted. On the other hand, it was urged by Mr. Hajarnavis for the revenue that under sub-section (I) of section 24B the fictional extension of the legal personality of the deceased must be given full effect to and the legal fiction created by the words "if he had not died" cannot be regarded as merely providing a machinery dealing with assessment or recovery of payment of tax from the estate of the deceased. According to him, sub-section (1} of section 24B should be regarded as containing a charging provision, a provision which creates a liability, and as such it should be held that by the legal fiction created thereunder even the income that was received by the heirs of the deceased during the period after the death of the deceased till the end of the accounting year should be regarded as deemed, income of the deceased. In view of these rival submissions, which have been put forward before us, the narrow question, which this court is called upon to decide, is whether the fictional extension of the legal personality of the deceased as contemplated by sub-section (1) of section 24B could be regarded as having been enacted for the purpose of merely providing a machinery for dealing with assessment or recovery of payment of tax from the estate of the deceased or whether the same has been enacted with a view to create an additional liability to pay tax on that part of the income said to have been received by the heirs and legal representatives of the deceased after the death of the deceased till the end of the relevant accounting year.

In order to decide this question it will be necessary to consider the purpose for which the legal fiction came to be enacted, in sub-section (1) of section 24B and, on this aspect of the matter two things would be relevant, viz., the position which obtained in law prior to the enactment of section 24B and whether any lacuna was there in the Act—an indication of which has been given by this court in Ellis C. Reid's case (supra)—and the Statement of Objects and Reasons which may set out the purpose for which section 24B came to be enacted.

.....

It is thus clear that the provisions of section 24B came to be enacted by the Indian Income-tax (Second Amendment) Act (18 of 1933) with the avowed object of filling in the lacuna that was pointed out by this court in Ellis C. Reid's case (supra), and the lacuna was that there was no

machinery in the Act till then which dealt with the assessment of or recovering payment from the assets of the deceased person. The above position also becomes clear if the Statement of Objects and Reasons appended to the Bill that was introduced in the Central Legislature is seen. The provisions of new section 24B were contained in clause 9 of the Bill and the note on clause 9 of the Bill runs as follows:

> *"The new section 24B supplies a lacuna in the Act which at present fails to provide either for assessment or the giving of refunds in respect of the income of persons deceased."*

Having regard to these aspects there can be no doubt that the provisions of section 24B must be taken to have been enacted for the purpose of inserting a machinery provision for assessment or giving of refunds in respect of the income of deceased persons and if that be the object or purpose of the enactment, we feel Mr. Mehta would be right in contending that the legal fiction introduced in section 24B(1) should be restricted to the purpose for which it was meant and intended and could not be extended as has been suggested on behalf of the revenue, for the principle is well-settled that a legal fiction is to be limited for the purpose for which it has been created and cannot be extended beyond that legitimate field (vide Bengal Immunity Co. Lid's case AIR 1955 SC 66).

.....

In view of this discussion we are clearly of the view that on a proper construction of section 24B(1) of the Act the said provision is clearly inapplicable in regard to the amount of Rs. 2,61,821 and Arvind's heirs or legal representatives cannot be called upon to pay tax thereon, as the same was never the income of Arvind prior to or on 31st August, 1950, nor could it be regarded as his income by reason of the legal fiction created there under."

37. The assessee had also placed reliance on the decision rendered by Hon'ble Kerala High Court in the case of K Kunhi Mohammed Hajee (supra). The assessee has submitted as under in respect of this decision:-

> "*Further, Kerela High Court in case of K Kunhi Mohommad Hajee vs State of Kerela and Another' held that Section 24 of Kerela Agricultural Income Tax Act permits assessment of income of the deceased person and recovery of tax that would have been payable by the assessee. It is only for this purpose that Section 24 has provided for the fiction of continuance of the deceased person. Further, it was held that the proper course would be to assess the legal representative sup to the period of his death and individually in the hands of legal representatives for the period subsequent to death.*

The relevant paragraph of the judgment is reproduced as under:

Section 24 of the Agricultural Income-tax Act, which corresponds to section 24B of the Indian Income-tax Act, 1922, since repealed, reads as follows:
"24. (1)-Where a person dies, his executor, administrator or other legal representative shall be liable to pay out of the estate of the deceased person, to the extent to which the estate is capable of meeting the charge the agricultural income-tax assessed as payable by such person or any agricultural income-tax which would have been payable by him under this Act if he had not died.
.....
Construing the corresponding section, section 24B of the Indian Income tax Act, 1922, the Supreme Court in Commissioner of Income-tax v. Amarchand N. Shroff, observed thus:

> *".....in all the cases enumerated above the language used in sub-sections (1), (2) and (3) of section 24B contemplates that the heirs and legal representatives of a deceased person are liable to pay income-tax out of his estate, (1) where assessment had already been made, and (2) where he dies before the assessment but the income was received before his death or by his heirs and legal representatives after his death which occurs during the previous year. If he dies before the publication of the notice under section 22(1) or before the service under section 22(2) or after the service but before he has furnished a return or filed an incorrect or incomplete return then the Income-tax Officer should make an assessment of the total income of such deceased person and determine the tax payable thereon. Section 24B does not authorize levy of tax on receipts by the legal representatives of a deceased person in the years of assessment succeeding the year of account being the previous year in which such person died".*

In the same judgement their Lordships said thus:

> *"By section 24B the legal representatives have, by fiction of law, become assessees as provided in that section but that fiction cannot be extended beyond the object for which it was enacted. As was observed by this court in Bengal Immunity Co. Ltd. v. State of Bihar legal fictions are only for a definite purpose and they are limited to the purpose for which they are created and should not be extended beyond that legitimate field. In the present case the fiction is limited to the cases provided in the three sub-sections of section 24B and cannot be extended further than the liability for the income received in the previous year.*

These decisions, no doubt, lay down the rule that the legal representatives are liable to be assessed as if the deceased was alive not only in respect of the income received by the deceased person upto the date of his death, but also the income received by the legal representatives during that year but not in any subsequent year. It is on this that reliance is placed by counsel for the revenue. According to him these decisions must be read as laying down the rule that if the legal representatives derived any income out of the property of the deceased during the previous year in which the death took place they are liable to be assessed on that income in addition to the income of the deceased upto the date of his death under section 24 of the Agricultural Income-tax Act, 1950. We do not think that this is the purport of the decisions of the Supreme Court. The language of section 24 of the Act appears to us to be clear. It indicates that what is permitted to be assessed under section 24 is the income of the deceased person and what is allowed to be recovered is the tax that would have been payable by the deceased. It is for that purpose and that alone that section 24 has provided for the fiction of continuance of the deceased person. Even if he is deemed to have not died, the income from his estates actually due to an received by his heirs could not have been his income unless it be there is a further fiction that he was to be deemed to have received such income. There is no scope for any such assumption. There is no compelling reason to assume so, keeping in view the limited objective of the fiction created in section 24 of the Agricultural Income-tax Act, 1950.

