

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

Before Shri Shailendra Kumar Yadav, Judicial Member and Shri
Rajesh Kumar, Accountant Member

ITA. No. 2462-2463/Mum/2012
(Assessment Year: 2002-03 & 2004-05)
ITA. No. 2465 to 2467/Mum/2012
(Assessment Year: 2006-07, 2007-08 & 2003-04)
&
ITA. No. 581/Mum/2013
(Assessment Year: 2008-09)

Shri. Lakhmichand D. Rohira
2301, Dheeraj Height Gaurav,
Off, Oshiwara Link Road,
Mumbai -400 058
PAN: ADNPR 6420 M

Assessee

Vs.

ACIT-Central Circle 24 &26
4th Flr, Ayakar Bhavan,
M.K. Road,
Mumbai -400 020.

Revenue

ITA. No. 2581 to 2583 ,2585 & 2586/Mum/2012
(Assessment Year: 2002-03 to 2004-05 ,2006-07 & 2007-08)
ITA. No. 1044/Mum/2013
(Assessment Year: 2008-09)

ACIT-Central Circle 24 &26
4th Flr, Ayakar Bhavan,
M.K. Road,
Mumbai -400 020

Revenue

Vs.

Shri. Lakhmichand D. Rohira
2301, Dheeraj Height Gaurav,
Off, Oshiwara Link Road,
Mumbai -400 058.
PAN: ADNPR 6420 M

Assessee

ITA. No.979/Mum/2013
(Assessment Year: 2002-03)
ITA. Nos. 980-985/Mum/2013
(Assessment Year: 2003-04 to 2008-09)

Shri. Dhanvinder Singh Bindra
C/o. R. Sanghvi & Co,
104, Rizvi Chambers,-2, Jain Mandir Marg,
Bandra (W)-Mumbai 400050
PAN: ADNPR 6420 M

Assessee

Vs.

ACIT-Central Circle 24 &26
4th Flr, Ayakar Bhavan,
M.K. Road,
Mumbai -400 020.

Revenue

ITA. No.1056 to 1062/Mum/2013
(Assessment Year: 2002-03 to 2008-09)

ACIT-Central Circle 24 &26
4th Flr, Ayakar Bhavan,
M.K. Road,
Mumbai -400 020.

Revenue

Vs.

Shri. Dhanvinder Singh Bindra
C/o. R. Sanghvi & Co,
104, Rizvi Chambers,-2, Jain Mandir Marg,
Bandra (W)-Mumbai 400050
PAN: ADNPR 6420 M

Assessee

Assessee(s) by :	Shri Vijay Mehta, AR
Revenue by :	Shri Anand Mohan, CIT-DR

सुनवाई की तारीख/Date of Hearing : 19/11/2015

घोषणा की तारीख /Date of Pronouncement: 30/11/2015

आदेश / O R D E R

PER RAJESH KUMAR, ACCOUNTANT MEMBER:-

These cross appeals have been filed by the two assessees and Revenue against separate orders of the Id. Commissioner of Income-Tax (Appeals)-39, Mumbai, passed for Assessment Years mentioned above. Since all these appeals relate to same search action and involve common issues, therefore these were heard together and are being disposed of by this consolidated order for the sake of convenience. We shall first take up the bunch of appeals filed by the assessee and ITA. No. 2462/Mum/2012 for Assessment Year 2002-03 is being taken as the lead case for the purpose of narrating the facts.

Shri. Lakhmichand D. Rohira

ITA No. 2462/Mum/2012-Appeal by assessee & ITA No 2581/Mum/2012 by Revenue for AY 2002-03

2. The grounds of appeal raised by the assessee in this appeal (AY 2002-03) read as under:

1. The learned CIT(A) has erred in law and on facts in upholding the order passed by the Assessing Officer u/s. 143(3) r.w.s 153 A of the Income-tax Act, 1961 which is invalid and bad in law.

2. The learned CIT(A) ought to have held that the Assessing Officer has passed the order without giving a proper and reasonable opportunity of being heard to the assessee.

3. The learned CIT(A), has erred in upholding an addition of Rs.50,18,750/- out of total addition of Rs.1,82,50,000/- made by the Assessing Officer on the ground that the assessee has received income Rs.13,750/- per day from the social club.

4. The learned CIT(A) has erred in not giving benefit of telescoping in respect of Rs.3,94,689/- declared by the assessee as income on account of cash discrepancies.

5. The learned CIT(A), has erred in confirming levy of interest under section 234B and 234c of the Income Tax act, 1961.

Additional grounds of appeal:-

The learned CIT(A) has erred in confirming the addition made by the Assessing Officer relating to discrepancy of Rs.1,30,731/- towards opening balance of fixed deposit matured during the year.

3. The grounds of appeal raised by the revenue in this appeal (AY 2002-03) read as under:

1. On the facts and the circumstances of the case and in law, the ld CIT(A) erred in directing the AO to reduce the addition made in the hands of Shri Lakhmichand Rohira from Rs. 55,000/- p.m to Rs. 13,750/- p.m as receipt from the business activity of M/S Shree Ram Social Club.

4. The ground Nos. 1 and 2 of the assessee's appeal for all Assessment Years, i.e., AY 2002-03 to 2004-05 & 2006-07 to 2008-09 are not pressed at the time of hearing before us; therefore, they are dismissed as not pressed.

5. Ground No.3 of the assessee's appeal for AY 2002- is against regard to the addition confirmed in the hands of the assessee by CIT(A) amounting to Rs.50,18,750/- out of total addition of Rs.1,82,50,000/-.

5.1 The brief facts of the case are that a search and seizure action u/s 132 of the Income-tax Act, 1961 was conducted on 08.05.2007 at the residential and business premises of the Bindra Group. The assessee was also covered in the said search operations. In response to notice u/s 153A issued on 19.08.2008, the assessee filed return of income on 31.10.2008 declaring total income of Rs.4,96,647/-. The assessee filed original return of income on 15.05.2002 admitting total income of Rs.86,890/-.

5.2 In the assessment order u/s 143(3) r.w.s. 153A of the Income-tax Act, the Assessing Officer added the following amounts:-

Income estimated from Shree Ram Social Club-Rs.1,82,50,000/-
Income from undisclosed sources – Rs.11,46,661/-

5.3 Mr. Dhanvinder Singh Bindra alongwith the assessee was running the Shree Ram Social Club. Shri Ram Social Club was also searched during the search proceedings and statements were also recorded of the employees and the assessee. During the course of assessment proceedings, the assessee was asked by the Assessing Officer to show cause why on the basis of seized material, statement of employees, assessee's own statement and cash of Rs.2,86,100/-

seized during the search operation from club premises it should not be inferred that the daily income of the club was in range of Rs.1.5 to 2 lakhs per day. In response to the same, the assessee retracted from his statement recorded during the search and claimed that daily income of the club was in range of Rs.4000-5000 only. The Assessing Officer did not accept the assessee's submission and further stated that it has been held in various decisions of the courts that the statement given by the assessee at the time of survey/search action was binding on him and any retraction made by him had no meaning at all unless substantiated by facts.

5.4 Thus, the Assessing Officer determined the income of the club at Rs. 1 lac per day in view of the following reasons:-

As per statement of Mr. A.O. Davis, recorded u/s 132(4) on 09.05.2007 (who was caretaker in the club, and was part of Managing Committee) daily income of club as specified in Q.8 ranges from 1.5 lakhs to 2 lakhs per day and this is the average income of the club from last 7-8 years. As per the statement, rent of Rs.1,000/- per day has been given to Mr. Dhanvinder Singh Bindra for use of his flat for club activities. Further as per the statement there are approximately 25 employees in the club to whom salary in the range of 100-200 per day had been given. Regarding accounting of income and expenditure of club, he specifically stated that daily accounts are written on loose papers and tore off at the end of the day.

As per statement of Mr. Jayanti Bhai Savla (who handles work of giving counter in 1st floor) recorded u/s 132(4) on 08.05.2007, daily cash savings of his portion of club was Rs.20000 per day, which he handed over to Mr. Mashraf Ansari and as per the statement of Mr. Mashraf Ansari

recorded u/s 132(4) in Mr. Jayanti Savla's portion, rate per game and number of players were very less as compared to other floors at the club. As per Mr. Mashraf Ansari, the first floor hall managed by Savla the rate is Rs. 2 per point. From this, the Assessing Officer inferred that there must be overall cash savings of Rs.1,00,000 per day from the club i.e. net profit. In his statement recorded u/s 131 on 14.09.2009, Mr. Jayant Savla reconfirmed that total cash savings from his portion was Rs.20000 on daily basis and also confirmed that Mr. Mashraf Ansari was important employee in the club and available at the time of search.

As per the statement of Mr. Mashraf Ansari, recorded u/s 132(4) on 08.05.2007, the average income of the club on daily basis was Rs.2,00,000/- per day. In his statement, he also specifically mentioned that how accounts of the punters were being kept.

From the statements of Mr. A.O. Davis and Mr. Mashraf Ansari, it was clear that the accounts were kept on loose papers which was torn off at the end of the day. From this, it can be directly inferred that the clear workings regarding profits cannot be worked out. In such scenario, the statements recorded under oath becomes very importation.

Mr. Laxmichand Rohira, in his statement recorded u/s 132(4) on 09.05.2007 specifically stated that club was owned by Mr. Dhanvinder Singh Bindra and he conducted business there. The relevant portion of the statement is extracted below:-

"Q.20. During the course of search proceedings at New Kamal Society, 248, Water Field Road, Opp. National College, Bandra (W), Mumbai 400 050, it was found that you are running a club, named & styled as "Shriram Social Club". Please state that the nature and the modus operation, of the business being conducted in the said club and income therefrom?"

Ans. M/s. Shriram Social Club is owned by Mr Dhannendra Singh Bindra (Papaji) I conduct the business of the club which is gambling by way of game of Rummy (of 21 cards). The premises which is 1st and 2nd floor of the New Kamal Building is owned by Mr. D.S. Bindra for which I pay him Rs. 6500/- share. The card game in the club is exclusively of 21 cards Rummy. The game is of two rupees, 10 rupees and 20 rupees point. There are 12 tables in the club for the game. However, the game is currently conducted on 4 to 5 tables only. We receive 40 rupees, 100 rupees and 200 rupees/game on 2 rupees points, 10 rupees points and 20 rupee points respectively. Each player will have to play minimum 36 games. The gross receipt of the club is in the range of Rs. 45,000/- to Rs. 55,000/- per day. Out of this around 50% of the gross receipt is spent on account of various expenditures viz. salary to employees, rent of premises paid to Mr. D. S. Bindra, tea and snacks to the members and some other incidental expenses."

5.5 From the club premises, cash of Rs.2,86,100/- had been seized which reiterated the fact that daily average income of the club was in the range of Rs.1 lakh to 2 lakhs, as it must be income of previous day.

5.6 From the club premises, loose papers had been seized in which against the name of the punter, figures were written and which as per explanation given by Mr. Mashraf Ansari showed that club was having huge income by way of gambling activities. The Assessing Officer on the analysis of these papers explained the modus operandi of club as follows:-

“Shri Dhanvindersingh S. Bindra has been running business of gambling & betting with the help of Shri Lakhmichand

Rohira from 1st and 2nd floor of New Kamal Co-op Hsg. Society situated at 248 Linking Road, Opp. National College, Bandra (W), Mumbai 400 050. The gambling activities were being conducted under garb of "Shree Ram Social Club" claimed to be for providing amusement to its members and their guest but the fact gathered during the search revealed that the gambling in the form of game of "Rummy" was being played among various punters at the above premises. As per page 116 of seized material Mr. Dhanyjnder Singh Bindra is the honourable president and proprietor of Shree Ram Social Club. The Rummy was played at stake ranging from Rs. 10/- per point of Rs. 100/- per point. Punter sitting on the table play Rummy on same stake and each time commission equivalent to stake per point is charged from the Punter declaring the game. For eg.: if six punters are playing Rummy of Rs. 50/- per point then the punter who declares the Rummy has to pay Rs. 50/- to the club as commission. Generally, six punters are playing Rummy with Three set of cards play on a table. After one round is completed the punters withdraw the card for their sitting position. The Punter withdrawing the card of highest value is allowed to choose the chair where he wants to sit on the chair besides the table and other Punter sit in descending order of the value of the card pulled by them from the stake of Rs. 50/0 the club collect Rs, 300/- from the particular table. Similarly for stake of Rs. 10/-, 20/- and 100/- etc., amount of Rs. 60, 120 and 600/- respectively is collected by the club for a round from the particular table. Many times stakes per point to be played is shared by the Punter with the club. For eg in the case of stake of Rs. 100/- per point the Punter wants to play Rs. 60/- per point, then it agrees that Rs. 40/- per point is played by him on behalf of the club and noting of 60/40 is recorded before his name in the record for the club maintained by the club which inter-alia means the profit and loss is shared in the ratio of 60/40 between the Punter and the club. The amount of Bank and cut /commission may vary from club to club. A Punter intending to gamble by playing "Rummy" has to deposit the cash amount called "bank" which is generally equivalent to

the 1000 points multiplied by the stake for which he wants to play the game. For eg, a Punter intending to play Rs. 100/- per point has to deposit amount of Rs. 1,00,000/- in lieu of which plastic token known as "counters" of different points equivalent to 1000 points are issued to him. Some time credits are also allowed to the regular Punters. In such cases accounts are to be settled by the Punters on weekly, fortnightly or monthly basis depending upon the creditability of the Punier. In charge of each floor maintains records in respect of token/counter issued to each customer/ Punter, cash on account "Bank" received from Punter, commission received by the club and details of win or loss incurred by each Punter. Thus, the total profit and the cash profit earned by the club on each day, receivable and payable on the particular day is duly worked out by the club.”

5.7. From the above, the Assessing Officer observed that the club must be earning net income of Rs.1,00,000/- per day on average basis atleast from the last 6-7 years. As per assessee’s claim 50% of the gross receipts were spent on account of various expenditures such as salary , electricity , water and others as he conducted business there.

5.8 After determining the income at Rs.1 lac per day from the club, the Assessing Officer bifurcated the income in the ration of 50:50 between Shri Dhanvinder Singh Bindra and the assessee for the following reasons:-

As per loose paper 116, Mr. Dhanvinder Singh Bindra is honourable president and proprietor of "SHREE RAM SOCIAL CLUB:. And from other loose papers, it can be directly inferred that Mr. Dhanvinder Singh Bindra was president of the cluband Mr. L. C. Rohira was conductor-cum-treasurar of the

dub and club was running continuously from a number of years.