The cases before the Supreme Court to which we have adverted are all cases -where income that was sought to be assessed in the hands of the legal representatives represent the income of the deceased person, accrued due before his death, but received by the legal representatives after his death. That is not the case here. We cannot read the observations in the decisions to which our attention has been drawn by counsel for the revenue in such manner as to alter the apparently plain meaning of section 24 which we have already adverted to.

In these circumstances, the proper course would be to assess the petitioners as legal representatives of the deceased, KunhiBava, for the period upto July 18, 1968, and independently as tenants-in-common for the period subsequent to the death of KunhiBava. The assessment as made cannot, therefore, be sustained. Hence, exhibit P-3 orders (same in both the petitions) are quashed. This does not preclude the agricultural income-tax authorities from proceeding against the petitioners by way of assessment afresh in accordance with law. The original petitions are disposed of as above. We direct the parties to suffer costs."

38. The Ld A.R also placed reliance on the decision rendered by Hon'ble Bombay High Court in the case of Mrs. Usha D shah (supra). The submissions made by the assessee on this decision are extracted below:-

> *"Further, Bombay High Court in case of 'Commissioner of Income Tax, Bombay City -II vs Mrs. Usha D. Shah' held that Section 168 of Income Tax Act, 1961 is mandatory in nature. The said section provides that the income of the deceased person shall be chargeable to tax in the hands of executor does not leave any discretion to the I.T authorities in respect of assessing the income of the Estate of a deceased person to tax. Such income has to be taxed in the hand of the executor.*
>
> The relevant extract of the headnote of the case is reproduced as under:
>
> *Section 168(1) of the IT. Act, 1961, which provides that the income of a deceased person shall be chargeable to tax in the hands of the executor does not leave any discretion to the I.T. authorities in respect of assessing the income of the estate of a deceased person to tax. Such income is to be taxed in the hands of the executor. The term "executor" is not to be understood in the restricted sense as the Expln. to the section gives an extended meaning to the word "executor" so as to include an administrator or other person administering the estate of the deceased person, that is, one who is in de facto management of the properly of the deceased person."*

39. The submissions made by the assessee on the decision rendered by Hon'ble Supreme Court in the case of Mramreddy Sulochanamma (supra) are extracted below:-

> *"Further, Supreme Court in case of Income Tax Officer, Gudur and Another vs Maramreddy Sulochanamma' held that re-opening for assessment year is bad in law when the notice is issued in the name of legal heir representative post death of the assessee. The same in invalid even in absence of a will appointing executors. Relying on various judgments, it was held that Income Tax officer has to proceed to assess the total income of the deceased against all the executors or all the legal representatives, as the case may be. If there are more than one executor of the deceased person, all of them will be his representatives and for the purpose of Section 24B(2) all of them jointly represent the estate of the deceased.*
>
> The relevant paragraph of the judgment is reproduced as under:
>
> *One Narayana Reddy was an income tax assessee. He died on March 26, 1948, leaving behind him his widow, Ramanamma, and five daughters.*

On his death his widow took possession of the estate and was managing it.

.....

After the death of Narayana Reddy the income-tax authorities dealt with his widow as his sole legal representative. On that basis the authorities collected from her the tax due from the estate of the deceased Narayana Reddy. They also took reassessment proceedings under section 34 of the Act and collected some additional tax from her. On March 17, 1962, the respondent, who is one of the daughters of Narayana Reddy and who had obtained a share in the estate of Narayana Reddy under the compromise decree referred to earlier, was served with notices under section 34of the Act seeking to reopen the assessment of Narayana Reddy for the years, 1941-42 to 1949-50. She filed as many as nine writ petitions challenging the validity of the notices served on her. The main question for decision is, as mentioned earlier, whether the said notices are valid.

.....

It is clear that notices issued in respect of the assessment for the assessment year 1949-50 are clearly invalid as they relate to a period subsequent to the death of Narayana Reddy."

40. The Ld D.R, however, sought to distinguish various case laws relied upon by the assessee as under:-

a. Bombay High Court order in the case of Arvind Bhogilal vs. CIT

The facts of this case pertain to taxability of income of deceased partner who attained majority on 22.08.1950, where upon a fresh deed of partnership was executed on 22.08.1950 and partner died on 31.08.1950. The Bombay High Court held that the sum derived from the firm could not be regarded as having accrued to the deceased partner at any time before his death on 31.8.1950 and therefore, after the accounts were made up at the end of the SY on a Diwali Day, the profits could be said to have accrued to the firm as also the individual partners thereof and therefore the deceased partner's heirs or legal representative would not be liable to pay tax thereon as this was never the income of the deceased partner prior to his death on 31.8.1950. The facts of this case are not comparable to the facts of our case. In the instant case, the assessee, **Shri Vrajlal C Mehta had opened a HSBC bank account before his death** and the peak credit balances in the bank account after his death were assessed as undisclosed income in the hands of the LR, Shri Anoop V Mehta, legal heir of Shri Vrajlal C Mehta.

b. Kerala High Court in the case of K.Kunhi Mohammed Hajee vs. State of Kerala and Another:

This case law pertains to sec.24 of the Kerala Agriculture Income tax Act, 1950. The instant case refers to the applicability of sec.159, the legal representative is liable to pay any sum which the deceased would have been liable to pay if he had not died. This section has to be read in conjunction with sec. 168 wherein the Executors are liable only for the income of the Estate of the deceased person from the date of death to date of complete distribution to the beneficiaries of the Estate according to their several interest. In the instant case, Shri Anoop Mehta, the legal heir of Late Shri Vrajlal C Mehta is assessed in the capacity of legal representative of the deceased. The assessee expired on 24.4.2005 and therefore, assessment for AY 2006-07 is in the hands of the LR and assessment for AY 2007-08 is also in the hands of LR. The ratio of K.Kunhi Mohammed Hajee that proper course of assessing the petitioners as legal representatives of the deceased for the period upto the date of death and independently as tenants in common for the period subsequent to his death does not apply as **Sec.159 does not state that the liability of LR stops with the previous year in which such person died.**

c. Supreme Court order in the case of Income tax Officer, Gudur and another vs. Mramreddy Sulochanamma:

The facts of this case are that the widow alone was assessed to tax as the sole legal representative of the deceased, though the property of the deceased was settled between the widow, the mother of deceased and his five daughters. Needless to say, the facts in our case are that **the HSBC account is not part of the Estate,** it devolves upon the son, Shri Anoop V Mehta and is assessed in the hands of the LR Shri Anoop V Mehta as it is the income of the deceased and would have been assessed in the hands of deceased but for his death. This does not apply to the instant case.

d. Bombay High Court order in the case of CIT, Bombay City-II vs. Mrs. Usha D Shah:-

In this case, the Hon'ble Bombay High Court held that the mother of the deceased who was managing the estate of the deceased after his death intestate, even though she was not an executor would be covered by the definition in Sec.168(1) and in these circumstances, the income from the estate of the deceased could be charged to tax only in the hands of the mother of deceased and not the widow of the deceased. The instant case cannot place reliance on this decision as (a) the HSBC account was not part of Estate (b) the Executors of the Estate have not demonstrated that it is part of the Estate (c) the Executors of the Estate have only furnished a will probated by the Hon'ble Bombay High Court which does not

mention this HSBC account and the Executors have not furnished proof of having submitted inventory of assets and liabilities other than those in the will to the Hon'ble Bombay High Court (d) it is only the Executors who are asserting that they are the Executors of the Estate which includes the HSBC account and there is no direction from the Hon'ble Bombay High Court that they are the Executors/Administrator of all the assets and liabilities of the deceased even though not mentioned in the will.

41. We notice that the Ld CIT-DR has sought to distinguish the case laws mainly on the reasoning that

(a) Shri Vrajlal C Mehta has opened the HSBC account before his death.

(b) Sec. 159 of the Act does not state that the liability of the LR shall stop with the previous year in which the person died.

(c) The HSBC account is not part of the Estate

(d) Only the Executors are claiming it to be part of Estate without disclosing those details to Hon'ble Bombay High Court, which has probated the Will of Shri Vrajlal C Mehta.

42. We are unable to agree with any of the reasoning given by the Ld CIT-DR to distinguish the case laws relied upon by Ld A.R. There is no dispute with regard to the fact that the impugned income has arisen after the death of Shri Vrajlal C Mehta, even though the initial deposits might have been made by him during his life time. The Hon'ble jurisdictional Bombay High Court has held in the case of Arvind Bhogilal (supra) that the provisions of sec. 24B(1) is not applicable to the income that arose after the death of Mr. Arvind Bhogilal and hence his legal heirs or legal representatives cannot be called upon to pay tax thereon on his behalf. This legal position is made clear by Hon'ble Supreme Court in the case of CIT vs. James Anderson (1964)(51 ITR 345), which decision was also discussed by Hon'ble Bombay High Court in the case of Arvind Bhogilal (supra) as under:-

"In Commissioner of Income-tax v. James Anderson, one G had died in 1945 leaving a will and the question of applying the provisions of section 24B was considered in connection with certain dividends received from a company in which the deceased held shares for the assessment years

1946-47 and 1947-48. Section 23A was applied and the amounts deemed to have been distributed as dividends in respect of these shares were Rs. 61,051 as on May 26, 1947, and Rs. 3,73,099 as on December 22, 1947. The Income-tax Officer served a notice under section 34(1)(b) of the Act read with section 24B on the respondent who was "a deemed assessee" in place of the "deceased person" and overruling his objection added the deemed dividends to the deemed assessee's income and the Supreme Court took the view that the assessment made on the assessee was not valid in law because the fictional extension of the legal personality of the deceased for the purpose of section 24B of the Act came to an end at the end of the accounting year in which G died and no tax could be levied on the assessee under section 24B in respect of the dividends deemed to have been disturbed on May 26 and December 22, 1947 after the end of the year. Similar was the position in the other case of Commissioner of Income-tax v. Hukumchand Mohanlal. the facts were that an allowance for sales tax paid by A was made in the assessment of A for the year 1950-51. A died in February 1960, and the amount so paid was refunded by the Government and received back by A's widow in November 1961. The court held that this amount could not be included in profits of A's widow for the assessment year 1962-63 under section 41(1) as the amount was not received by the widow in the accounting year in which A died. This decision was later on confirmed by the Supreme Court in Commissioner of Income-tax v. Hukumchand Mohanlal. It would thus appear clear that in both these cases the question of applicability of section 24B was considered in this context of an income which had been admittedly received by the heirs and legal representatives of the deceased in years subsequent to the accounting year in which the deceased had died and the court took the view that the amount that was received by their and legal representatives could not be brought to tax under section 24B of the Act. In each, of these decisions the observations in Amarchand N. Shroff's case (quoted above) were relied upon and its ration was applied."

The decision rendered by Hon'ble Supreme Court in the case of James Anderson (supra) makes it clear that the income accruing to a person after his death cannot be taxed as per the provisions of sec.159 of the Act on the legal heirs.