All the above mentioned persons who were regular employees in the club, specifically mentioned that Mr. Dhanvinder Singh Bindra and Mr.Laxmichand Rohira were main persons, who run the club and share the income of the club equally.

Flats, from where club was conducted, was owned by Mr. Dhanvinder Singh Bindra.

From the club premises, loose papers have been found, which specifically mentioned that Mr, Dhanvinder Singh Bindra was main person, who represents the club at all legal forums.

Mr. Laxmichand Rohira in his above mentioned statement clearly specifies that income of the dub is divided between Mr. and himself (Mr, Rohira) in the ratio of 50-50%,

Accordingly as per provisions of Income Tax Act, both Mr. D.S. Bindra and Mr. L C. Rohira are representative assesses of the club and will be assessed accordingly, to protect the interest of revenue.

Other facts, which lead to the fact that assesses was actively involved in gambling activities and regularly earned income by way of it are:-

- i Assessee is not having any regular source of income. Income which he was showing as commission income, was bogus one, as accepted by assessee himself in his statement u/s. 132(4).
- ii. Assessee has not maintained any books of accounts regarding commission income earned by the assessee himself and his sons.
- iii Assessee is making capital by way of gifts and inheritance.
- iv.Assessee has made unaccounted investments in shops.”

5.9 Thus, the Assessing Officer accordingly assessed Rs.1,82,50,000/- (365 x 1 lac x 50/100) in the hands of the assessee.

6. The matter was carried before the First Appellate Authority, wherein various contentions were raised on behalf of the assessee who was a managing committee member of Society called "Shriram Social Club", which was registered under Society Registration Act, 1960 on 16.03.1999. The main objectives of this society are as under:-

- "i) To provide for basic knowledge of the indoor games amongst the member of the club,
- ii) To provide for better facilities for playing the indoor games.
- iii) To arrange for supply of sports magazines, booklets etc. to the members,
- iv) To celebrate religious functions amongst the members of the Club.
- v] To provide for recreation or other leisure time occupation by arranging indoor games such as Carom, Playing Cards, Bridge, Chess and arrange the tournaments of such games amongst the members.
- vi) To arrange free medical camps to help the poor people of the locality
- vii) To provide for the medical help to the poor and needy persons.
- viii) To arrange for supply of Text Books, Exercise Books, uniforms, Stationery and other necessary articles to the poor and deserving students.
- ix) To help persons affected by natural calamities."

6.1 The society was also registered with Charitable Commissioner vide registration No.F.29327 dated 26.07.1999.

Shriram Social Club was running activities from 2/48, New Karnal Building, 1st and 2nd Floor, Linking Road, Badra (W), Mumbai 400 050. The premises was owned by Mr. Dhanvendra Singh S. Bindra who was also the president of the said club. The affairs of the club were run by managing committee which consisted of following:-

President	Mr. D.S. Bindraq
Vice President	Mr. K.D. Bindra
Secretary	Mr. Yusuf Bakali
Treasurer	Mr. Lakhmichand D. Rohira
Committee Member	Mr. A.O. Davis
Committee Member	Mr. A.O. Thomas
Committee Member	Mr. Gop Nathani

6.2 The submission of the assessee was that on 08.05.2007 there was search operation on the Bindra Group and Mr. Lakhmichand D. Rohira. During the course of search of Bindra Group at the above said premises, certain records of Shriram Social Club were also found and seized. The statements of three employees viz. (1) Mr. Jayant M. Savla, (2) Mr. A.O. Davis and (3) Mr. Mushraf Ansari were recorded and questions were asked about activity and income of the social club. The Assessing Officer had alleged that gambling activities were conducted by the said club and the Assessing Officer in his order had elaborately explained how the game of card known as Rummy was played by members of the club. The Assessing Officer had assumed on adhoc basis that the club was earning Rs.1 lac per day from these activities. The Assessing Officer after treating Mr. D.S. Bindra and Mr. L.D. Rohira

as representative assessee of the club assessed in the hand of the assessee 50% of the presumed income calculated on adhoc basis without any calculation or interpretation of seized material. The stand of the assessee had been that no seized material were found relating to AY 2002-03 and the assessee was assessed to such income in his capacity as representative assessee as stated in paragraph 6 on page no.6 of the assessment order. Further stand of the assessee has been that section 160 of Income Tax Act deals with the circumstances in which an assessee may be treated as representative assessee for other person which states as under:-

- "160 (1) For the purposes of this Act, "representative assessee" means
- (i) in respect of the income of a non-resident specified [***] sub-section (1) of section 9, the agent of the non-resident, including a person who is treated as an agent under section 163;
 - (ii) in respect of the income of a minor, lunatic or idiot, the guardian or manager who is entitled to receive or is in receipt of such, income on behalf of such minor, lunatic or idiot;
 - (iii) in respect of income which the Court of Wards the Administrator-General the Official Trustee or any receiver or manager (including any person, whatever his designation, who in fact manages property on behalf of another) appointed by or under any order of a court, receives or is entitled to receive , on behalf or far the benefit of any person, such Conn of Wards, Administrative-General Official Trustee, receiver or manager,
 - (iv) in respect of income which is trustee appointed under a trust declared by a dull/ executed instrument in writing whether testamentary or otherwise /including any wakf

deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913) receives or is entitled to receive on behalf or for the benefit of any person such trustee or trustees;

- (v) in respect of income which is trustee appointed under an oral trust receives or is entitled to receive on behalf or for the benefit of any person, such trustee or trustees.

Explanation 1 - A trust which is not declared by a duly executed instrument in writing (including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913) shall be deemed, for the purpose of clause (iv), to be a trust declared by a duly executed instrument in writing if a statement in writing, signed by the trustees, setting out the purpose or purposes of the trust, particulars as to the trustees, the beneficiary or beneficiaries and the trust property is forwarded to the /Assessing Officer

- (i) where the trust has been declared before the 1st day of June, 1981, within a period of three months from that day; and;
- (ii) in any other case, within three months from, the date of declaration of the trust.

Explanation 2.— For the purposes of clause (v), "oral trust" means a trust which is not declared by a duly executed instrument in writing [including any wakf deed which is valid under the Mussalman Wakf Validating Act, 1913 (6 of 1913),] and which is not deemed under Explanation I to be a trust declared by a duly executed instrument in writing.]

- (2) Every representative assesses shall be deemed to be an assesses for the purposes of this Act.”

6.3 The assessee further submitted that whether the assessee could be treated as ‘Representative Assessee’ depended upon the legal status of “Shriram Social Club” as per the provisions of the Income Tax Act.

- i) "Shriram Social Club" hereinafter referred as 'Society / Club' is a Society registered under Society Registration Act 1860 under registration no 422 dated 16th March 1999. The Society is also registered with charitable commissioner vide registration no. F-29327 dated 26-7-1999.
- ii) The Society is managed by managing committee consisting of seven members who regulate & manage the Club activities.
- iii) The Society & Trust are two different kind of legal entities, While the society is registered & regulated by Society Registration Act 1860, a Trust is regulated by Indian Trust Act 1882,
- iv) The meaning of Trust or Society is neither defined in Indian Trust Act nor Society Registration Act. (f
 - a) Requisite of the Trust
On reading the various provisions of Indian Trust Act & allied Laws and various legal pronouncements, there are four major requisites of a Trust. These are;
 - i) The existence of the author of the trust or someone at whose instance the trust comes into existence.
 - ii) The beneficiary,
 - ii) The trust property
 - iv) There must be divesting of the ownership by the author of the trust in favour of the beneficiary or the trustee. A trust is an obligation annexed to the ownership of a specific property and not with reference to a non-existent property. Unless all these requisites are fulfilled, a trust cannot be said to have come into existence. These principles have been pointed out in Nachimuthu Industrial Association v, CIT (1980) 123 ITR 611 (Mad),
 - b) Requisite of the Society :
On perusal of various provisions of the Society Registration Act and allied Laws and various legal pronouncements, the major requisites of society are;
 - i) Conglomerate of people in general or particular group of people.
 - ii) Managing Committee for working of Society
 - iii) An electoral form of management of Society.”