43. Now we will advert to the decisions relied upon by Ld CIT-DR.

(a) In the case of Kamalesh Kumar Mehta (106 ITR 855), the issue was about continuation of assessment of deceased assessee in respect of income earned during his life time. So is the case in the case of CIT

vs. Manohar Lal Nagpal (139 ITR 157). In the case of CIT vs. Roshanlal and Smt. Chaturi Bai (1`34 ITR 145) also, the issue related to the assessment of deceased in respect of income earned during his life time.

(b) In the case of CIT vs. Chandra Mohan Verma (244 ITR 430), the issue was whether the assessment order passed on one legal heir without impleading others was valid or not. Similar is the position in the case of CIT vs. Humam singh (276 ITR 347)

In our view, the above said decisions are on different facts and hence they cannot be applied to the facts of the present case.

44. The Ld CIT-DR, by placing reliance on the decision rendered by Hon'ble Delhi High Court in the case of Jansampark Advertising & Marketing P Ltd (supra) and the decision rendered by Hon'ble Supreme Court in the case of Kapurchand Shrimal (supra) contended that the assessment order should not be quashed and the AO should be directed to make fresh assessment.

45. In our view, both the decisions do not apply to the issue under consideration. In both the cases, there were only procedural irregularities, i.e., there was no mistake in assumption of jurisdiction. However, in the instant case, the assessing officer has not assumed jurisdiction over "Estate of late Vrajlal Mehta" at all. The Ld CIT-DR also placed her reliance on the decision rendered by Hon'ble Delhi High Court in the case of Sky light Hospitality LLP (W.P © 10870/2017 and CM No.44503/2017 dated 02-02-2018, which has been confirmed by Hon'ble Supreme court in perition No.7409/2018 dated 06-04-2018). The issue in this case was that the appellant contended that the notice u/s 148 was issued under wrong name. The Hon'ble Supreme Court noticed that the Hon'ble Delhi High Court, after considering the facts available in that case, concluded that the wrong name given in the notice was merely clerical error which could be corrected u/s 292B of the Act. The said view was upheld by Hon'ble Supreme Court. However, the facts available in the instant

case are with regard to the jurisdiction, i.e., who has to be assessed for the impugned income and hence, in our view, the revenue cannot take support of the decision rendered in the case of Sky Light Hospitality LLP.

46. In view of the foregoing discussions, we find merit in the contentions of the assessee. Accordingly we hold that the assessment framed on the Legal heir, i.e., on Shri Anoop Mehta as legal heir of late Vrajlal C Mehta in respect of income arising after the date of death is not in accordance with the provisions of sec. 159 r.w.s. 168 of the Income tax Act, 1961. Accordingly, shri Anoop Mehta cannot be asked to pay tax as legal representative of late Vrajlal C Mehta u/s 159 of the Act. We also hold that it is the "Estate of late Vrajlal C Mehta", which is liable to pay tax in terms of sec. 168 of the Act in respect of impugned income. Since the assessing officer has assessed wrong person for the above said income and since the Ld CIT(A) has also confirmed the same, in our view, orders passed by them are not sustainable in law for the reasons discussed above. Accordingly we quash the orders passed by the tax authorities.

47. The second ground urged by the assessee relates to enhancement of income by the learned CIT(A) by an amount of ₹ 14.49 crores relating to HSBC Bank account standing in the name of a company called Investment Lexcor SA.

48. We have noticed earlier that Mr. Anoop Mehta had accepted the bank account standing in the name of Yeel Investment Inc. In respect of bank accounts standing in the names of M/s. Euros Invest Ltd. and M/s. Investment Lexcor SA, he has submitted that the same belongs to his brother Mr. Rajesh Mehta. Before Investigation authorities, an affidavit of Mr. Rajesh Mehta was also filed. During the assessment proceedings also, Shri Anoop Mehta reiterated the above said submissions and hence the Assessing Officer did not make any addition in respect of deposits found in M/s. Investment Lexcor SA. The learned CIT(A), however, took the view that deposits amount

available in the account of M/s. Investment Lexcor SA is also assessable in the hands of Mr. Anoop Mehta as legal heir of Mr. Vrajlal Mehta. Accordingly, he enhanced the income by ₹ 14.49 crores.

49. Learned AR submitted that the learned CIT(A) himself , in page 34 of his order, has observed that there are many beneficiaries mentioned against account of M/s. Investment Lexcor SA including Mr. Anoop Mehta and Mr. Rajesh Mehta. However, the learned CIT(A) chose to assess the same in the hands of Mr. Anoop Mehta as legal heir even though the present assessing officer and Investigation authorities have accepted the affidavit filed by Mr. Rajesh Mehta owning up the bank accounts. The Learned AR further submitted that Mr. Rajesh Mehta is a NRI for several years and accordingly he has stated that he has invested the funds in the account of M/s. Investment Lexcor SA out of his earnings made abroad. The Learned AR submitted that Mr. Anoop Mehta, at the first instance itself, has expressed ignorance about the bank account standing in the name of M/s. Investment Lexcor SA. The Learned AR further submitted that the proceedings u/s. 153C of the Act was initiated against Mr. Rajesh Mehta and said proceedings were dropped accepting the explanations furnished by him. Accordingly, he submitted that the learned CIT(A) has made enhancement on surmises and conjectures without bringing any evidence on record and without considering proceedings that took place before other tax authorities.

50. On the contrary, learned DR submitted that the learned CIT(A) has observed that Mr. Anoop Mehta was also one of the beneficial owner of M/s. Investment Lexcor SA. Further, Mr. Rajesh Mehta has furnished only an affidavit to claim the ownership of the above said account and hence the above said evidence, being a self serving document, cannot be relied upon.

51. We have heard the rival contentions and perused the record. The assessee furnished detailed submissions in respect of this issue and we prefer to extract the same, for the sake of convenience.