6.4 The assessee further submitted that from the above submission it could be observed that there was no Trustee or particular beneficiary in a society form of organization.

6.5 Likewise, various submissions were made by the assessee and the ld. CIT(A), having considered the submissions on behalf of the assessee, had given partial relief to the same which had been opposed by both the parties by raising various grounds in the cross appeals, as discussed above.

6.6 During the search, it was noticed that the club was not maintaining its books of accounts properly and it was also found that the day to day accounts were maintained in loose papers and the loose papers were torn of at the end of the day. It was also not possible to find out the exact income from the seized materials found during the search. The statements were recorded during the search proceedings from four persons as discussed above. Using the information available on these statements, the Assessing Officer estimated the income of the club at Rs.1 lac per day and distributed this Rs.1 lac equally between the assessee and Mr. Bindra & assessed Rs.1,82,50,000/- per year in the assessee's hand starting from AY 2002-03 onwards. The assessee has contested this addition on the following grounds:-

- (i) The income has to be assessed in the hands of the club and not in the hands of the appellant and the appellant cannot be held as Representative assessee.

- (ii) The estimation made by the A.O at Rs. 1 lakh income per day is not reasonable and the A.O's reliance on the statements recorded from the lower Level employees is not justified.
- (iii) The income should have been distributed to various office bearers of the club and should have been assessed in these hands.
- (iv) It is assessed in the appellant's hand then telescoping effect should be given with regard to the other unaccounted income admitted/assessed in the appellant's hands.

6.7 The Id. CIT(A) observed regarding objection No. (i) above that even though the club was registered as society, it has not functioned as a society. It almost functioned as a Joint Venture or as a businesses owned by the two co-owners of two individuals namely Mr. Dhanvinder Singh S. Bindra and the assessee. This fact was evident from the statements recorded from all these persons. These two persons were only managing the show and sharing the profit. The registration of the society was only for record purposes and the actual activities were carried out not as a society but like a joint venture by two individuals to share the profit from the business carried out in the guise of a society. From the statements recorded, it can be seen that no other persons from the society had enjoyed the profits of the club other than the assessee and Mr. Bindra. In view of this, the CIT(A) held that the profits arising from the business activities of these two persons in the guise of society had to be assessed at 50:50 in the hands of the

assessee and Mr. Bindra; thus, the grounds listed above was rejected.

7. Next objection was considered by the ld. CIT(A) with regard to the estimation of income at Rs.1 lac per day from the activities of the club. He observed that two persons i.e., the assessee and Mr. Bindra had not kept records properly which could enable to deduce the correct income from the business activity. Ld. CIT(A) also observed from the statements that the accounts of each day were recorded in loose papers and were torn off at the end of the day and so the income had to be estimated only on the basis of the statements recorded from the four persons. But, he observed that Mr. Jayanti Savla and Mr. Mashraf Ansari were low paid employees and they were assigned specific works and they were not aware of the entire financial transactions of the club. So the statements recorded from these two persons would not help to determine the income earned from his business activity. It was also observed that Mr. A.O. Davis was more involved in the day to day functioning of the club and he was not involved in the day to day accounting of the business activity. Only the assessee was involved in the day to day accounting and financial matters of the club. In fact, the assessee was said to be the Treasurer of the Club. In view of above, the CIT(A) held that the statement recorded u/s 132(4) of the assessee was more reliable than the statement recorded from other persons with regard to the income from the business activity which was carried out in the guise of society.

7.1 The assessee had stated that the gross income from the club may vary from Rs.45,000/- to Rs.55,000/- and the net income would be around 50% of the gross income. The sworn statement recorded u/s 132(4) was reliable evidence and if anybody wanted to prove otherwise it had to prove with reliable evidence that the statement was false. In the case on hand, the Department was not having any documentary evidence to show that the daily income was Rs.1 lac. On the other hand, the assessee could not prove that his gross income was less than Rs.55,000/- per day. In view of this, the assessee's contention that the statement recorded u/s 132(4) from him did not show the correct state of affairs of the business activity and the gross income per day would be around only Rs.2000 to Rs.4000 was rejected. The CIT(A) further observed that the estimation made by the Assessing Officer was on the higher side and the Assessing Officer had assessed the income at Rs.13,14,43,000/- (Rs.1,85,00,000 x 7 + Rs.19,43,050/-) for all these assessment years i.e. AY 2002-03 to 2008-09. The assessee and his family members were also searched and no of assets were found in their hands. He, therefore, estimated the gross receipts from this business activity at Rs.55,000 per day and estimated the net profit at Rs.27,500 per day. Accordingly, the CIT(A) directed the Assessing Officer to substitute Rs.13,750/- per day in the hands of the assessee and determined the addition accordingly.

7.2 Before us, ld. Departmental Representative supported the order of the Assessing Officer. On the other hand, ld. Authorized

Representative relied upon the submissions which are summarized as under to oppose the addition in question :-

i A search was conducted on 08.05.2007 at the residential / business premises of the assessee. The assessee and one Mr. Bindra were found to be carrying on Sri Ram Social Club, wherein card playing activities were carried out, mainly of "Rummy" and the premises where these activities were carried out was owned by Mr. Dhanvinder Singh Bindra.

ii During the course of search, statements of assessee and various employees were recorded, some of the documents were seized and also fixed deposit receipts and KVP were seized. Cash amounting to Rs, 2,86,100/- was also seized.

iii As stated above, the statement u/s. 132(4) of Mr. A.O. Davis, care taker of the club was recorded, wherein it was stated by him that daily income of the club is in the range of 1.5 lacs to 2 lacs per day.

iv Statement of another employee, one Mr Mashraf Ansari u/s. 132(4) was recorded, who was handling cash. In the said statement, it was mentioned by him that average income on daily basis was Rs.2 lacs per day. It was also clarified that accounts of the punters (players) are kept on loose paper which are torn off at the end of the day. Thus, clear working with respect to profits earned by the club was not possible to work out.

v Statement of assessee was recorded u/s. 132(4) of the Act. In the said statement it was stated that the gross income ranges between Rs.45,000 to Rs.55,000 per day. Out of the said income, the expenses on account of rent, salary to employees, tea and snacks to members and some other incidental expenses are incurred which is approximately 50% of the gross income and the balance profit is shared between the appellant and Mr. Dhanvinder Singh Bindra.

vi The learned Assessing Officer estimated average net income of the club at Rs.1,00,000/- per day based on the statement of the employees. The same was divided between the assessee and the assessee's partner, Mr. Dhanvinder Singh Bindra in the ratio of 50:50, Accordingly, an addition of Rs.1,82,50,000/- (50,000 x 365 days) was made for each year.

7.3 The stand on behalf of the assessed is that employees statements were not reliable as they may not be aware of the overall functioning of the business of the assessee. Hence, statement of the assessee is more reliable according to which gross income per day of the club was adopted at Rs.55,000/- and 50% of the income was allowed as a deduction on account of expenses and the balance 50% of income of Rs.27,500/- was divided between the assessee and his partner in the ratio of 50:50. Thus, the undisclosed income on account of club business was confirmed at Rs.50,18,750/- by CIT(A).

7.4. Therefore, as stated above, both the parties are in appeal before us and raised their grievances as narrated in the grounds of appeals.

7.5 The assessee has placed before us a chart in this regard, i.e. the estimation of income from Club as made by the Assessing Officer as well as CIT(A) for all the six assessment years, which reads as under:-

Estimate of income from Club as made by the Assessing Officer			
Sr.No.	Particulars	Rs.	Basis
1.	Gross Receipt per day	2,00,000	Statement of employees
2.	Less : 50% of the gross receipt spent on account of expenditure viz. salary to employees, rent of premises paid to Mr. D. S. Bindra, tea & snacks to the members and some other incidental expenses.	1,00,000	Statement of the assessee and statements of the employees
3.	Net receipts per day	1,00,000	
4.	Less : 50% share in daily income of the club of Shri D. S. Bindra	50,000	Statement of the assessee and statements of the employees
5.	Net income per day	50,000	
6.	No. of days	365	
7.	Yearly income	1,82,50,000	

NoteL: The above income of Rs. 1,82,50,000/-- has been estimated for all the years i.e. from A.Y.2002-03 to A.Y.2007-08 at the same figure.

Estimate of income from Club as made by the CIT(A)

Sr.No	Particulars	Rs.	Basis
1.	Gross Receipt per day	55,000	Statement of assessee
2.	Less : 50% of the gross receipt spent on account of expenditure viz. salary to employees, rent of premises paid to Mr. D. S. Bindra, tea & snacks to the members and some other incidental expenses.	27,500	Statement of the assessee and statements of the employees
3.	Net receipts per day	27,500	
4.	Less : 50% share in daily income of the club of Shri D. S. Bindra	13,750	Statement of the assessee and statements of the employees
5.	Net income per day	13,750	
6.	No. of days	365	
7.	Yearly income	50,18,750	

Note : The above income of Rs.50,18,750/- has been estimated for all the years, i.e- from A.Y.2002-03 to A.Y. 2007-08 at the same figure.

7.6 Thus, the issue before us in Assessment Year 2002-03 is against the addition of Rs.50,18,750/- out of the total addition of Rs.1,82,50,000/- made by the Assessing Officer on the ground that the assessee had received income of Rs.13,750/- per day from the social club. Ld AR of the assessee stated that the CIT(A), on the basis of the income earned in A.Y. 2008-09 of Rs.13,750/- per day,

had estimated the same income for all the six preceding years, i.e., Rs.13,750/- per day for all the assessment years. In this regard, the stand of the assessee had been that it was not possible that a person earns exact income for consecutive seven years that he had earned on a particular day admitted by estimates based on the statement recorded during the course of search which described figures of gross receipts of current period. Further, the club cannot be open for all 365 days a year. The club would not have earned on non-functioning days for reasons such as holidays and other factors such as heavy rains, vacation periods, etc.. In this background, the assessee provided his estimate of income for all the seven assessment years which was based on three arguments:-

- (i) Statement of the assessee – The assessee has in his statement stated that he earns a gross income of Rs.45,000 to Rs.55,000 per day. In this regard, the assessee submitted that Rs.45,000 per day as his daily gross income and accordingly the income has been calculated.
- (ii) Growth in turnover – According to the assessee, it is a well known fact that turnover of any business cannot be achieved overnight and it increases progressively. The assessee has calculated the income on progressive basis after considering 20% growth rate.
- (iii) 30 non-working days per year

7.7 In this background, the assessee estimated income from club for AY 2002-03 to 2008-09 as under:-

Sr. No.	Particulars	Rs.
1.	Average receipts per day	45,000

2.	Less : 50% of the gross receipt spent on account of expenditure viz. salary to employees, rent of premises paid to Mr. D. S. Bindra, tea & snacks to the members and some other incidental expenses.	22,500
3.	Net receipts per day	22,500
4.	50% share of the assessed	11,250
5.	Net income per day of the assessee.	11,250

7.8. The assessee also produced a chart showing income of the assessee on Progressive Basis @ 20% as under:-

Sr. No.	Assessment Year	Income per day (Rs.)	Income per annum by taking 335 working days (Rs.)(365d- 30d)
1.	2008-09	11,250	3,82,500*
2.	2007-08	9,000	30,15,000
3.	2006-07	7,200	24,12,000
4.	2005-06	5,760	19,29,600
5.	2004-05	4,608	15,43,680
6.	2003-04	3,636	12,34,810
7.	2002-03	2,949	9,87,915
	Total		1,15,05,505

Figure marked * is arrived at by taking period from 1.4.2007 to 07.05.2007 after reducing 3 non-working days i.e. 37-3=34 days.

7.9 Thus, the assessee, by providing the estimated income of club as per the tabular working above, pleaded before us to consider the same and reduce the addition as confirmed by the CIT(A). The Id. Departmental Representative, on the other hand, argued that the order of Assessing Officer may be restored which is reasonable according to him in the facts and circumstances of the case.

8. We have considered the rival submissions and perused the materials on records. We find that the assessee in his statement before the search team stated on oath that the daily income ranges between Rs. 45,000/- per day to Rs 55,000/- and the Id CIT(A) took Rs. 55,000/- to extrapolate the income for the entire year. Besides the income was estimated for all 365 day without giving any allowance for holidays/closed days during which the club was closed. As stated above the assessee submitted before us that the allowance should be given for 30 days in year. Ld AR for the assessee also submitted that the income estimated on particular day is for the current year and same formula cannot be applied for all the preceding years covered under the search. On the basis of arguments of both the sides we find that some more fairness has to be there in estimating the income in question. Accordingly the income is calculated by taking Rs. 50,000/- as gross receipt, allowing 15 days to the assessee in each year for non functional days in a year as per Table-A and also by taking income by 10% progressive basis as per Table-B as under:-

TABLE-A

Sr. No.	Particulars	Rs.
1.	Average receipts per day	50,000
2.	Less : 50% of the gross receipt spent on account of expenditure viz. salary to employees, rent of premises paid to Mr. D. S. Bindra, tea & snacks to the members and some other incidental expenses.	25,000
3.	Net receipts per day	25,000
4.	50% share of the assessed	12,500
5.	Net income per day of the assessee.	12,500

9.1. Calculation of income on progressive basis @ 10% as under:-

TABLE-B

Sr. No.	Assessment Year	Income per day (Rs.)	Income per annum taking working days (Rs.) (365 days-15 days)	Relief granted to the assessee (Addition confirmed by CIT(A) Rs. 50,18,750-C)
	A	B	C	D
1.	2008-09	12,500	4,43,750*	1,94,300*
2.	2007-08	11,250	39,37,500	10,81,250
3.	2006-07	10,125	35,43,750	14,75,000
4.	2005-06	9,113	31,89,550	18,29,200
5.	2004-05	8,202	28,70,700	21,48,050

6.	2003-04	7,382	25,83,700	24,35,050
7.	2002-03	6,644	23,25,400	26,93,350
	Total		1,88,94,350	

(Figure marked * is arrived at by taking period from 1.4.2007 to 07.05.2007 after reducing 3 non-working days i.e. $37-1.5=35.5$ days and Addition confirmed by CIT(A) was Rs. 6,38,050/-.)