22. Now, coming onto Ground No. 2, the same is reproduced as under:

> *"The learned CIT(A) has erred in enhancing the income assessed by the AO by Rs. 14,49,34,704 on account of the credits appearing in HSBC bank account of a company called Investment Lexcor S,A"*

23. It is reiterated that during the course of search, Mr. Anoop Mehta was shown certain documents by which he was informed for the first time of the existence of a bank account with HSBC Bank in Geneva. The said base note gives details of the three accounts, i.e Yeel Investments Inc, Euros Invest Limited, Investment Lexcor S,A and the balances lying in these accounts as on December 2005 and December 2006 .The tax treatment of balances of the said accounts is as under:

> *1. Yeel Investment Inc- Offered to tax in the hands of Estate of Vrajlal C. Mehta based on the balances as appearing in the base note.*
>
> *2. Euros Invest Limited - Rajesh Mehta, son of Vrajlal Mehta claimed that the said account belonged to him. Also, an affidavit was filed to that effect. Further, the account was closed in 2003.*
>
> *3. Investment Lexcor S.A - Rajesh Mehta, son of Vrajlal Mehta claimed that the said account belonged to him. Also, an affidavit was filed to that effect.*

24. Further, during the course of search proceedings, first statement of Mr. Anoop Mehta was recorded on 13.09.2011 (Page No. 1 to 6 of Paper book), wherein he was enquired of the bank accounts forming the part of base note. The relevant portion of the statement is reproduced as under:

Q. 8 Please state whether you know the following companies/ entities

1. Yeel Investments Inc.

2. Euros Invest Limited

3. Investment Lexcor S.A.
Please also state whether you had any business dealing with any of these companies/entities. Please also state whether you are in anyway associated with these companies/ entities?

Ans. I am aware of the fact that there exists a company by the name M/s.Yeel Investments Inc. To the best of my knowledge, it was set up by my father Late Shri. VrajlalChandulal Mehta. I am the beneficiary of this company. The company was incorporated as an Investment company whose bank accounts have money whose beneficiary is myself. I do not have any idea about the other two companies you are mentioning about, i.e. Euros Invest Limited and Investment Lexcor S.A.

Q.9 I am showing you these documents (made part of this statement as Annexure-1, pages numbered 1-32) in which you name, date of birth, address, names of certain family members and other persons alongwith the name of some companies and other details as given below appear:

Name: Mehta AnoopVrajlal

D.O.B.: 08.11.1956

Address: 52, Et-CID, 13A Ridge Road Ind - Bombay 400006.

Other Names: Mehta VrajlalChandulal, Mehta Suman Vrajlal, Mehta DevaunshiAnoop, Shah Asha Navin Chandra, Mehta Rajesh Vrajlal Mehta Asha Rajesh? Mehta Sachiv R and Mehta Siddhi.

Companies: Yeel Investments Inc, Euros Invest Limited, Investment Lexcor S.A, *First Corporate Director Inc and Manacor S.A*

Trusts: The Parrots Trust, Fiduciare Equity Trust AG

ID Numbers: BUP_SIFIC_PER_ID 5090140303, PERJD 34612, PER_NO 140303, etc.

Kindly confirm the same and state whether the data mentioned in these documents correspond to the data of you and your family members/ associates, State what these documents are about?

Ans. I have gone through the papers shown by you. I confirm that my name, my date of birth and my address, names of some of the members of my family/associates in my business i.e., Mehta Vrajlal Chandulal, Mehta Suman Vrajlal, Mehta DevaunshiAnoop, Shah Asha Navin Chandra, Mehta Rajesh Vrajlal, Mehta Asha Rajesh, Mehta Sachiv R and Mehta Siddhi Appear in the said document Further, I would also like to state that am aware of the company Yeel Investments Inc, in which I am a beneficiary.

I have some faint remembrance of the trust 'The Parrot Trust'. However, I have no idea about the concerns Euros Invest Limited, Investment Lexcor

S.A., First Corporate Director Inc and Manacor S.A and the Fiduciare Equity Trust A.O.

It appears from the documents shown by you that there are some balances in the bank accounts maintained by us with HSBC Geneva in the name of Yeel Investments Inc. As far as the rest of the data such as amounts reflected against the names of other concerns of which I have not knowledge about are concerned, I cannot comment upon them right now, I need to check up with the bank authorities and get back to you.

25. On perusal of the same, it is important to note that Mr. Anoop Mehta in the first spontaneous statement, accepted to have some idea about the account, 'Yeel Investment Inc' which he claimed to have been belonged to his father, Late Vrajlal C. Mehta. He clearly denied to have known anything about 'Euros Invest Limited' and Investment Lexcor S.A'.

26.Further, vide letter dated 19.01.2012 (Page No.7 to 11 of Paper Book), a submission by Mr. Anoop Mehta was filed to Investigation wing wherein it was specifically written that Euros Invest Limited and Investment Lexcor S.A belonged to Shri Rajesh Mehta. A copy of the said letter and affidavit is already submitted before your Honour vide Paper Book. It is pertinent to note that investigation wing was satisfied with regards to the ownership of the said accounts.

27. Further, the Ld AO during the course of reassessment proceedings revisited the whole thing and re-recorded statement of Anoop Mehta on 11.03.2015 (Page No.14 to 17 of Paper Book}, wherein he categorically reiterated the statement taken during the course of Search Proceedings. The relevant portion of the statement is reproduced as under:

Q9. There is a mention of an account in the base note, in the name of Yeel Investment Inc, are you aware about it?
Ans. As on today, Yes.

Q.20 To whom this account belonqs?
Ans. It belongs to my father late Shri V.C. Mehta.

Q.21 There is a mention of another account in the' base note, in the name of Euro Invest Ltd, are you aware about it?
Ans. As on today I am aware of it. It belongs to my brother (Mr. Rajesh V Mehta).

Q.11 How do you know this it belongs to your brother (Mr.Rajesh V. Mehta)?
Ans. He told me.

Q.12 Why do I accept your submission that this account belong to your brother?
Ans. The following day after the search, I spoke to my brother and asked him about the three company shown to me. He immediately confirmed that Euros Invest Limited and Investment Lexcor S.A (Ex. Investment Funds S.A) belonged to him. About the third company (Yeel Investment Inc.) he said, he is not aware but would make some enquiries and get back to me.
I am aware that he clarified that the two companies belonged to him by an affidavit, which was filed with the Income Tax Department, Scindhia House, by his chartered accountant Mr.Bimal Desai.

Q.13 Please produce the copy of the affidavit?
Ans. If the affidavit is available with the CA and I will talk to him and furnish the same on 16.03.2015.

Q.14 Since base note is in your name then why Euro Invest P Ltd should not be considered as relating to you?
Ans. As, I have already stated, the following day after the search, I spoke to my brother and asked him about the three company shown to me. He immediately confirmed that Euros Invest Limited and Investment Lexcor S.A (Ex. Investment Funds S.A) belonged to him. About the third company (Yeel Investment Inc), he said, he is not aware but would make some enquiries and get back to me.
I am aware that he clarified that the two companies belonged to him by an affidavit, which was filed with the Income Tax Department, Scindhia House, by his chartered accountant Mr. Bimal Desai.

Q.15 There is one more accounting the name of Investment Lexcor S.A (Ex- investment funds S.A.), are you aware about it?
Ans. As on today, yes, I am aware about it and this account belongs to my brother

Q.16 How do you know this account belongs to your brother?
Ans. As, I have already stated, the following day after the search, I spoke to my brother and asked him about the three company shown to me. He immediately confirmed that Euros Invest Limited and Investment Lexeor S.A (Ex. Investment Funds S.A) belonged to him. About the third company (Yeel Investment Inc), he said, he is not aware but would make some enquiries and get back to me.

I am aware that he clarified that the two companies belonged to him by an affidavit, which was filed with the Income Tax department, Scindhia House, by his chartered accountant Mr.Bimal Desai.

Q.16a How it is possible that out of three accounts mentioned in the Base Note, one account belongs to your father and remaining two account belongs to your brother?
Ans. My brother informed me that the two companies belonged to him and the third company belong to my father. I have no reason to disbelieve him

Q. 16b Why did not you transfer the money form account of late Mr. V C Mehta to you own account?
Ans. I did not bring the money back, the executors of the Late Shri Vrajlal C. Mehta made all efforts to bring money back in the account of Late Shri Vrajlal C Mehta in Bank of Baroda. And the executors very clear that they would only distribute the residual money after all taxes were paid and all assessment done as per the Will.

28. It may further be noted that in the case of Shri Rajesh Mehta, search assessments were initiated u/s. 153C of the Act, wherein he was issued a show cause notice dated 13.03.2014 in which specific query was raised regarding Investment Lexcor S.A. The show cause notices have been reproduced as under:

"OFFICE OF THE ASST. COMMISSIONER TAX
CENTRAL CIRCLE 20, ROOM NO.401, 4™FLOOR
AAYAKAR BHAVAN M.K.ROAD, MUMBAI400020.

TEL: (O) 22039131 EXTN: 2401
Dated: 13.03.2014

Shri Rajesh V. Mehta
162, EL-CID,
13A Ridge Road, Mumbai 400 006.

PAN: AAIPM3017B

Sub : Search/block assessment proceedings for assessment year 2007-08 - Show cause regarding.
**** * ** *** * * * ** ** ** * * * * *

In connection with search assessment proceedings for AY 2007-08, the following points are noticed and in this regard, you are requested to furnish the submission of explanation within 3 days on receipt of this letter.

From the information available to this office it is seen that you are beneficial owner in the bank account in HSBC Bank, Switzerland with following code BUP

Name	*Code BUP*
MEHTA RAJESH VRAJLAL	*5090112178*

Further you aforesaid identification is linked to following bank account

Investment Lexcore SA	*5091230085*	*CH13 0868 9050 9109 10013* *CH36 0868 9050 910931625* *CH73 0868 9050 910905150* *CH82 0868 9050 910910129* *CH85 0868 9050 9109 40415*

Further, through affidavit submitted to this office, you have admitted that you are beneficiary in the above mentioned account. However, from the perusal of your return of income for the year under consideration it is seen that you have not disclosed the same bank account in the return of income. In this regard, you are hereby asked as to why the amount of peak credit of $ 38,76,949.00 during the year should not be considered as your income and be added back to your income?
Seal

(PRAVIN D. SALUNKHE)
Asst. Commissioner of Income Tax,
Central Circle-20, Mumbai"

29. The reply to the notice was filed by Shri Rajesh Mehta vide letter dated 24.03.2014. Thereafter, search assessment proceedings have been dropped. The relevant extract of the reply furnished by Shri Rajesh Mehta is reproduced as under:

2. "The assessee is a resident of United Arab Emirates (U.A.F) for the aforesaid year. The status of the assessee is Non Resident Indian" as per section 6 of the Income tax Act 1961 for the aforesaid year. It may be noted that the assessee is Non Resident since 1971, i.e more than past 30 years

3. The assessee fails to understand the legality and jurisdiction under the provision of Income Tax Act 1961 for issuing show cause to consider the peak credit balance of the HSBC Bank, Switzerland as indicated in the show cause notice, as income of the assessee for the A.Y 2007-08. All the transactions in HSBC Bank, Switzerland account pertain to businesses and other interest outside India and none of them pertain to any income or source in India.

4. In the show cause notice, you have mentioned that the assessee has not disclosed the said bank accounts in the return of income. In this regard, it may be noted that the assessee has regularly filed income tax returns as Non Resident Indian and disclosed income accrued or arisen in India which are taxable in India. As a Non Resident, there is *no requirement to disclose the aforesaid overseas bank accounts. This requirement has been introduced in case of "Resident Indian" with effect from A.Y 2012-13 (refer fourth proviso of section 139(1) of the Act)."*

5. *Section 5(2) of the Income Tax "Act, 1961 provides that the total income of any previous year of a person who is a Non Resident includes all income from whatever source derived which is received or is deemed to be received in such year or accrues or arises or is deemed to accrue or arise to him in India during the year. In other words, in the case of a Non Residential Indian all his income which have not been received in India or which does not accrue or arise in India are not taxable in India.*

6. The assessee is Non Resident Indian for the last more than three decades has earned and received income outside India from the sources outside India and therefore such income are not taxable in India, Accordingly, the bank account(s) of such Non-Resident Indian wherein the Non-resident Indian has deposited his income earned outside India are not required to be disclosed under the Income Tax Act, 1961. It is therefore submitted that you have no authority/jurisdiction under the Income Tax Act, 1961 to call upon the assessee to give details of his foreign bank accounts explaining the credit and debit entries therein. It is therefore respectfully submitted that the disclosure of foreign accounts in the return of income is applicable only to Resident Indians and not applicable to Non Resident Indian.

30. Thus, Investigation Wing, assessee's Ld AO and Rajesh Mehta's Ld. AO did not record an adverse finding with respect to claim of Shri Rajesh Mehta regarding ownership of Investment Lexcor S.A. However, without consideration of these observations of Investigation wing and Ld. AO, the Hon'ble CIT(A) without any reason issued enhancement notice to which assessee replied vide letter dated 21.12.2016. The Hon'ble CIT(A) did not consider the submission of assessee. Further, he did not conduct any other independent inquiry on the basis of assessee's contention and

enhanced the income of the assessee without bringing any further evidence on record. The enhancement was made purely on the assumption that Investment Lexcor S.A belongs to Late Shri Vrajlal C. Mehta.

31. Further, in the CIT(A) order dated 24.03.2017, Hon'ble CIT(A) made an incorrect observation that the base note in the name of Late Shri Vrajlal C Mehta contains the name of all the three accounts and there is no specific reference for Rajesh V Mehta in the said base note being owner of accounts of either Investment Lexcor S.A. or Euros Invest Ltd. Further, same observation was made in Para 30 of Page 37 of the same CIT(A) order.

32. Considering all the above submission, observations of Investigation Wing, Assessment order of Vrajlal Mehta and dropping of assessment of Shri Rajesh Mehta, it is submitted that there was no new evidence based on which enhancement was made. Further, the already existing information was subject to inquiry and scrutiny at various levels of department. Hence, enhancement of income done by Hon'ble CIT(A) is bad in law.

33.It is hereby clarified that, the subject matter of current appeal is mainly enhancement of income of the assessee on account of the balances in HSBC bank account in name of Investment Lexcor S.A. It is hereby further clarified that the assessee has not challenged the declaration of income on account of balances lying in HSBC Bank account in the name of Yeel Investment Inc'.

34. Further, assessee has filed an undertaking dated 17.10.2016 before the Hon'ble CIT(A) during the course of the appellate proceedings that the assessee shall stand with their disclosure of income in respect of Yeel Investment Inc and will not be seeking any reduction in the income offered at any stage. Also, the assessee will not be claiming any refund of the amount of taxes already paid except for inter-se adjustment of taxes paid amongst various assessment years.

52. The Ld CIT-DR has also furnished written submissions on this issue and for the sake of convenience, we extract the same below:-

"With respect to enhancement by Ld CIT(A) of the amount in Lexcor Investment in the same HSBC account mentioned in the base note, it is submitted that this HSBC account belongs to the late Shri Vrajlal C Mehta. Therefore, all the accounts in this base note of Late Shri Vrajlal C Mehta are to be assessed in the hands of the legal representative and legal heir of Late Shri Vrajlal C Mehta, i.e., Shri Anoop V Mehta as per sec. 159. The burden of proof shifts to Shri Anoop V Mehta, in his capacity as legal heir

of Late Shri Vrajlal C Mehta to prove that the Lexcor Investment never belonged to late Shri Vrajlal C Mehta. Merely claiming that the beneficial owner of Lexcor SA is Rajesh Mehta does not discharge the burden of proof of establishing the ownership of lexcor SA. The filing of an affidavit by shri Rajesh Mehta (brother of Shri Anoop V Mehta), as alleged by the Executors, before the CIT(A) that this lexcor SA Investment belong to him does not establish how it belongs to him and not to late Shri Vrajlal C Mehta when the base note indicate a single HSBC account in the name of Shri Vrajlal C Mehta indicating various trust accounts. Thus, the logical conclusion is that all investments accounts indicated in the base note of Shri Vrajlal C Mehta pertain to his investments only and having not been included in the Will devolve upon his legal representatives. The legal representative of Late Shri Vrajlal C Mehta is shri Anoopo V Mehta and this fact has not been disputed by either Shri Anoop Mehta or Rajesh Mehta. The reference to show cause notice issued to Rajesh Mehta by Investigation wing does not indicate anything (Please see para 28 and 29 of the written submission). That search assessment proceedings have been dropped and that there is no adverse finding with respect to claim of Shri Rajesh Mehta regarding ownership of Investment lexcor SA does not lead to conclusion that these assertions have been accepted. No further enquiry was required to be caused by the CIT(A) to establish that Investment Lexcor SA belongs to Late Shri Vrajlal C Mehta as all the investments in that base note of Vrajlal C Mehta belonged to him.

Please see para 33 wherein it is stated that it is hereby clarified that, the subject matter of current appeal is mainly enhancement of income of the assessee on account of the balances in HSBC bank account in name of "Investment Lexcor SA". It is hereby further clarified that the assessee has not challenged the declaration of income on account of balances lying in HSBC Bank account in the name of Yeel Investment Inc. The assessee here is Late Shri Vrajlal C Mehta represented by his legal representative Shri Anoop V Mehta; this assessee has not challenged the enhancement of income on account of balances in HSBC Bank account in the name of Investment Lexcor SA and has not challenged the assessment of balances lying in HSBC Bank account in the name of Yeel Invesment Inc. Thus, the order of the AO and the CIT(A) in the case of Late Shri Vrajlal C Mehta represented by his legal representative Shri Anoop V Mehta is not challenged. Therefore, the order of the CIT(A) must be upheld."

53. We heard rival contentions on this issue and perused the record. We notice that the Shri Anoop Mehta, from the very beginning, has been claiming that the bank accounts standing in the name of M/s Euro Investment Ltd and M/s Investment Lexcor SA belong to his brother Shri Rajesh Mehta, who happens to be an NRI for several years. He has also filed affidavit before the

Investigation wing accepting the ownership of both the bank accounts. During the course of assessment proceedings also, the AO made enquiries about these two accounts and Shri Anoop Mehta has reiterated his earlier submissions. Accordingly the assessing officer did not make any addition in respect of these two accounts. Out of the two accounts, the account standing in the name of M/s Euro Investment Ltd was closed in 2003 itself and hence the dispute arose in respect of M/s Investment Lexcor SA. Besides the above, the assessing officer has initiated proceedings u/s 153C of the Act in respect of the above said account in the hands of Shri Rajesh Mehta and a specific query was also raised in this regard. The query raised by the AO and the reply given by shri Rajesh Mehta is extracted in the preceding paragraphs. After considering the reply, it is stated that the proceedings u/s 153C of the Act were dropped.

54. In our view, the Ld CIT(A) has not duly considered above facts and he has been mainly influenced by the fact that Shri Anoop Mehta is also shown as one of the beneficiaries in the above said account. Further the Ld CIT(A) has also stated that Shri Anoop Mehta is entitled to residual assets of Late Vrajlal Mehta as per the Will. In our view, the reasoning given by Ld CIT(A) is not sustainable. Under the Income-tax Act, the income tax is levied on the person who earned the income. The fact that Shri Anoop Mehta may be entitled to the residual assets may not be relevant to determine the person on whom the income is required to be assessed. For the same reasoning, the details of beneficiaries are also not relevant for that purpose.

55. The Ld CIT-DR also contended that the account standing in the name of M/s Investment Lexcor SA is tagged to late Shri Vrajlal C Mehta. There should not be any dispute that only right person can be assessed in respect of any income. Mere tagging of group accounts together will not automatically lead to the conclusion that all the accounts belong to a single person. In the instant case, it is noticed that Shri Rajesh Mehta has claimed ownership of the account before the investigation wing, before the assessing officer of Late

Vrajlal C Mehta and also before his assessing officer also. All the authorities have accepted his claim. Hence in our view, the Ld CIT(A) is not justified in enhancing the income by holding that the bank account standing in the name of Investment Lexcor SA belong to the assessee, without finding fault with the decision taken by other authorities and also without bringing on record any material to contradict the claim so made. Accordingly we set aside his order on this issue. The Ld CIT-DR has also urged in her written submissions that Shri Anoop Mehta as legal heir has not filed appeal. The issue of locus standi has already been addressed by us in the earlier paragraphs and hence this contention of Ld CIT-DR is liable to be rejected.

56. In any case, the enhancement made by Ld CIT(A) also would not survive in view of our decision rendered against the first ground raised by the assessee, wherein we have quashed the orders passed by the tax authorities on the legal ground urged by the assessee.

57. The next ground urged by the assessee relates to the claim for credit of tax of Rs.52,44,128/- paid by the assessee in AY 2012-13 in respect of income now offered in AY 2007-08.

58. We have noticed earlier that the assessee, "Estate of Late Vrajlal C Mehta", offered entire income pertaining to bank account standing in the name of Yeel Investment Inc in the assessment year 2012-13, as the proceeds were received during the relevant financial year. On the basis of subsequent developments, the assessee chose to offer part of income already offered in AY 2012-13 in AY 2006-07 and 2007-08. Accordingly it filed revised return of income for the above said three years. Since the assessee had already paid the relevant tax in AY 2012-13 and since part of income pertaining to that tax was shifted to AY 2007-08, the assessee sought credit of proportionate tax in AY 2007-08. The said claim was rejected by the AO as well as Ld CIT(A).

59. We heard both the parties on this issue. The Ld A.R submitted that the assessee has offered income in AY 2012-13, since the said income was received for the first time in India in that year only. The assessee has also paid the tax thereon. Subsequently, upon considering the views taken by the Revenue and also to avoid protracted litigation, the assessee has chose to offer part of that income in AY 2006-07 and 2007-08 making corresponding reduction in the income offered in AY 2012-13. The Ld A.R submitted that the CBDT has issued a Circular No.14 (XL-35) dated 11.04.1955, wherein the tax authorities are advised to guide the assessees and it is further reiterated that the revenue should not take advantage of an assessee's ignorance to collect more tax out of him than is legitimately due from him. The Ld A.R also placed reliance on the decision rendered by Hon'ble Gujarat High Court in the case of Naresh Bhavani Shah (HUF) vs. CIT (396 ITR 589), wherein it is held that there was no dearth of power with the department to grant credit of tax deducted at source in a genuine case.

60. The Ld D.R, on the contrary, submitted that there is no provision under the Act to give credit for the tax paid in AY 2012-13 in AY 2007-08.

61. This ground of the assessee pertains to the returns of income filed by "Estate of late Vrajlal C Mehta". We notice that the assessee has placed reliance on the Circular issued by CBDT and the decision rendered by Hon'ble Gujarat High Court in the case of Naresh Bhavani Shah (HUF) (supra). Considering the peculiar circumstances of the case, we are of the view that there is merit in the claim of the assessee. As per the provisions of sec. 5 of the Act, income received in India is taxable in the year of receipt. Hence the assessee appears to have offered the income in AY 2012-13. However, when the revenue chose to assess the income on accrual basis, the assessee has accepted the same and has accordingly filed revised returns of income, though they were beyond the prescribed time. No information was placed before us about the fate of those return of income and revised return of income filed for

AY 2012-13 by Estate of late Vrajlal C Mehta. Since we have quashed the assessment order passed in the name of Shri Anoop Mehta, legal heir of late Shri Vrajlal C Mehta, the return of income as well as revised returns of income filed by Estate of late Vrajlal C Mehta shall remain intact. Hence this issue shall really arise only when the revenue is acting on those returns. Hence, at that point of time, the revenue may consider the claim of the assessee liberally in accordance with the decision rendered by Hon'ble Gujarat High Court in the case of Naresh Bhavani Shah (HUF) (supra).

62. The last ground urged by the assessee relates to non-consideration of revised return of income filed by the assessee. This ground does not require adjudication in view of the decision taken by us on other grounds.

63. In the result, the appeal of the assessee is treated as allowed.

Order has been pronounced in the Court on 29.8.2018.

Sd/-	Sd/-
(PAWAN SINGH)	(B.R.BASKARAN)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai; Dated : 29/8/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

BY ORDER,

//True Copy//

Senior Private Secretary
ITAT, Mumbai

PS