9.2 In view of the above the addition is deleted to the extent of Rs.26,93,350/- out of Rs. 50,18,750/- by sustaining the addition of Rs. 23,25,400 and thus the ground is partly allowed. The AO is directed to compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

10. The next issue raised in the assessee's appeal for AY 2002-03 is with regard to not giving the benefit of telescoping in respect of Rs.3,94,689/- declared by the assessee as income on account of cash discrepancies.

10.1 In this regard, the stand of the assessee has been that the assessee in his return of income declared an amount of Rs.3,94,689/- u/s. 132(4) of the Act as income on account of cash discrepancies. This income was offered as there were cash shortfall, source of which could not be explained. In this regard, the stand of the assessee has been that for AY 2002-03, the assessee has estimated his club income of Rs.9,87,915/- as per submissions before us. Since there was no other income, the cash discrepancy of Rs.3,94,689/- was out of club income only, which has already been offered in his return of income. Hence, he submitted that

telescoping benefit should be given and taxable income should be reduced upto the extent of Rs.3,94,689/-. The ld DR relied on the orders of authorities below.

10.2. We have heard the rival submissions and perused the material available on record. In the earlier issue , the income of the assessee from the club as sustained by us is Rs. 23,25,400/- and since the assessee has no other income as found during the search, order of CIT(A) rejecting the telescoping benefit to the assessee cannot be sustained. In our view the income of the assessee for the instant year is sufficient to take care of the short fall of Rs. 3,94,689/- and therefore we delete the addition of Rs. 3,94,689/-. In result the this ground is allowed in favour of the assessee. The AO is directed to compute the taxable income accordingly.

11. In the additional ground raised by the assessee for AY 2002-03, the issue is against the confirmation of addition by CIT(A) relating to the discrepancy of Rs.1,30,731/- towards the opening balance of fixed deposit matured during the year.

11.1 The ld. Counsel for the assessee submitted that the additional ground filed by the assessee may kindly be admitted as the issue raised in the said ground had been raised before CIT(A) and also is purely a question of law and prayed that the same may

kindly be admitted and adjudicated by relying on the following decision:-

- i) National Thermal Power Corporation v. CIT, 229 ITR 383 (SC)
- ii) Jute Corporation of India Ltd v. CIT, 187 ITR 688 (SC)
- iii) Ahmedabad Electricity Co. Ltd v. CIT, 199 ITR 351 (Bom)

11.2 The ld. DR on the other hand strongly opposed the admission of the additional ground. Considering the submission of the ld. AR and DR, we find that the the issue was raised before the AO and CIT(A) but inadvertently not raised in the grounds of appeal before us and we therefore admit the additional ground in view of the above decisions.

11.3 The brief facts are that an FDR matured during the year which was made on 07.02.2001 and the maturity proceeds were Rs. 1,45,059/-. The AO added the maturity amount in the income of the assessed whereas the CIT(A) reduced the additions to Rs. 1,30,731/- by granting relief of Rs. 14,328/- on the ground that the assessee had already shown this income in the return of income filed u/s 153A of the Act. In this regard, the stand of the assessee has been that addition was made for the want of explanation in respect of source of payment made by the assessee during the year. It was stated by the ld AR that the assessee has only one source of income, i.e., the club income and also during the course of search proceedings, no other major source of income was found by the search team and therefore submitted that the telescoping benefit

should be given as the only source of income was the income earned from the club. In other words, he pleaded that no separate addition was required for an amount of Rs.1,30,731/- being discrepancy in O.B. of FDR which is investment made by the assessee out of the income from the club. In this regard, an indicative chart prepared by the assessee for telescoping has been placed on record as Annexue-3 in the paper-book filed before us. The Id. Departmental Representative relied on the orders of authorities below on this issue.

11.4. We have heard the rival submissions and perused the material available on record. In the earlier issue the income of the assessee as sustained by us is Rs. 23,25,400/- and since the assessee had no other income as found during the search , order of CIT(A) rejecting the telescoping benefit to the assessee can not be sustained. In our view the income of the assessee for the instant year is sufficient to take care of the difference in opening balance of FDR which mature during the year of Rs. 1,30,731/- and therefore we delete the addition of Rs. 1,30,731/-. In result the this ground is allowed in favour of the assessee. The Assessing Officer is directed accordingly.

12. In result the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

ITA No. 2467/Mum/2012-Appeal by assessee and ITA No 2582/M/2012-Appeal by the revenue for AY 2003-04

13. The main issue raised by the assessee in Ground No. 3 of assessee's appeal for AY 2003-04 is similar to the main issue raised by the assessee in ITA No.2462/Mum/2012 for AY 2002-03 . Therefore, our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well and the addition is deleted to the extent of Rs. 24,35,050/- out of Rs. 50,18,750/- by sustaining the addition of Rs. 25,83,700 . Accordingly, issue in ground No.3 is partly allowed. The AO is directed to compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

14. The next issue raised by the assessee in Ground No. 4 is as under:-

The Ld CIT (A) has erred in not giving benefit of telescoping in respect of gifts received against the income from the Social Club current or previous assessment years.

14.1 The facts are that the assessee received gift from Shri Mukesh Ram Chand which was added to the income of the assessee by the AO and also confirmed by the CIT(A).The ld AR for the assessee submitted before us that the assessee was having only one source of income as found during the course of search from the Social Club and therefore the telescoping benefit should be given against the addition made on account of unexplained gifts u/s 68 of the

Act. As the source of income from the club stands offered to tax the benefit of telescoping prayed to be allowed to the assessee. The Ld DR on the other hand relied on the order of authorities below on the issue.

14.2 We have heard the rival submissions and perused the material available on record. In the ground no 3 the income of the assessee as sustained by us is Rs. 25,83,700/- and since the assessee has no other income as found during the search , order of CIT(A) rejecting the telescoping benefit to the assessee can not be sustained. In our view the income of the assessee for the instant year is sufficient to take care of Rs. 2,00,000/- being addition made u/s 68 of the Act and therefore we delete the addition of Rs. 2,00,000/-. In result the this ground is allowed in favour of the assessee. Assessing Officer is directed accordingly.

15. The issue raised by the assessee in Ground No. 5 of assessee's appeal for AY 2003-04 relates to not giving benefit of telescoping in respect to Rs. 3,32,156/- as declared by the assessee as income on account of cash discrepancies which is similar to the corresponding issue raised by the assessee in ITA No.2462/Mum/2012 Assessment Year 2002-03 in Ground No.4. Therefore, our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well. Accordingly, Ground No.5 is allowed. The AO is directed accordingly.

16.1 The additional ground raised by the assessee for AY 2003-04 is with regard to the addition made by the Assessing Officer and confirmed by the CIT(A), relating to the gift received of Rs.2,00,000/-.

16.2 The issue raised by the assessee in the additional ground has been decided by us in favour of the assessee vide para 14.2 above and therefore this has not been adjudicated.

17. In result the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

ITA No. 2463/Mum/2012-Appeal by assessee & ITA No 2583/M/2012-Appeal by the revenue for AY 2004-05

18. The main issue raised by the assessee in Ground No. 3 of assessee's appeal for AY 2004-05 is similar to the main issue raised by the assessee in ITA No.2462/Mum/2012Assessment Year 2002-03. Therefore, facts being similar our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well and the addition is deleted to the extent of Rs. 21,48,050/- out of Rs. 50,18,750/- by sustaining the addition of Rs. 28,70,700/- Accordingly, Ground No.3 is partly allowed. The AO is directed to compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

19. The issue raised by the assessee in Ground Nos. 4 of appeal for AY 2004-05 relates to not giving the telescoping benefit in respect of Rs. 3,00,944/- declared by the assessee as income on account of cash discrepancies which is similar to the corresponding issue raised by the assessee in ITA No.2462/Mum/2012 for Assessment Year 2002-03 in Ground No.4. Therefore, our decision in ITA No.2462/Mum/2012 for AY 2002-03 in Ground No.4 shall apply to this as well . Accordingly, Ground No 4 is allowed . The AO is directed accordingly.

20. The issue raised by the assessee in ground no 5 relates to not allowing the benefit of telescoping in respect of gift received against the income from the Social Club from the current and previous assessment years and the additional ground relates to confirming the addition by the CIT(A) relating to gift received by the assessee of Rs.3,36,065/-.

20.1 Since the issue raised by the assessee in the ground no 5 and additional ground is similar to one as decided by us in ITA No. 2467/Mum/2012 for the assessment year 2003-04 in ground no 4 and therefore ,facts being similar, following the same reasoning in para 14.2 we allow the appeal on this issue . As a result ground No 5 and additional ground are allowed. Assessing Officer is directed accordingly.

21. In result the appeal of the assessed is partly allowed and appeal of the revenue is dismissed.

ITA No. 2465/Mum/2012-Appeal by assessee & ITA 2585/M/23012- Appeal by revenue for AY 2006-07

22. The main issue raised by the assessee in Ground No. 3 of assessee's appeal for AY 2006-07 is similar to the main issue raised by the assessee in ITA No.2462/Mum/2012 Assessment Year 2002-03. Therefore, facts being similar, our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well and the addition is deleted to the extent of Rs. 14,75,000/- out of Rs. 50,18,750/- by sustaining the addition of Rs. 35,43,750/- Accordingly, Ground No.3 is partly allowed. The AO is directed to compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

23. The next issue raised by the assessee in Ground Nos. 4 to 6 is against the confirmation of additions of Rs. 2,25,095/- by CIT(A), relating to jewellery, by not giving the benefit of telescoping.

23.1 We have heard the rival submissions and perused the material available on record. In the ground no 3 the income of the assessee as sustained by us is Rs. 35,43,750/- and since the assessee has no other income as found during the search , order of CIT(A) rejecting the telescoping benefit to the assessee cannot be sustained. In our view the income of the assessee for the instant

year is sufficient to take care of the unexplained jewellery of Rs. 2,25,095/- and therefore we delete the addition of Rs. 2,25,095/-. In result the this ground is allowed in favour of the assessed. The AO is directed accordingly.

24. The next issue raised in the ground no 7 relates to not allowing the benefit of telescoping in respect of Rs.7,67,018/- on account of cash discrepancies. An identical issue has been decided by us in ITA No.2462/Mum/2012 for AY 2002-03 and by applying our decision in the said ITA we delete the addition of Rs. 7,67,018/- and thus issue is decided in favour of the assessee. The AO is directed accordingly.

25. In result the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

ITA No. 2466/Mum/2012-Appeal by assessee & ITA No 2586/M/2012 –Appeal by the revenue for AY 2007-08

26. The main issue raised by the assessee in Ground No. 3 of assessee's appeal for AY 2007-08 is similar to the main issue raised by the assessee in ITA No.2462/Mum/2012 Assessment Year 2002-03. Therefore, facts being similar, our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well and the addition is deleted to the extent of Rs. 10,81,250/- out of Rs. 50,18,750/- by sustaining the addition of Rs. 39,37,500/- Accordingly, Ground No.3 is partly allowed. The AO is directed to

compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

27. The issue raised by the assessee in Ground No. 4 of appeal for AY 2007-08 relates to not giving benefit of telescoping in respect of Rs.3,21,200/- declared by the assessee as income on account of cash discrepancies which is similar to the corresponding issue raised by the assessee in Assessment Year 2002-03 in Ground No.4. Therefore, facts being similar our decision in ITA No.2462/Mum/2012 for AY 2002-03 in Ground No.4 shall apply to this as well. Accordingly, Ground No. 4 is allowed. The Assessing Officer is directed accordingly.

28. In result the appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

ITA. No. 581/Mum/2013-Appeal by assessee & ITA No 1044/M/2013 for AY 2008-09

29. The main issue raised by the assessee in Ground No. 1 of assessee's appeal for AY 2008-09 is similar to the main issue raised by the assessee in ITA No.2462/Mum/2012 of Assessment Year 2002-03. Therefore, facts being similar our decision in ITA No.2462/Mum/2012 for AY 2002-03 shall apply to this as well and the addition is deleted to the extent of Rs. 1,94,300/- out of Rs. 6,38,050/- by sustaining the addition of Rs. 4,43,750/- Accordingly, Ground No.3 is partly allowed. The AO is directed to

compute the tax accordingly. This will take care of the corresponding appeal of the revenue.

30. The next issue raised in the ground no 2 is against the upholding the additions of Rs. 9,71,220/- out of total additions of Rs. 12,00,000/- by CIT(A) in respect of interior decoration and purchase of electronics items.

30.1 The ld. AO made the additions on the basis of photographs of the house of the assessee stating that huge amount had been spent on the interior and floorings. He referred the matter to DVO u/s 55A of the Act and the report of the DVO was not received till the finalization of the assessment order and thus made an adhoc addition of Rs. 12,00,000/- (Rs. 10,00,000/- for the interiors and Rs. 2,00,000/- for the purchase of electronic items. The ld CIT(A) deleted the additions to the extent of Rs.2,28,780/- and sustained the balance addition of Rs. 7,21,220/- on the basis of DVO report while sustaining the full addition in respect of electronic items of Rs. 2,00,000/-.

30.2 Ld AR submitted before us that as far as the addition in respect of interior decoration is concerned, the DVO stated in his report that Rs. 2,55,680/- was on account of fixing of marble flooring whereas as a matter of fact the flat was purchased and the cost paid was inclusive of marble flooring as was evident from the from the property agreement filed in the paper book page no. 25 qua specification to be provided. The ld counsel further submitted

that the DVO stated Rs. 3,33,920/- to be on account of false ceiling with POP whereas the same item was also provided in the flat by the builder as per the terms of purchase as was evident from the from the property agreement filed in the paper book page no. 25 qua specification to be provided. Further the assessee had already declared in his return of income for the AY 2003-04 a sum of Rs. 2,63,500 as cost of furniture a copy of which was filed as page no 35 of the P.B. The total of all the three items comes to Rs. 8,53,100/- which is more than the estimate made by the DVO in his report and therefore the ld counsel argued that the addition deserved deletion.

30.3 As regards the purchase of electronic items , the ld AR submitted that the AO without any basis made the addition of Rs. 2,00,000/- on estimate basis that too without any evidence and also in view of the fact that the assessee has only one source of income as found during the search action from the club and therefore telescoping benefit should be granted to the assessee.

30.4 We have heard the rival submissions and perused the materials on records. We note that the Assessing Officer made additions on the basis of photograph of the flat purchased by the assessee to the tune of Rs.10,00,000/- towards interiors and Rs. 2,00,000/- towards the electronic items.The matter was referred to DVO u/s 55A of the Act who estimated the value of marble flooring at Rs. 2,55,680 and false ceiling at Rs. 3,33,920/- whereas the

both these items were provided by the builders at the time of purchase of flat as per the conditions of specifications in the agreement of property filed in the paper book page no 25. It is also seen that the assessee declared the cost of furniture at Rs. 2,63,500/- in the assessment year 2003-04. The additions are based on estimate and conjectures and without any basis which can not be sustained. The same is the position in respect of electronic items at Rs. 2,00,000/- which is also made on estimate basis. Moreover when the assessee has only one source of income which has been taxed other additions are unwarranted and therefore ordered to be deleted and the ground is decided in favour of the assessee and against the revenue. The AO is directed accordingly.

31. Next issue of denying the benefit of telescoping is common in the ground no 3 and the additional ground , they are being disposed together. The ground no 3 relates to rejection of telescoping benefit to the assessee by CIT(A) in respect of Rs. 32,00,000/- declared by the assessee on account of cash discrepancies whereas the additional ground taken by the assessee is that the commissioner of income tax (appeals) ought to have directed the AO to either tax the source of income from the club or application of income being investments made. The appellant prays that the appropriate directions may please be given for the reduction of amount of Rs. 62,47,400/- offered for tax , in order to avoid the double taxation.

31.1 The Ld AR of the assessed submitted that the search was conducted on 08.05.2007 and thereafter the assessee in his return of income for the assessment year 2008-09 disclosed an amount of Rs. 62,47,400:- as under:-

Cash Seized	Rs. 32,00,000
Jewellery Seized	Rs. 28,97,400
Income Declared u/s 132(4)	Rs. 1,50,000
Interest income	
Total	Rs. 62,47,400

31.2. The ld AR of the assessee argued that Rs. 62,47,400 was not possible to be earned in just one month and 8 days. This was the income which was earned by the assessee over a period of time which has been assessed to tax in the earlier years as income from the club. Income has to be assessed either on the basis of source of income or application and not both otherwise it would result in double taxation which is not permissible under the Act. It was therefore prayed that the same may please be ordered to be reduced from the current income as declared by the assessee. Ld counsel filed a chart showing the total income and adjustment of unexplained gifts, FDRs and unexplained jewellery on the basis of telescoping and balance available which was sufficient to cover the income declared in the current year at Rs. 62,47,400/-.The same was opposed by the ld DR on the ground that the assessee suo motto declared the said income in the current year and therefore the assessee did not deserve any relief on this score.

32. We have considered the rival submissions and perused the material on records. It is correct that the income has been assessed in each year on the basis of source of income and the amount found during search and seizure on 08.05.2007 was not earned in one month and 8 days but was earned over a period of time. It is also correct that when the source of income has been assessed in each year, the application of income, or amount returned by the assessee amounting to Rs.62,47,400/- if taxed would result in double taxation. From the chart filed by the assessee it is clear that if telescoping benefit is allowed in respect of unexplained gifts, FDRs, and other investments even then adequate balance remains which can cover the above amount. We are therefore of the considered view that if the amount of Rs. 62,47,400/- is assessed in the current year it would amount to double taxation which is not permissible under law. As the income has been assessed yearwise, we direct the AO to assess the current year income after allowing a reduction of Rs.62,47,400/-. The ground no 3 and additional ground are decided in favour of the assessee. Assessing Officer is directed accordingly.

33. In result all the appeals of the assessee are partly allowed and all the appeals of the revenue are dismissed as indicated above.

Shri Dhanvinder Singh Bindra

ITA No.979 & 980 to 985/Mum/2013-Appeal by assessee & ITA No. 1056 to 1062 /Mum/2013-Appeal by Revenue for AY 2002-03 to AY 2008-09.

34. The grounds of appeal raised by the assessee in ITA No.979/Mum/2013 (AY 2002-03) read as under:

1 . In the facts and circumstances of the case and in law the ld. CIT(A)'s order confirming an addition of Rs. 13,750/- (i.e Rs. 50,18,750/- p.a.) is erroneous in as much as it is not based on any seized incriminating materials but based upon the fallacious appreciation of factual information, assumption, extrapolation , conjectures and surmises and is primarily based on conflicting statements of persons recorded during the search on the appellant on 08.05.2007 and ignoring :

- a)The timely retraction of one Mr Lakhmichand Rohira on 11-07-07-2007 & 05-09-2007 after the search on 08.05.2007 and his statement under cross examination.
- b) Affidavit of Mr A.O. Davis.
- c)Statement of such persons were given for the first time almost after 30 months after search.
- d)That no club members were examined by the AO.
- e)That the copies of the search warrants were not given to the appellant till date inspite of demanding it time and again.

2. In the facts and circumstances of the case and in law the ld CIT(A) has erred by not appreciating her predecessors (CIT(A)-39 order dated 23.01.2012 in the similar case of Mr Lakhmichand Rohira where then the ld CIT(A) in para 5.11.3 had clearly diluted the sanctity and reliance of the statements of Mr Mashraf Ansari , Mr Jayanti Savla & Mr A.O. Davis to arrive at conclusion , which addition however has been followed in the impugned order.

The grounds of appeal raised by the revenue in this appeal (AY 2002-03) read as under:

1. That the ld CIT(A) has erred in law and on facts in estimating total gross receipts from the club at Rs. 55,000/- per day solely on the statement of Shri Lakhmichand Rohira and ignoring the statement of the employees particularly MR A.O. Davis who admitted daily income of Rs. 1.50 to 2.00 lacs and 4.00 to 4.50 lacs on the important days and the importance of whose statement has been emphasized by the ld CIT(A) himself.

35. The main issue raised by the assessee in Ground No. 1 & 2 of assessee's appeals for AY 2002-03 is similar to main issue raised by the assessee (Lakhmichand Rohira) in ITA No.2462/Mum/2012 Assessment Year 2002-03 in para no. 9.2. Therefore, facts being similar to that of ITA No.2462/Mum/2012 for AY 2002-03 and shall apply to all these appeals of assessee wherein we have granted partial relief to the assessee as per the calculation in Table-C.

TABLE-C

ITA No.	A.Y.	Addition deleted	Addition Sustained
979/M/13	2002-03	Rs.26,93,350/-	Rs.23,25,400/-
980/M/13	2003-04	Rs.24,35,050/-	Rs.25,83,700/-
981/M/13	2004-05	Rs.21,48,050/-	Rs.28,70,700/-
982/M/13	2005-06	Rs.18,29,200/-	Rs.31,89,550/-
983/M/13	2006-07	Rs.14,75,000/-	Rs.35,43,750/-
984/M/13	2007-08	Rs.10,81,250/-	Rs.39,37,500/-
985/M/13	2008-09	Rs.1,94,300/-	Rs.4,43,750/-

Accordingly, Ground No.1 & 2 are partly allowed. The AO is directed to compute the tax accordingly. This will take care of the corresponding appeals of the revenue.

36. In result the all the appeals filed by assessee are partly allowed and all the appeals file by revenue are dismissed.

37. In combined result, all appeals filed by both the assesses are partly allowed and appeals filed by Revenue are dismissed.

Pronounced in the open Court on this the 30th day of November, 2015.

Sd/-

(SHAIENDRA KUMAR YADAV)
JUDICIAL MEMBER

Ahmedabad: Dated 30/11/2015

Sd/-

(RAJESH KUMAR)
ACCOUNTANT MEMBER

True Copy

*bt

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai