

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'बी', मुंबई ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JM**  
**&**  
**SHRI R.C.SHARMA, AM**

**आयकर अपील सं./ITA No.2417 to 2421/Mum/2013**

**(निर्धारण वर्ष / Assessment Year : 2005-06 to 2009-2010)**

Shri Mohan Hotchand Khanchandani, 114, Laungani Lodge, 1 <sup>st</sup> Floor, S.V.Road Khar (W), Mumbai-400052	Vs.	DCIT Central Circle-36, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AGPPK 5420 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**आयकर अपील सं./ITA Nos.2863 to 2866/Mum/2013**

**(निर्धारण वर्ष / Assessment Year : 2005-06 to 2008-2009)**

DCIT Central Circle-2, Mumbai- 400020	Vs.	Shri Mohan Hotchand Khanchandani, 114, Laungani Lodge, 1 <sup>st</sup> Floor, S.V.Road Khar (W), Mumbai-400052
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AGPPK 5420 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**AND**

**Cross Objection Nos.125 to 128/Mum/2014**

**(निर्धारण वर्ष / Assessment Year : 2005-06 to 2008-2009)**

Shri Mohan Hotchand Khanchandani, 114, Laungani Lodge, 1 <sup>st</sup> Floor, S.V.Road Khar (W), Mumbai-400052	Vs.	ACIT Central Circle-2, Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AGPPK 5420 R</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Vijay C. Kothari

राजस्व की ओर से /Revenue by : Shri N.P.Singh

सुनवाई की तारीख / Date of Hearing : **28/01/2016**

घोषणा की तारीख/Date of Pronouncement **28/04/2016**

## आदेश / O R D E R

### PER BENCH :

These are the cross appeals filed by the assessee and revenue and also cross objection by the assessee against the order of CIT(A), Mumbai, for the assessment years 2005-06 to 2009-2010, in the matter of order passed u/s.143(3) r.w.s.153A of the I.T.Act.

2. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in the business of money lending. There was an action under s.132 of the Act on the Hicons and Pranay Group of cases on 24.2.2009 and the assessee was interalia subjected to search action. In response to notice under s.153A, the assessee filed return of income whereby the income stood revised to Rs.5,45,320/- for the year under consideration. The AO has completed the assessment for A.Y.2005-2006 determining the total income at Rs.6,33,63,830/-. The assessment has been framed, making the following additions/disallowances :-

i)	On account of low drawings	-	Rs. 1,54,500/-
ii)	Exemption under s.54F denied	-	Rs. 17,63,943/-
iii)	Cash credit under s.68	-	Rs.6,33,63,829/-

In the assessment order so framed the AO observed that there was a survey u/s. 133A of the Act, during the course of which the books of accounts of the assessee were impounded. The survey was subsequently converted into a search action and three kutcha diaries belonging to the assessee were seized, listed as Annexure A-2(ONGC diary), A-3 (Brown colour diary), and A-4 (Divyasannidhi diary). The notings in ONGC diary

was stated to be for the period 1.4.2006 to 30.12.2007, the notings in Annexure A-3 brown diary stated to be for the period 01.01.2005 to 31.12.2005 and A-3 Divyasannidhi diary for the period from 01.04.2004 to 31.12.2004. Based on the periods as noted above, the A.O prima facie came to a finding that the notings/ discrepancies' as observed are to be taxed for A.Y. 2005-06 for A-4 diary, A.Y 2006-07 for A-3 diary wherein 75% will be taxed for the said year and 25% in A.Y. 2005-06. In other words, the figures/ discrepancies were taken up for taxation as under:-

i) Annexure A-2 (ONGC diary) (01.04.2006 to 31.12.2007)	57% in A.Y 2007-08 43% in A.Y 2008-09
ii)Annexure A-3 (brown diary) (01.01.2005 to 31.12.2005)	25% in A.Y 2005-06 75% in A.Y. 2006-07
iii)Annexure A-4 (Divyasannidhi) (01.04.2004 to 31.12.2004)	100% in A.Y 2005-06

It was observed that assessee has no quarrel with the percentages as stipulated above for the purpose of taxation of the quantum for the various years. The assessee vehemently contested the addition as made under s. 68 with reference to the notings as found and as interpreted by the A.O. Few instances of the notings as found in the diary vis-à-vis explained by assessee are shown hereunder:-

Page No.	Amount as seen in the diary	Amount as per explanation of the assessee
80	Rs. 5,00,000/-	Rs.5,000
84	Rs.6,00,000/ -	Rs.60,000
86	Rs. 1,00,000/-	Rs. 10,000/-
89	Rs.8,00,000/-	Rs.8,000/-
92	Rs. 1,00,000/-	Rs. 1,000/-
92	Rs.2,00,000/-	Rs.2,000/-
92	Rs. 1,50,000/-	Rs,1,500/-

According to the assessee the quantum of amount represented by the figures .in the diary are not the correct figures since the amounts have been inflated by adding zeroes, "mainly two zeroes, and that the quantum of figures have to be interpreted as explained by him. It was held by the A.O that the notings represents brokerage and interest from own finances and commission from financial transactions done on behalf of lender and borrower and therefore the quantum of amounts as originally reflected in the diary has to be considered as his income. On the said premise, the A.O has to brought to tax the difference between the quantum of amount as actually appearing in the diary and the quantum as explained by the assessee, as unexplained credit under s. 68 of the Act. The A.O has tabulated the difference between the quantum of amount as recorded in the diaries and the quantum as explained by the assessee, and. the difference as noted between the two amounts has been brought to tax. For ready reference the tabulation as done by the A.O is reproduced hereunder: -

A-2 ONGC Diary (2007)

Page No.	Correct Amount as per diary	Explained by the assessee for taxation	Difference Amount (Rs.)
155	100000	1000	99000
95	100000	10000	90000
152	100000	10000	90000
7	1000,000	100000	900000
184	1000000	100000	900000
57	150,000	1500	148500

A.Y. 200

156	20,000	2000	18000
52	200,000	20000	180000
127	200,000	20000	180000
133	200,000	20000	180000
175	200,000	20000	180000
40	250,000	2500	247500
41	25,000	2500	22500
58	30,000	3000	27000
189	30,000	3000	27000
52	300,000	30000	270000
91	400,000	4000	396000
141	40,000	4000	36000
144	400,000	4000	396,000
192	400,000	4000	396,000
195	400,000	4000	396,000
116	50,000	500	49,500
27	50,000	5000	45,000
48	50,000	5000	45,000
49	500,000	5000	495,000
53	500,000	5000	495,000
56	500,000	5000	495,000
105	5,000,000	5000	4,995,000
107	500,000	5000	495,000
157	50,000	5000	45,000
176	50,000	5000	45,000
195	50,000	5000	45,000
25	5,000,000	50000	4,950,000
142	500,000	50000	450,000
116	5,00,000	500000	4,500,000
74	60,000	600	59,400
76	6000	600	5,400
181	600,000	6000	594,000
182	600,000	6000	594,000
83	70,000	7000	63,000
49	70,000	7000	63,000
52	700,000	70000	630,000
99	250,000	Not mentioned	250,000
	25,701,000		24,587,800

### A-3 Brown Colour Diary (2005)

Page No.	Correct Amount as per Diary	Explained by the assessee for taxation	Difference Amount (Rs.)
13	16500	16500	148500
16	100000	10000	90000
16	400000	40000	360000
18	100000	1000	99000
19	150000	1.5	14998.5
19	50000	50	49950
22	250000	25000	225000

25	1000000	10000	99000
30	200000	20000	180000
33	500000	5000050000	450000
33	500000	Not mentioned	450000
33	500000	50000	500000
35	500000	2000	450000
36	20000	10000	18000
38	100000	1850	90000
39	185000	2500	183150
41	250000	8000	247500
43	800000	50000	792000
46	500000	50000	450000
47	500000	Not Mentioned	450000
49	100000	75000	100000
50	750000	10000	675000
53	100000	4000	90000
60	40000	10000	36000
61	100000	50000	90000
64	500000	50000	450000
65	500000	10000	450000
66	100000	10000	90000
66	2000000	20000	1980000
66	500000	50000	4500000
68	100000	10000	90000
76	15000000	1500000	13500000
77	500000	50000	450000
77	500000	50000	450000
79	100000	10000	90000
80	5000000	50000	4950000
81	500000	50000	450000
83	500000	50000	450000
84	500000	50000	450000
86	500000	50000	450000
93	500000	5000	495000
96	500000	50000	450000
97	250000	2500	247500
97	500000	5000	495000
98	100000	10000	90000
98	50000	5000	45000
102	1000	100	900
102	70000	7000	63000
104	50000	5000	45000
105	100000	1000	99000
106	30000	3000	27000
106	500000	50000	450000
115	40000	4000	36000
115	500000	50000	450000
120	200000	20000	180000
120	50000	5000	45000
123	100000	10000	90000
127	15000	1500	13500

A.Y. 2

128	800000	8000	792000
132	100000	10000	90000
139	200000	20000	180000
145	50000	5000	45000
152	5000000	50000	4950000
153	5000000	50000	4950000
157	50000	5000	45000
159	50000	5000	45000
163	300000	3000	297000
164	100000	1000	99000
173	1000000	10000	990000
173	400000	4000	396000
179	5000000	5000	4950000
181	100000	10000	90000
181	200000	20000	180000
181	9000	900	8100
184	500000	50000	450000
186	80000	8000	72000
192	50000	5000	45000
192	50000	5000	45000
195	200000	20000	180000
195	800000	80000	720000
197	1000000	10000	990000
198	50000	5000	45000
220	500000	5000	495000
226	400000	4000	396000
	55705000		52526099

**C) A-4 Divvya Sannidhi (2004)**

Page No.	Correct Amount as per Diary	Explained by the assessee for taxation	Difference Amount (Rs.)
34	50000	Not Mentioned	50000
37	750000	75000	675000
40	250000	25000	225000
45	500000	5000	495000
48	800000	8000	792000
49	250000	2500	247500
65	500000	50000	450000
67	400000	50000	350000
70	200000	Not Mentioned	200000
77	100000	Not Mentioned	100000
80	500000	5000	495000
84	600000	50000	540000
86	100000	10000	90000
89	800000	8000	792000
92	100000	1000	99000
92	200000	2000	198000
92	150000	1500	148500
93	200000	Not Mentioned	200000

A.Y. 20

94	200000	2000	198000
96	500000	50000	450000
98	1650000	16500	1633500
98	850000	8500	841500
102	50000	5000	45000
103	50000	5000	45000
107	80000	8000	72000
107	30000	3000	27000
110	40000	4000	36000
113	100000	Not Mentioned	100000
114	100000	Not Mentioned	100000
122	120000	12000	108000
123	125000	12500	112500
124	200000	2000	198000
125	400000	Not Mentioned	400000
128	500000	5000	495000
129	100000	1000	99000
129	3500000	1500	3498500
130	200000	2000	198000
130	300000	3000	297000
133	250000	2500	247500
133	500000	5000	495000
134	150000	1500	148500
134	5000000	5000	4995000
135	10000	1000	9000
136	200000	2000	198000
136	50000	5000	45000
138	100000	10000	90000
138	50000	5000	45000
139	250000	2500	247500
143	500000	5000	495000
146	100000	1000	99000
147	80000	8000	72000
150	3500000	3500	3496500
151	1000000	1000	999000
154	10000	1000	9000
156	250000	2500	247500
157	50000	50	49950
157	85000	850	84150
159	50000	5000	45000
160	60000	60	59940
163	500000	5000	495000
169	10000	1000	9000
173	750000	75000	675000
177	50000	50	49950
182	1200000	12000	1188000
185	300000	3000	297000
186	200000	2000	198000
187	50000	5000	45000
188	100000	1000	99000
	3500000	Not Mentioned	3500000

A.Y. 2005-06

190	20000	2000	18000
192	350000	5000	345000
192	200000	2000	198000
193	100000	10000	90000
195	100000	1000	99000
195	50000	5000	45000
198	50000	5000	45000
198	50000	500	49500
199	100000	1000	99000
202	600000	6000	594000
203	1000000	100000	900000
204	200000	2000	198000
208	100000	1000	99000
208	200000	2000	198000
209	250000	2500	247500
209	100000	1000	99000
213	50000	5000	45000
217	100000	1000	99000
218	50000	5000	45000
217	100000	1000	99000
218	50000	5000	45000
219	400000	40000	360000
228	200000	20000	180000
231	50000	5000	45000
233	100000	1000	99000
237	200000	20000	180000
238	50000	5000	45000
239	50000	5000	45000
242	80000	8000	72000
243	250000	2500	247500
245	12500	1250	11250
246	50000	5000	45000
250	7500000	75000	7425000
251	500000	50000	450000
252	100000	10000	90000
253	1000000	10000	990000
255	100000	1000	99000
256	200000	2000	198000
	48962500		47929240

7.3.1 After tabulating the difference between the two amounts, the difference as seen has been brought to tax for A.Ys 2005-06 to 2008-09 as under:-

Sr. No.	A.Y	Related to Annexure	Total Amount (Rs.)	% as mentioned above	Amount (Rs.)
1	2005-06	A-3	52526099	25	13131525
2	2005-06	A-4	47929240	100	47929240

3	2006-07	A-3	52526099	75	39394575
4	2007-08	A-2	24587800	57	14015046
5	2008-09	A-2	24587800	43	10572754

From the above table it can be observed that the AO has brought to tax Rs.6,10,60,765/- as unexplained cash credit under s.68 for the A.Y.2005-06. Against the order of AO, assessee approached to the CIT(A).

3. It was contended before the CIT(A) that the A.O has grossly erred in tabulating the difference between the figures as noted down in the diary and the correct figure as explained by the assessee, and treating it as his income. It was also submitted that the diaries contained record of a number of events/transactions such as winnings from pool games, notings of meetings with various parties, score of the rummy player in the card game, finance brokerage, finance deals between the borrower and the lender so also telephone calls made to various lenders/borrowers, in respect of the finance and estate business. It was the explanation of the assessee that the assessee being a finance-cum-estate agent, operates from his office by contacting various lenders and borrowers and striking finance deals and the same are recorded in the kutchra diary first and thereafter the deal materializes, the same are recorded in the pucca books i.e cash book, ledger etc. This also accounts for the difference in the actual dealings. It was contended that the notings of the three diaries are nothing but details of finance transactions in the market, between and on behalf of lender and borrower. .It is brought to notice that the A.O has accepted the said fact by not denying the same and by accepting the amounts earned by way of brokerage/ commission from the said deals relating to finance and estate. It is pointed by the assessee that common

feature in the notings is the addition of zeroes to the quantum of the actual transacted amount. By way of clarification, it was submitted by the assessee that the assessee being a broker was in the habit of adding zeroes to the figure of the transaction and the said entries are kuccha entries in the rough diary and that the veracity of this explanation is possible by corroboration, through production of the bank statement of the lender who has advanced the loan to the borrower and that similar is the case of all the transactions as appearing in dairies. It was further pointed out that the A.O has. blindly added the difference to the total income without pausing to understand or even read the entries or understand the transaction between the lender and borrower. It was also submitted that some of the entries appearing in the dairies are rotation entries i.e. the amounts advanced by the lender to the borrower rotating twice or thrice or number of times periodwise i.e. quarterly or six monthly rotation from lender to borrower. It was also brought to attention that the assessee has already offered to tax, in the return of income as filed, the brokerage, pool game income and interest income and that the rest of the transactions in the dairies are for and on behalf of lender and borrower to various parties in the market. It is submitted that by revising the return and declaring additional income, the income on account of brokerage and loans/advances, has already suffered tax. It is further pointed out that the A.O failed to make any independent investigation with regard to any of the entries appearing in the said dairies and has merely proceeded to

decide upon the quantum of the . "correct" amount, totally disregarding the explanation of the assessee.

4. After considering assessee's contention and the AO's order, the CIT(A) found that assessee is a finance broker and the entries in the diary pertain to finance transactions or deals arranged between the lender and the borrower and that the assessee is merely a conduit through whom the monies' were advanced. The assessee had also submitted that confirmation certificates had been obtained to evidence transaction through bank between the lender and the borrower. Secondly, it was the contention that not enough opportunity was given nor any questions asked pertaining to the entries per se as seen in the diaries. The assessee also furnished copies of the confirmation letters as obtained. Under the said circumstances, the description of the entries in the three differs as tabulated separately, for all the three diaries, as well confirmations as obtained were accepted and placed on record. In the said material as now furnished by the assessee, the assessee had in tabular form, noted the page number, date, amount as appearing in the dairy, and as explained by the assessee, whether cheque or cash, and also contained brief description of the nature of the transaction as reflected by the said entry. The said material, being additional evidence were forwarded by CIT(A) to the AO asking for remand order no.CIT(A)-41/Remand Report/2011-12 dated 11/08/2011. The A.O has furnished the

remand report as per no, ACIT /CC-036/2012-13 dated 26/07/2012. The remand report received from the A.O is extracted below:-

*"2. Brief of the case - A search and seizure operation was carried out under section 132 of the Income tax. Act, 1961 on the assessee on 24.02.2009. During the course of search proceeding, three diaries were found and seized bearing Annexure A-2, A-3 and A-4. During the course of assessment proceeding assessee failed to fully explain the contents of seized document and therefore the assessing officer added the various unexplained amount appearing in the diaries as cash credit u/ s. 68 of the IT Act in respective AYs.*

*3. Before the Ld.CIT(A) assessee has stated that during assessment proceedings, the AO has not specifically asked to explain entries Page wise and also not allowed opportunity to submit confirmation of borrower and lender. However, the above contention of the assessee is factually incorrect because assessee was specifically asked to explain the contents of the seized pages vide questionnaires dated 020-09-2010 and again vide order sheet entry dated 13-12-2010 which means that the assessing officer has given the assessee repeated opportunities to produce all supporting evidence and explanation. with regard to seized papers. Therefore, no additional evidence in this case should be accepted at this stage.*

*4. Without prejudice to the above the undersigned has following comments to offer on the confirmation filed by the assessee before the CIT(A) :-*

*i) The figures mentioned in the seized diaries and those in the confirmations filed are different. The correct figure/ amounts mentioned in the seized diaries are tabulated in para 5.10 of the assesment order. It has been correctly mentioned in the assessment order that assessee has explained only part amounts mentioned in the seized diaries.*

*ii) Even if the confirmations filed by the assessee are taken into account, they are only partly able to explain the contents of the diaries. The extent to which the confirmation explain the amounts mentioned in the diaries has been already accounted for in the assessment order.*

*iii) Further there are many cash transactions which the assessee has related to earning from pool games. For such earning no further evidence is possible except the amount written down in the seized documents.*

*iv) During the course of remand proceedings, the assessee has produced some of the parties for verification and these parties were examined on record. The examination "of these parties. revealed*

*that these parties have transacted with the assessee, Shri Mohan Khanchandani only and they are not aware of identities of the other parties (lender or borrower) mentioned against their names in the confirmations .*

*5. In view of the above AO's order may be confirmed."*

5. After considering the remand report and rejoinder of the assessee on the remand report the CIT(A) decided as under :-

*"8. I have carefully considered the matter. I have also examined the three diaries which contain the impugned entries that are in dispute. The diaries contain notings of figures on different dates. The explanation of the appellant is that the actual quantum has been exaggerated by the addition of zeros as he was habituated to adding more zeros, than the actual.*

*During the course of hearing of the appeal," in reply to a specific query, appellant who had appeared in person, replied that he had exaggerated the sums by adding zeros in order to be perceived as a Broker cum Finance Agent of repute and considerable might and thereby to have a larger share of the business in the market.*

*8.1 The task at hand is to arrive at a reasonably "correct" interpretation of the notings as seen in the three diaries. That these diaries represent Kaccha or Rough books are not in dispute; it is a fact that books of account were indeed being maintained by the appellant and which have not been rejected. The repeated assertion of the appellant before the A.O and before the appellate authority is that the notings in the diary do not represent his income but represent the transactions or deals entered into by him as a Finance Broker who served as a conduit between the lender and the borrower. It is again a fact that the appellant has offered to tax brokerage income and which has been accordingly assessed. A further assertion made is that appellant was in the habit of adding zeros to the amounts which were the subject matter of transaction. In order to evidence this assertion, appellant placed before the CIT(A) , loan confirmations and copies of Bank statements of various borrowers/lenders, which material was remanded to the A.O for scrutiny and verification of its genuineness. It is observed that the said confirmations were with respect to cheque transactions that were identified datewise, amount wise, and partywise tallied with the relevant bank statement of the lender/borrower. A "few instances are hereby detailed:-*

Page No.	Date	Amount as per Diary	Amount as per assessee's explanation	Description of transaction
33	24.02.2005	5,00,000	50,000	Haribhai Saroopa to sheetal Restaurant & Bar

With respect to the above noting in the Diary, the appellant produced confirmation signed by M/s. Haribhai Saroopa, confirming that an amount of Rs. 50,000/- was advanced as loan, by cheque no. 363065 on 24.02.2005, to M/ s .. Sheetal Restaurant & Bar. The appellant also filed copy of account of M/ s. Sheetal Restaurant & Bar with Punjab & Sindh Bank, evidencing credit of Rs. 50,000/- on 26.02.2005. It is to be noted that, while the bank statement reflected the sum as Rs. 50,000/- the amount entered by appellant in his diary is Rs. 5,00,000/- i.e. the amount in the diary is more by one zero.

ii) ONGC Diary

Page No.	Date	Amount as per Diary	Amount as per assessee's explanation	Description of transaction
116	09.08.2007	50,00,000	5,00,000	Divya construction to Mohan Khanchandani

As regards the said noting, appellant filed confirmation signed by M/s. Divya Construction confirming that. Rs. 5,00,000/- was advanced to Shri Mohan H. Khanchandani on 29.05.2007, vide cheque no. 526710. To corroborate, appellant furnished copy of his account with Canara Bank, wherein it is observed that Rs. 5,00,000/- was deposited on 29.05.2007. It is observed that the amount jotted in the diary by the appellant is more by one zero.

iii) Divyasannidhi

Page No.	Date	Amount as per Diary	Amount as per assessee's explanation	Description of transaction
173	04.02.2004	7,50,000	75,000	Ram Bhavnani to Vora Associates

Appellant has filed confirmation from Ram Bhavnani confirming that Rs. 75,000/- was advanced by cheque no. 751224 to My s. Vora Associates. To corroborate, appellant furnished copy of bank account of M/s. Vora Associates with Punjab & Sindh Bank, evidencing credit of Rs. 75,000/- on 04.02.2004. The noting in the diary of the appellant is Rs. 7,50,000/-, the amount is more by one zero.

8.2 The above are only few illustrative instances which are culled out from the material 1 documents furnished by the appellant. It; is observed that with respect to all the cheque transactions, the appellant has furnished confirmation and copy of bank statement in corroboration of the confirmation filed. As already noted above, on a close scrutiny, there appears a method in the madness of adding zeros. It is found on close examination of the transactions through banks, that the corresponding jotting as made in the Diary, relating to the said transaction, is recorded by adding one zero; which has been shown above through the illustrated instances. But there are

*also transactions in cash; with respect to cash in the absence of any corroboration with a third party source, it has not been possible to test the veracity of the explanation of the appellant.*

*8.3 At this juncture it is pertinent to examine the Remand Report of the A.O. A reading of the Remand Report, which has been reproduced elsewhere in the order, would indicate that the A.O has not rejected or disowned the confirmations/ copies of bank statements filed by the appellant in support of his explanation of adding zeros. On the other hand, the A.O agrees that that to the extent of transactions through cheque, the contents the Diaries stand explained. Further, appellant did produce some of the parties before the A.O, who have attested to the fact of the appellant being a Estate-cum-Finance Agent, who brokered deals, acting as a conduit between the lender and borrower. The A.O however does not given credence to it in spite of the parties affirming to the same, on the ground that the parties did not know each other, But then in such a market, where the Broker brought parties who hither-to strangers together, one who had funds and other who was in need of funds, the parties need not ordinarily know each other. Hence I am of the considered view that the material/document provided by the appellant are not to be rejected; the said material support the appellant's explanation as regards cheque transactions are concerned.*

*8.4 The appellant transacted through cheques as well as through cash in respect of arrangement of finance. Through a close scrutiny of the material on record, it has been deciphered that appellant was largely in the habit of adding one zero to the actual amount transacted through cheque, while making notings in the Diaries. Hence I am of the view that the explanation of the appellant, to the extent of deals brokered through banking channels, is to be accepted by viewing the jotting in the Diary as being the actual . figure but exaggerated by one zero, barring couple of entries where amount of cheque is reduced by two zeroes. The same treatment is to be given with respect to cash transactions.' Further as regards cash transaction the assessee has not produced any evidence with regards to third party loan transaction and therefore the amount appearing in Diaries to the extent of cash transactions are to be treated as unexplained credits and therefore they are liable to be added as income of the assessee. However, as has been stated earlier that assessee was in the habit of adding one zero to the actual transaction and the same having been explained by adducing evidence, the same treatment is also to be meted with regard to such cash transactions and accordingly the following additions as tabulated below is confirmed. Hence I am of the considered view that addition made by the A.O will have to be sustained but by re-tabulating the same, by adding one zero. Hence I proceed to tabulate the notings in the diary in the manner as shown below :*

SR NO	PAGE NO.	DATE	AMT AS PER DIARY	EXPLAINED BY ASSESSEE	CHEQ/ CASH	DETAILS	AMT AS EXPLAINED BY APPELLANT (HE INCREASES ONE ZERO IN EACH AMOUNT)	AMOUNT LIABLE TO BE BROUGHT TO TAX, CONSIDERING APPELLANT'S ADMISSION
1	34	10-Jan-04	50,000	No explanation	CHEQ	JAYNTILAL D DOSHI TO WOOD ART	5,000	5,000
2	37	15-Jan-04	750,000	75,000	CHEQ	PRITI TO SHEETAL RESTAURANTS	75,000	
3	40	20-Jan-04	250,000	25,000	CASH	COM RAM BHAVANANI TO	25,000	25,000

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						DINESHBHAI		
4	45	26-Jan-04	500,000	5,000	CHEQ	COM RAM BHAVANANI TO WOOD ARTS	50,000	45,000
5	48	29-Jan-04	800,000	8,000	CASH	COM GOVIND BAJAJ TO MOHAN	80,000	72,000
6	49	30-Jan-04	250,000	2,500	CASH	COM BHARAT MATLANI TO HARSHU DAVE	25,000	25,000
7	65	22-Feb-04	500,000	50,000	CHEQ	PRITI TO SHEETAL RESTAURANTS	50,000	
8	67	25-Feb-04	400,000	50,000	CHEQ	PRITI TO SADHANA AUTO RADIATORS	40,000	(10,000)
9	70	28-Feb-04	200,000	No explanation	CASH	COM HARSHU DAVE TO NITIN	20,000	20,000
10	77	09-Mar-04	100,000	No Explanation	CHEQ	RS.50000/- EACH -RAM BHAVANANI TO CHAMPION UMBRELLA & NAVAN KHANCHANDANI TO CHAMPION UMBRELLA	10,000	10,000
11	80	12-Mar-04	500,000	5,000	CASH	PLAYED POOLGAME INCOME TO MOHAN	50,000	45,000
12	84	18-Mar-04	600,000	60,000	CASH	ESTATE BROKERAGE SALE OF FLAT	60,000	60,000
13	86	20-Mar-04	100,000	10,000	CASH	BROKERAGE ABU BAKER TO MOHAN	10,000	10,000
14	89	25-Mar-04	800,000	8,000	CASH	COM GOVIND BAJAJ TO MOHAN	80,000	72,000
15	92	30-Mar-04	100,000	1,000	CASH	LEASE CIN METRO DECORATOR TO PRITI	10,000	9,000
16	92	30-Mar-04	200,000	2,000	CASH	LEASE CIN METRO DECORATOR TO RAM BHAVANI	20,000	18,000
17	92	30-Mar-04	150,000	1,500	CASH	LEASE CIN METRO DECORATOR TO MOHAN	15,000	13,500
18	93	31-Mar-04	200,000		CASH		20,000	20,000
19	94	01-Apr-04	200,000	2,000	CASH	COM LAXMI JEWELLERS TO HASHU DAVE	20,000	18,000
20	96	03-Apr-04	500,000	50,000	CHEQ	NEETU SAROOPA TO SHEETAL REST. & BAR	50,000	
21	98	06-Apr-04	1,650,000	16,500	CASH	COM LAXMI JEWELLERS TO CHANDAN SAROOPA	165,000	148,500
22	98	06-Apr-04	850,000	8,500	CASH	COM LAXMI DECORATORS TO	85,000	76,500

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						NAVAN		
23	102	16-Apr-04	50,000	5,000	CHEQ	RAM BHAVANI TO SHEETAL REST & BAR	5,000	
24	103	17-Apr-04	50,000	5,000	CASH	COM SHETTY MEDICAL STORES TO RAM-4000 AND RAM-1000	5,000	5,000
25	107	24-Apr-04	80,000	8,000	CASH	COM GOVIND BAJAJ TO MOHAN	8,000	8,000
26	107	24-Apr-04	30,000	3,000	CASH	KHAN FURNITURE TO MOHAN	3,000	3,000
27	110	29-Apr-04	40,000	4,000	CASH	KIRAN IMPEX TO HARCHUMAR-2500, HASHU DAVE-1000, NEETU SAROOPA-500	4,000	4,000
28	113	05-May-04	100,000			CANCELLED	10,000	10,000
29	114	06-May-04	100,000			CANCELLED	10,000	10,000
30	122	20-May-04	120,000	12,000	CASH	FROM HARCHUMAL TO LAXMI JEWELLERS	12,000	12,000
31	123	21-May-04	125,000	12,500	CASH	COMM AGANST FLAT	12,500	12,500
32	124	22-May-04	200,000	2,000	CASH	FROM OMKAR JEWELLERS TO SANGEETA BHAVANI	20,000	20,000
33	125	24-May-04	400,000			CANCELLED	40,000	40,000
34	128	28-May-04	500,000	5,000	CASH	FROM DINESHBAHI TO MOHAN	50,000	50,000
35	129	29-May-04	100,000	1,000	CASH	FROM METRO DECORATORS TO PRITI	10,000	10,000
36	129	29-May-04	3,500,000	1,500	CASH	FROM ROYAL CONST TO RAMBHAVANNANI	350,000	350,000
37	130	01-Jun-04	200,000	2,000	CASH	FROM LAXMI JEWELLERS TO HASHU DAVE	20,000	20,000
38	130	01-Jun-04	300,000	3,000	CASH	FROM PRAMODBHAI TO KUMAR AHUJA	30,000	30,000
39	133	04-Jun-04	250,000	2,500	CASH	FROM PRAMOD SILK MILLS TO PRITI	25,000	25,000
40	133	04-Jun-04	500,000	5,000	CASH	PLAYED POOLGAME INCOME TO MOHAN	50,000	50,000
41	134	05-Jun-04	150,000	1,500	CASH	FROM DINESHBAHI TO HARCHUMAL	15,000	15,000
42	134	05-Jun-04	5,000,000	5,000		CANCELLED	500,000	500,000

43	135	07-Jun-04	10,000	1,000	CASH	FOM PROMOD SILK MILLS TO NEETU SAROO PA	1,000	1,000
44	136	08-Jun-04	200,000	2,000	CASH	FROM PROMOD SILK MILLS TO MOHAN	20,000	20,000
45	136	08-Jun-04	50,000	5,000	CHEQ	VICKY ENT TO SHEETAL REST & BAR	5,000	-
46	138	10-Jun-04	100,000	10,000	CASH	PRITIN TO DINESHBHAI	10,000	10,000
47	138	10-Jun-04	50,000	5,000	CHEQ	WOOD ART TO HASHU DAVE	5,000	-
48	139	11-Jun-04	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO MOHAN	25,000	25,000
49	143	18-Jun-04	500,000	5,000	CASH	FROM BUNTY VOHRA AUTO TO MOHAN	50,000	50,000
50	146	22-Jun-04	100,000	1,000	CASH	FROM METRO DECORATORS TO PRITI	10,000	10,000
51	147	24-Jun-04	80,000	8,000	CASH	FROM GOVIND BAJAJ TO MOHAN	8,000	8,000
52	150	29-Jun-04	3,500,000	3,500	CASH	FROM ROYAL CONST TO RAMBHAVANNANI	350,000	350,000
53	151	30-Jun-04	1,000,000	1,000	CASH	FROM METRO DECORATORS TO PRITI	100,000	100,000
54	154	03-Jul-04	10,000	1,000		CANCELLED	1,000	-
55	156	06-Jul-04	250,000	2,500	CASH	FROM LAXMI JEWELLERS TO RAM BHAVANANI	25,000	25,000
56	157	08-Jul-04	50,000	50	CASH	WOOD ART TO HASHU DAVE	5,000	5,000
57	157	08-Jul-04	85,000	850	CASH	WOOD ART TO RAM.DINESH CHANDAN	8,500	8,500
58	159	10-Jul-04	50,000	5,000	CASH	WOOD ART TO HASHU DAVE	5,000	-
59	160	12-Jul-04	60,000	60	CASH	PRITI FORM FLAT A/C	6,000	5940
60	163	17-Jul-04	500,000	5,000	CASH	FROM SHETTY MEDICAL STORES TO PRITI	50,000	50,000
61	169	24-Jul-04	10,000	1,000	CASH	FROM KIRAN IMPEX TO RAM BHAVANANI	1,000	1,000
62	173	31-Jul-04	750,000	75,000	CHEQ	RAM BHAVANI TO VOHRA ASSOCIATES	75,000	-
63	177	07-Aug-07	50,000	50	CASH	PLAYED POOLGAME INCOME TO MOHAN	5,000	5,000
64	182	17-Aug-07	1,200,000	12,000	CASH	FROM AGAINST FLAT LEASE TO HARCHIMAL	120,000	120,000
65	185	25-Aug-07	300,000	3,000	CASH	FROM HARISH ASWANI TO MOHAN	30,000	30,000

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66	186	26-Aug-07	200,000	2,000	CASH	FROM LAXMI JEWELLERS TO PRITI	20,000	20,000
67	187	27-Aug-07	50,000	5,000	CASH	FROM LAXMI JEWELLERS TO PRITI	5,000	5,000
68	188	28-Aug-07	100,000	1,000	CASH	FROM METRO DECORATORS TO PRITI	10,000	10,000
69	188	28-Aug-07	3,500,000	-			350,000	350,000
70	190	02-Sep-04	20,000	2,000	CASH	FROM LAXMI JEWELLERS TO MOHAN	2,000	2,000
71	192	04-Sep-04	350,000	5,000	CASH	PLAYED POOLGAME INCOME TO MOHAN	35,000	35,000
72	192	04-Sep-04	200,000	2,000	CASH	PRAMOD SILK MILLS TO PRITI	20,000	20,000
73	193	06-Sep-04	100,000	10,000	CASH	NEETU SAROOPA TO ASA ENT	10,000	10,000
74	195	09-Sep-04	50,000	5,000	CASH	WOOD ART TO HASHU DAVE	5,000	5,000
75	198	09-Sep-04	100,000	1,000	CASH	FROM DHIRUBHAI TO PRITI	10,000	10,000
76	198	17-Sep-04	50,000	5,000	CASH	VOHRA AUTO TO HASHU DAVE	5,000	5,000
77	198	17-Sep-04	50,000	500	CASH	SHETTY MEDICAL TO PRITI	5,000	5,000
78	199	18-Sep-04	100,000	1,000	CASH	FROM ABU BAKER TO PRITI	10,000	10,000
79	202	24-Sep-04	600,000	6,000	CASH	SOGU COLLETION TO NEETU & MOHAN	60,000	60,000
80	203	25-Sep-04	1,000,000	100,000	CHEQ	KUMAR AHUJA TO SHEETAL REST	100,000	
81	204	01-Oct-04	200,000	2,000	CASH	FROM LAXMI JEWELLERS TO HASHU DAVE	20,000	20,000
82	208	07-Oct-04	200,000	2,000	CASH	FROM PRAMOD SILK MILLS TO PRITI	20,000	20,000
83	208	07-Oct-04	100,000	1,000	CASH	FROM ASA ENT TO NEETU SAROOPA	10,000	10,000
84	209	09-Oct-04	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO MOHAN	25,000	25,000
85	209	09-Oct-04	100,000	1,000	CASH	FROM DINESHBHAI TO PRITI	10,000	10,000
86	213	16-Oct-04	50,000	5,000	CASH	COM HARISH ASWANI TO MOHAN	5,000	5,000
87	217	23-Oct-04	100,000	1,000	CASH	FROM KIRAN IMPEX TO HASHU DAVE	10,000	10,000
88	218	25-Oct-04	50,000	5,000	CASH	FROM SHETTY MEDICAL TOMOHAN	5,000	5,000

89	219	26-Oct-04	400,000	40,000	CASH	BHARAT MA TLANI TO NEETU SAROOPA-500, HASHU-1000, KIRAN IMPE X- 2500	40,000	40,000
90	228	20-Nov-04	200,000	20,000	CASH	SANGEETA BHAVNANI TO LAXMI JEWELLERS	20,000	20,000
91	231	25-Nov-04	50,000	5,000	CASH	FROM BHAVYA DEVELOPERS OT PRITI	5,000	5,000
92	233	27-Nov-04	100,000	1,000	CASH	FROM METRO DECORATORS TO MOHAN	10,000	10,000
93	237	02-Dec-04	200,000	20,000	CASH	HASHU DAVE TO LAXMI JEWELLERS	20,000	20,000
94	238	03-Dec-04	50,000	5,000	CASH	HASHU DAVE TO VOHRA AUTO	5,000	5,000
95	239	04-Dec-04	50,000	5,000	CASH	BAY BAY TO CHANDAN SAROOPA - PRITI	5,000	5,000
96	242	08-Dec-04	80,000	8,000	CHEQ	VINAYAK GANAPAT TO PUSHPA CYAMLANI	8,000	8,000
97	243	09-Dec-04	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO MOHAN	25,000	25,000
98	245	14-Dec-04	12,500	1,250	CASH	SHETTY MEDICAL TO NITIN	1,250	1,250
99	246	16-Dec-04	50,000	5,000	CASH	FROM VOHRA AUTO TO HASHU DAVE	5,000	5,000
100	250	21-Dec-04	7,50,000	75,000	CHEQ	PRAKASH T PAHUJA TO VOHRA ASSOCIATES	750,000	675,000
101	251	22-Dec-04	500,000	50,000	CHEQ	INDIRABEN J JOSHI TO SHEETAL REST & BAR	50,000	
102	252	23-Dec-04	100,000	10,000	CHEQ	PRADEEP SAROOPA TO BHAVYA DEVELOPERS	10,000	
103	253	30-Dec-04	1,00,00+ 0	10,000	CASH	PLAYED POOLGAME INCOME TO MOHAN	100,000	100,000
104	255	30-Dec-04	100,000	1,000	CASH	METRO DECORATORS TO PRITI	10,000	10,000
105	256	31-Dec-04	200,000	2,000	CASH	LAXMI JEWELLERS TO HASHU DAVE	20,000	20,000
			4,89,62,500	10,33,260		<b>Grand Total</b>	<b>48,96,250</b>	<b>42,82,690</b>

**A-3 Brown Colour Diary(2005)**

SR NO	PAGE NO	DATE	CORRECT AMT AS PER DIARY	EXPLAINED BY ASSESSEE	CHEQ/ CASH	DETAILS	CORRECT AMT AS EXPLAINED BY APPELLANT (HE INCREASES ONE ZERO IN EACH ADMISSION AMOUNT)	AMOUNT LIABLE TO BE BROUGHT TO TAX, CONSIDERING APPELLANT'S ADMISSION
1	13	05-Jan-05	165,000	16,500	CASH	BROKERAGE AGAINST LEASE AGREEMENT - CHANDAN SAROOPA TP DINESH BHAI	16,500	16,500
2	16	08-Jan-05	100,000	10,000		CANCELLED DEAL NOT MATERIALISED	10,000	10,000
3	16	08-Jan-05	400,000	40,000	CHEQ	RAM BANWARI TO DINESHBHAI	40,000	-
4	18	15-Jan-05	100,000	1,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
5	19	18-Jan-05	150,000	2	CASH	RENEWAL COM NEETU SAROOPA TO BHAVYA DECORATOR	15,000	15,000
6	19	18-Jan-05	50,000	50	CASH	RENEWAL COM HASHU DAVE TO BHAVYA DECORATOR	5,000	5,000
7	22	25-Jan-05	250,000	25,000	CASH	HASHU DAVE TP BHARAT MATLANI	25,000	25,000
8	25	04-Feb-05	1,000,000	10,000	CASH	FROM TARABEN TO MOHANBHAI	100,000	100,000
9	30	21-Feb-05	200,000	20,000	CASH	FROM SANGEETA BHAVNANI TO LAXMI JEWELLERS	20,000	20,000
10	33	24-Feb-05	500,000	50,000	CHEQ	HARIBAH SAROOPA TO METRO DECORATORS	50,000	-
11	33	24-Feb-05	500,000	50,000	CHEQ	CHANDAN SAROOPA TO METRO DECORATORS	50,000	-
12	33	24-Feb-05	500,000	-		CANCELLED DEAL NOT MATERIALISED	50,000	50,000
13	35	28-Feb-05	500,000	50,000	CHEQ	HARIBAH SAROOPA TO METRO DECORATORS	50,000	-
14	36	01-Mar-05	20,000	2,000	CASH	FROM BAY BAY TO MOHAN	2,000	2,000
15	38	03-Mar-05	100,000	10,000	CHEQ	RS.100000/- MAHENDRASINGH TO VOHRA ASSOCIATES	10,000	-
16	39	04-Mar-05	185,000	1,850	CASH	FROM CHANDAN SAROOPA TO MOHAN	18,500	18,500
17	41	08-Mar-05	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO PRITI	25,000	25,000
18	43	10-Mar-05	800,000	8,000	CHEQ	VINAYAK GANAPAT TO PUSHPA GYAMLANI	80,000	72,000

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19	46	15-Mar-05	500,000	50,000	CASH	VOHRA AUTO TO HASHU DAVE	50,000	50,000
20	47	17-Mar-05	500,000	50,000	CHEQ	PRAKASH T PAHUJA TO SHEETAL REST	50,000	-
21	49	19-Mar-05	100,000	-	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
22	50	22-Mar-05	750,000	75,000	CHEQ	PRAKASH T PAHUJA TO VOHRA ASSOCIATES	75,000	-
23	53	25-Mar-05	100,000	10,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
24	60	04-Apr-05	40,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	4,000	4,000
25	61	05-Apr-05	100,000	10,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
26	64	09-Apr-05	500,000	50,000	CHEQ	NEETU SAROOPA TO SHEETAL REST	50,000	-
27	65	11-Apr-05	500,000	50,000	CHEQ	SURENDRA BACHANI TO VOHRA ASSOCIATES	50,000	-
28	66	12-Apr-05	100,000	10,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
29	66	12-Apr-05	2,000,000	20,000	CASH	HASHU DAVE TO OMKAR JEWELLERS	200,000	200,000
30	66	12-Apr-05	500,000	50,000	CHEQ	SURENDRA BACHANI TO SHEETAL REST	50,000	-
31	68	14-Apr-05	100,000	10,000	-	REPEAT PAGE NO.66	10,000	-
32	76	26-Apr-05	15,000,000	1,500,000	CHEQ	PRAKASH T PAHUJA TO INNOVATIVE CONST	1,500,000	-
33	77	27-Apr-05	500,000	50,000	CHEQ	MAYA BHAMBANI TO VOHRA ASSOCIATES	50,000	-
34	77	27-Apr-05	500,000	50,000	CHEQ	LALCHAND BHAMBANI TO SHEETAL REST	50,000	-
35	79	30-Apr-05	100,000	10,000	CASH	COM HARCHMAL TO HARESH ASWANI	10,000	10,000
36	80	02-May-05	5,000,000	50,000	CHEQ	HARESH ASWANI TO MAYA BHAMBANI	500,000	450,000
37	81	03-May-05	500,000	50,000	CHEQ	CHANDAN SAROOPA TO VOHRA ASSOCIATES	50,000	-
38	83	05-May-05	500,000	50,000	CHEQ	NEETU SAROOPA TO VOHRA ASSOCIATES	50,000	-
39	84	06-May-05	500,000	50,000	CHEQ	VICKY ENT TO SHEETAL REST	50,000	-
40	86	13-May-05	500,000	50,000	CHEQ	CHANDAN SAROOPA TO VOHRA ASSOCIATES	50,000	-
41	93	28-May-05	500,000	5,000	CASH	PLAYED POOLGAME INCOME TO PRITI	50,000	50,000

42	96	03-Jun-05	500,000	50,000	CHEQ	CHANDAN SAROOPA TO VOHRA ASSO	50,000	-
43	97	04-Jun-05	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO PRITI	25,000	25,000
44	97	04-Jun-05	500,000	5,000	CASH	PLAYED POOLGAME INCOME TO PRITI	50,000	50,000
45	98	07-Jun-05	50,000	5,000	CASH	FROM METRO DECORATOR TO PRITI	5,000	5,000
46	98	07-Jun-05	100,000	10,000	CHEQ	NEETU SAROOPA TO VOHRA ASSOCIATES	10,000	-
47	102	11-Jun-05	1,000	100	CASH	PLAYED POOLGAME INCOME TO PRITI	100	100
48	102	11-Jun-05	70,000	7,000	CHEQ	VINAYAK GANAPAT TO PUSHPA GYAMLANI	7,000	-
49	104	14-Jun-05	50,000	5,000	CASH	VOHRA AUTO TO HASHU DAVE	5,000	5,000
50	105	15-Jun-05	100,000	1,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
51	106	16-Jun-05	30,000	3,000	CASH	CHANDAN SAROOPA TO MAHADEV JEWELLERS	3,000	3,000
52	106	16-Jun-05	500,000	50,000	CHEQ	MOHAN HOTCHAND HUF TO HARESH ASWANI	50,000	-
53	113	02-Jul-05	40,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	4,000	4,000
54	115	05-Jul-05	500,000	50,000	CHEQ	NEETU SAROOPA TO SHEETY MEDICAL STORES	50,000	-
55	120	12-Jul-05	200,000	20,000	CASH	HASH DAVE TO OMKAR JEWELLERS	20,000	20,000
56	120	12-Jul-05	50,000	5,000	CHEQ	SURENDRA BACHANI TO SHEETAL REST	5,000	-
57	123	18-Jul-05	100,000	10,000	CASH	PLAYED POOLGAME INCOME TO PRITI	10,000	10,000
58	127	23-Jul-05	15,000	1,500	CHEQ	PRAKASH PAHUKA TO INNOVATIVE CONST	1,500	-
59	128	25-Jul-05	800,000	8,000	CASH	PLAYED POOLGAME INCOME TO PRITI	80,000	80,000
60	132	30-Jul-05	100,000	10,000	CASH	FROM HARESH ASWANI TOMOHAN	10,000	10,000
61	139	09-Aug-05	200,000	20,000	CASH	FROM VOHRA ASSOCIATES TO MOHAN	20,000	20,000
62	145	19-Aug-05	50,000	5,000	CASH	FROM CHANDAN SAROOPA TO MOHAN	5,000	5,000
63	152	31-Aug-05	5,000,000	50,000	CHEQ	HARESH ASWANI TO MOHAN HOTCHAND HUF	500,000	4,50,000

A.Y. 2005-06

64	153	06-Sep-05	5,000,000	50,000	CHEQ	HARCHUMAL KHANCHANDANI TO PRITI	500,000	4,50,000
65	157	06-Sep-05	50,000	5,000	CASH	FROM METRO DECORATOR TO PRITI	5,000	5,000
66	159	06-Sep-05	50,000	5,000	CASH	CANCELLED	5,000	5,000
67	163	14-Sep-05	300,000	3,000	CASH	FROM CHAN DAN SAROOPA TO MAHADEV JEWELLERS	30,000	30,000
68	164	15-Sep-05	100,000	1,000	CASH	FROM MAHADEV JEWELLERS TO MOHAN	10,000	10,000
69	173	01-Oct-05	1,000,000	10,000	CASH	FROM METRO DECORATOR TO HASHU DAVE	100,000	100,000
70	179	08-Oct-05	500,000	5,000	CHEQ	KAVITA BACHANI TO SHEETAL REST & BAR	50,000	45,000
71	181	11-Oct-05	100,000	10,000	CASH	SURENDRA BACHANI TO OMKAR JEWELLERS	10,000	10,000
72	181	11-Oct-05	200,000	20,000	CASH	HASHU DAVE TO OMKAR JEWELLERS	20,000	20,000
73	181	11-Oct-05	9,000	900	CASH	HASHU DAVE TO MOHAN KHANCHANDANI	900	900
74	173	01-Oct-05	400,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	40,000	40,000
75	184	15-Oct-05	500,000	50,000	CHEQ	SURENDRA BACHANI TO VOHRA ASSOCIATES	50,000	-
76	186	24-Oct-05	80,000	8,000	CASH	PLAYED POOLGAME INCOME TO PRITI	8,000	8,000
77	192	08-Nov-05	50,000	5,000	CHEQ	MAYA BHAMBANI TO SHEETAL REST	5,000	-
78	192	08-Nov-05	50,000	5,000	CHEQ	NARESH BHAMBANI TO VOHRA ASSOCIATES	5,000	-
79	195	15-Nov-05	200,000	20,000	CHEQ	PRITI KHANCHANDANI TO SANJAY ZAVERI	20,000	-
80	195	15-Nov-05	800,000	80,000	CHEQ	MOHAN KHANCHANDANI TO SANJAY ZAVERI	80,000	-
81	197	17-Nov-05	1,000,000	10,000	CASH	FROM METRO DECORATOR TO MONICA	100,000	100,000
82	198	19-Nov-05	50,000	5,000	CASH	PLAYED POOLGAME INCOME TO PRITI	5,000	5,000
83	220	21-Dec-05	500,000	5,000	CASH	VANDESH TO CHANDAN SAROOPA	50,000	50,000
84	226	31-Dec-05	400,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	40,000	40,000
			5,57,05,000	31,78,902		<b>Grand Total</b>	<b>55,70,500</b>	<b>18,89,000</b>

**A-2 ONGC Diary (2007)**

SR NO	PAGE NO	DATE	AMT AS PER DIARY	EXPLAINED BY ASSEESSEE	CHE Q/ CASH	DETAILS	CORRECT AMT AS EXPLAINED BY APPELLANT (HE INCREASES ONE ZERO IN EACH AMOUNT)	AMOUNT LIABLE TO BE BROUGHT TO TAX, CONSIDERING APPELLANT'S ADMISSION
1	155	26-Oct-07	100,000	1,000	CASH	BROKERAGE METRO DECORATOR TO PRITI	10,000	10,000
2	95	04-Jul-07	100,000	10,000	CASH	ESTATE BROKERAGE -LALIT KHUSHLANI TO PRITI	10,000	10,000
3	152	19-Oct-07	100,000	10,000	CASH	BROKERAGE METRO DECORATOR TO PRITI	10,000	10,000
4	7	17-Oct-07	1,00,000	100,000	CHE Q	KANCHAN SAROOPA TO SHEETAL RESTAURANTS BAR	100,000	-
5	184	11-Dec-07	1,00,000	100,000	CHE Q	SURENDRA NACHANI TO VOHRA ASSOCIATES	100,000	-
6	57	30-Apr-07	150,000	1,500	CASH	PLAYED POOLGAME INCOME TO PRITI	15,000	15,000
7	156	29-Oct-07	20,000	2,000	CASH	PLAYED POOLGAME INCOME TO PRITI	2,000	2,000
8	52	24-Apr-07	200,000	20,000		ROUGH ENTRIES NO DEAL DONE	20,000	20,000
9	127	29-Aug-07	200,000	20,000	CASH	ESTATE BROKERAGE -KHAN FURNITURE TO MOHAN	20,000	20,000
10	133	08-Sep-07	200,000	20,000	CASH	ESTATE BROKERAGE - VOHRA ASSOCIATES TO MOHAN	20,000	20,000
11	175	24-Nov-07	200,000	20,000	CASH	ESTATE BROKERAGE - METRO DECORATOR TO NAVAN KHAN - CHANDANI	20,000	20,000
12	40	09-Apr-07	250,000	2,500	CASH	PLAYED POOLGAME INCOME TO PRITI	25,000	25,000
13	41	10-Apr-07	25,000	2,500	CASH	REPEAT PAGE NO.40	2,500	2,500
14	58	03-May-07	30,000	3,000	CASH	COM.SHETTY MEDICAL STORE TO MOHAN	3,000	3,000

A.Y. 2005-06								
15	189	17-Dec-07	30,000	3,000	CASH	PLAYED POOLGAME INCOME TO PRITI	3,000	3,000
16	52	24-Apr-07	300,000	30,000	-	NO DEAL	30,000	30,000
17	91	29-Jun-07	400,000	4,000	-	CANCELLED GAME NOT OVER	40,000	40,000
18	141	22-Sep-07	40,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	4,000	4,000
19	144	26-Sep-07	400,000	4,000	CASH	TWO TIMES ENTRY REPEAT PAGE NO.141	40,000	40,000
20	192	21-Dec-07	400,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	40,000	40,000
21	195	25-Dec-07	400,000	4,000	CASH	PLAYED POOLGAME INCOME TO PRITI	40,000	40,000
22	116	09-Aug-07	50,000	500	CASH	COM. DIVYA CONSTRUCTIONS TO MOHAN	5,000	5,000
23	27	20-Mar-07	50,000	5,000	CASH	COM. HASHU DAVE TO SHETTY MEDICAL STORES	5,000	5,000
24	48	18-Apr-07	50,000	5,000	CASH	COM.WALIA BUILDERS TO PRITI	5,000	5,000
25	49	19-Apr-07	500,000	5,000	CASH	BROKERAGE HASHU DAVE TO MOHAN	50,000	50,000
26	53	25-Apr-07	500,000	5,000	-	ROUGH NOTING BY PENSIL NO DEAL	50,000	50,000
27	56	28-Apr-07	500,000	5,000	CASH	METRO DECORATOR TO PRITI	50,000	50,000
28	105	16-Jul-07	5,000,000	5,000	CASH	COM WALIA BUILDERS TO PRITI	500,000	500,000
29	107	19-Jul-07	500,000	5,000	CASH	COM METRO DECORATOR TO HASHU DAVE	50,000	50,000
30	157	01-Nov-07	50,000	5,000	CASH	PLAYED POOLGAME INCOME TO PRITI	5,000	5,000
31	176	26-Nov-07	50,000	5,000	-	NOTING MANTRA	5,000	5,000
32	195	25-Dec-07	50,000	5,000	CASH	POOLGAME INCOME TO NAVAN KHANCHANDANI	5,000	5,000
33	25	17-Mar-07	5,000,000	50,000	CHE Q	RS.200000/- PRITI KKANCHANDANI TO WALIA BUILDERS	500,000	
34	142	24-Sep-07	500,000	50,000	CHE Q	CHANDAN SAROOPA TO VOHRA ASSOCIATES	50,000	
35	116	09-Aug-07	5,000,000	500,000	CHE Q	DIVYA CONSTRUCTIONS TO MOHAN KHANCHANDANI	500,000	
36	74	06-Jun-07	60,000	600	CASH	PLAYED POOLGAME INCOME TO PRITI	6,000	6,000

37	76	08-Jun-07	6,000	600	CASH	PLAYED POOLGAME INCOME TO MOHAN H K	600	600
38	181	05-Dec-07	600,000	6,000	CASH	PLAYED POOLGAME INCOME TO PRITI	60,000	60,000
39	182	06-Dec-07	600,000	6,000	CASH	PLAYED POOLGAME INCOME TO PRITI	60,000	60,000
40	83	20-Jun-07	70,000	7,000	CASH	BROKERAGE DINESHBAHI TO PRITI KHANCHANDANI	7,000	7,000
41	49	19-Apr-07	70,000	7,000	-	CANCELLED	7,000	7,000
42	52	24-Apr-07	700,000	70,000	-		70,000	70,000
43	99	09-Jul-07	250,000	NOT MENT IONED	CASH	RS.100/- BROKERAGE BHARATKUMAR TO MOHAN	25,000	25,000
			2,57,01,000	11,13,200		<b>Grand Total</b>	<b>25,45,100</b>	<b>13,20,100</b>

*8.4.1 In the above tabulation, the difference has been worked out, based on appellant's own admission of adding a zero to the amount transacted. So also, where no explanation has been offered with reference to any entry, the same has been brought to tax. The difference as tabulated in the last column, will be brought to tax in the respective assessment years as per the norms as adopted by the A.O in paragraph 5.12 of the assessment order, and regarding which the appellant has no quarrel.*

6. The CIT(A) has also confirmed the addition made u/s.54F in respect of purchase of new flat in Libra Tower. In this regard we found that assessee had claimed exemption under s. 54 F on the gains arising from sale of shop in Pushpak Apartments. As per the return filed, the assessee declared Long Term Capital Gain of Rs. 17,63,943/-, and after claiming exemption under s. 54F, the income from Capital Gain was declared at nil. The assessee furnished evidence with regard to the

purchase and sale of the shop in Pushpak Apartment. The assessee claimed before the A.O. that the proceedings from the sale of shop was invested in a residential property at Libra Towers. The A.O declined to accept the Claim of investment in Libra Towers for the reason that for the year under consideration, a sum of Rs. 25,00,000/- is seen paid to Innovative Construction flat, which is reflected in the Balance sheet for the year ended 31.3.2005 and 31.3.2006, however, the same does .not appear in the Balance Sheet as on 31.3.2007. Holding that the assessee has failed to discharge his liability for furnishing the agreement for purchase of flat valued at Rs. 25,00,000/-, and also opining that since the asset does not appear in the Balance Sheet as on 31.3.2006, the sum of Rs. 25,00,000/- is nothing but an advance which has been returned , the A.O disallowed the claim under s.54F.

7. By the impugned order, the CIT(A) confirmed the disallowance. Against the above order of CIT(A) both assessee and revenue are in appeals before us.

8. The assessee is aggrieved for upholding the disallowance of claim u/s.54F as well as for part of addition confirmed by the CIT(A) u/s.68. However, the revenue is in appeal before us for deleting the addition made by the AO u/s.68 of the I.T.Act in all the years under consideration.

9. We have considered rival contentions and carefully gone through the orders of authorities below and found from the record that the assessee is engaged in the business of finance broking. The income from

the said broking business has been offered as income from brokerage in the return of income filed over the period of years. The assessee business is to arrange finance for borrowers through lenders. For the said services the assessee earns brokerage income. There was search at assessee's premises, during the course of survey/search proceedings three diaries were found and seized bearing Annexure No. A-2 ONGC diary 01-04-06 to 30-12-2006, A-3 Brown color diary 01-01-2005 to 31-12-2005, A-4 Divya sanidhi diary 01-04-2004 to 31-12-2004. The said diaries contain jottings in respect of finance arranged for and on behalf of the clients, by the assessee. The said diary also contains jottings in respect of miscellaneous income earned in the pooling game and brokerage income. The fact that the assessee was a finance broker was explained at the time of search action. In the statement recorded u/s 132(4) of the Act on 01-04-2009 the assessee in response to Question No 4 deposed as under:

*" .... Q-4 1 am showing you your statement recorded on oath on 20.03.2009. Please go through the same. Please refer to your response to Q. No. 5 of the said statement in which you had committed to furnish particulars of brokerage and interest for own finances and financial transactions done on behalf of lender and borrower to various parties in the market with their names & addresses .*

*Ans. 1 have prepared the details of brokerage, pool game & interest income amounting in the sum of Rs. 2,33,3071- which may not have been declared by me in my returns of income for the relevant years during which they were earned. 1 am submitting these details by way of annexure which contains the details of income written in my handwriting. You may append the said statement as Annexure - A to my deposition recorded today."*

The DDIT has questioned the assessee on 20.03.2009 and the assessee has replied to some of the entries appearing in the diary. The AO has disputed the quantum of amount represented by those figures as replied by the assessee to DDIT and as appearing in the diaries. The assessee has offered the income for various years in respect of Brokerage, pool game, purchase of property, interest on loans, and flat purchase, jewellery, and money spent on furniture.

AY 2005-06	Rs 2,70,000/-
AY 2006-07	Rs 1,44,000/-
AY 2007-08	Rs 11,20,705/-
AY 2008-09	Rs 25,85,295 /-
AY 2009-10	Rs 21,40,719/-
Total	Rs 60,15,671/-

In reply to question 0.4 by DDIT the assessee has submitted the details brokerage, poolgame,& interest of Rs 2,33,307/- and therefore the AO has jumped to the conclusion that the assessee has owned up and accepted the income from diaries and hence the proper additional income needs to be determined and worked out and taxed as per paragraph no 5.6 of the AO's order. On page 6 & 7 in the answer to question no 6 the assessee has replied that the page wise explanation in earlier statements recorded on 17.03.2009 and 19.03.2009 hold good and the assessee has came forward and offered Rs.60,15,671/- and is ready and willing to answer question in respect of document seized and explained the same once again. Thereafter AO in para 5.10 page 8 has proceeded to verify the income and determine the amount of the entries appearing as per

diary and tax the difference after deducting the amount explained by the assessee (as per pages 8 to 15 of AO's order) in A-2 ONGC diary, A-3 Brown color diary, A-4 Divya sanidhi diary and arrive at the total additions U/s 68 for various assessment years. The AO for the reasons stated in para 5 at page 3 to 15 has not accepted the submissions made by the assessee. The AO has presumed that the jottings made in the 3 diaries are the transactions carried by and pertains to the assessee. Accordingly, the AO has treated the transactions as unexplained cash credits u/s 68 of the Act. The gross receipts are apportioned over the period for which the diaries are written in proportion of time basis.

10. Before the CIT(A) assessee has filed loan confirmation in respect of the three diaries namely A-4, A-3, A-2 explaining as per the chart all the entries in all the three diaries with the confirmation letters of borrowers and lenders in the market. Thereafter the AO vide his letter dated 26.09.2011 has asked for various details to be furnished in respect of the charts filed with the CIT appeals explaining the diary entries. The assessee have produced the parties along with the confirmation and their Bank A/c before the AO and few balance parties were called to be produced by 15.03.2012 as per AO's letter dated 01.03.2012 and the AO thereafter has given the final remand report on 26.07.2012 as appearing in CIT appeals order page 14 Para 7.6. Further to the above, during the remand proceedings the assessee has submitted details of finance transactions arranged by him for and on behalf of the clients. The

assessed has submitted the details of the same along with confirmations and bank statements of lender and borrower reflecting the said finance transactions. The assessee has also produced the parties before the AO who were examined by the AO. On verification of the details, confirmations and bank statements submitted and also examination of the parties deposed the AO has furnished the Remand Report dated 26-07-2012. The averments of the assessee that he is a finance broker has not been disputed / disbelieved by the A.O.

11. We found that notings of the three diaries contain details of finance transaction in the market, between lender and borrower. In some of the instances assessee's own funds was also found to have advanced on interest. The said fact is accepted by AO by accepting the amounts earned by way of brokerage and interest from finance / estate deals. The said entries are kuccha entries in the rough diary and the same is corroborated by production of the bank statement of the lender who has advanced the loan to the borrower and that similar is the case of all transactions appearing in the diaries AO failed to make any independent investigation with regard to any of the entries appearing in the said diaries and totally disregarded the explanation of the assessee. The diary entries also pertain to transaction between lender and borrower and the same is reflected in the bank statement of lender / borrower and thus these transactions stands corroborated. Some of the confirmation certificate had been obtained to evidence transaction through bank between the

lender and borrower. The CIT(A) has called for a remand report from the AO with regard to the confirmation so filed by the assessee and also with regard to the actual amount of advance given as appearing in the bank statement by reconciling the entries made in the diaries vis-à-vis bank statement, the CIT(A) found that assessee has exaggerated one zero while making entries in the diaries. Detailed finding has been given by the CIT(A) after considering the remand report to the effect that assessee has exaggerated one zero with respect to the advance given, while recording the same in the rough diaries so found and seized during the course of search. The CIT(A) has also answered to the specific query being made to the assessee during the course of hearing to the effect that assessee has exaggerated the sums by adding zeros in order to be perceived as a broker cum finance agent of repute and considerable means and thereby to have larger share of the business in the market. The CIT(A) also found that assessee had offered brokerage income and the same have been assessed by the department. It was also found that assessee was in habit of adding zero to the amounts which were the subject matter of transaction. After considering the loan confirmations and copies of the bank statement of the various borrowers/lenders, which material was remanded to the AO for scrutiny and verification of its genuineness, the CIT(A) restricted the addition by reducing one zero as stipulated in para 8 of his appellate order. The CIT(A) has dealt with each and every entry of loans and advances giving page no. date, amount as per diary, amount

as per assessee's explanation and description of transaction and finally arrived at the amount liable to be brought to tax considering the remand report. The CIT(A) has also confirmed the addition where no income has been offered with reference to any entry. Accordingly, the difference has tabulated in the last column of the chart prepared by the CIT(A), was brought to tax in the respective assessment year as per the claims adopted by the AO in paragraph 5.1 to 5.12 of the assessment order.

12. Considering the totality of facts and circumstances of the case vis-à-vis finding given by the CIT(A) with respect to each and every entry, we do not find any reason to interfere in the order of CIT(A) upholding the addition as given in the chart. Accordingly, ground taken by the assessee and revenue with regard to addition made u/s.68 in all the years under consideration are dismissed.

13. In the assessment year 2005-06, assessee is also aggrieved for addition made by declining claim of deduction u/s.54F.

14. From the record we found that the assessee has claimed deduction in its return of income filed on 30-3-2006. The said return was processed u/s.143(1). A search proceeding u/s.132 was carried out on 24-2-2009. However, during the course of search proceeding, no incriminating evidence/records were found in the investigation made in the residential house premises of the assessee and on the date of search no proceeding was pending for impugned order under appeal. As per the decision of jurisdictional High Court in the case of Murli Agro Products Ltd., ITA No.36

of 2009 and Continental Warehousing Corporation 374 ITR 645, it was held that once the assessment has attained finality, the AO while passing the assessment order u/s.153A r.w.s.143(3) of the I.T.Act could not have disturbed the assessment/reassessment order unless the materials gathered in the course of proceedings u/s.153A of the Act establish that the reliefs granted under the finalized assessment were contrary to the facts unearthed during the course of proceedings u/s.153A. Similar view has been taken by the coordinate bench in the case of Shri Govind Agarwal, ITA No.3389/Mum/2011, dated 10-1-2014, All Cargo Global Logistics, 137 ITD 287 (Mum)(SB), SKS Ispat and Power Limited, CC 45 (ITA Nos.8746&8747/Mum/2012). The decision of Hon'ble Bombay High Court in the case of All Cargo Global Logistic, 374 ITR 645 has confirmed the verdict of the Special Bench. The sum and substance of all these decisions are that when no assessment has abated, the question of making any addition or making disallowance which are not based on only material found during the search is bad in law". We had carefully gone through the orders of the AO and CIT(A), nowhere we found that they have referred any incriminating material having been found during the course of search. Respectfully, following the proposition of law laid down by the jurisdictional High Court, we do not find any merit for disallowance of claim u/s.54F already allowed u/s.143(1) in the assessment year 2005-06, for which time limit for issue of notice u/s.143(2) had already expired

much prior to the date of search. Accordingly, we direct the AO to delete the disallowance so made u/s.54F.

15. In the assessment year 2007-08, the AO has made addition u/s 69C of the Act being unexplained investments - Rs.25,03,666/- The AO observed that assessee has paid Rs.25,03,666/- to the builder M/s Pranay Construction. During the course of survey action at the premises of the builder he has declared sum of Rs.5,03,50,000/- in respect of the project Hill Road (Libra) admeasuring net 12,154 sq feet (after deducting free space provided to tenants and area purchased by the promoters). The AO has computed average rate of cash component of Rs.4,143/- per sq. ft (5,03,50,000/12,154). The same is presumed to be paid by the applicant and hence, addition of Rs. 25,03,666/-.

16. By the impugned order the CIT(A) has deleted the addition on account of alleged cash component paid for purchase of flat from Pranay Construction amounting to Rs.25,03,666/- for the reason that the addition was based on presumption drawn from the declaration made by the builder and that no evidences were found in respect of the same.

17. Against the above order of CIT(A), revenue is in appeal before us.

18. We have considered rival contentions and found that the assessee had purchased flat number 801 in the project 'Libra' developed by Pranay Construction Private Limited vide agreement dated 29-11-2006 for a consideration of Rs.47,00,000/-. The assessee's wife Ms. Neelu M. Khanchandani also purchased flat number 802 in the said project for a

consideration of Rs.51,00,000/- . There was survey action at the premises of the builder on 23-03-2007 and 24-03-2007 page number 2 of diary inventorized as Brown Diary 06 was found wherein the amount of Rs. 5,03,50,000/- was mentioned against various dates under the head 'Hill Road (Libra) Cash Receipts'. The AO has reproduced the said page at Para 6.2 page 16 of the assessment order dated 30-12-2010. The same is reproduced herein below.

*"The above inference of cash payment is also corroborated from the fact that M/s Pranay Construction Pvt. Ltd. During the course of survey operation made on them on 23.03.2007 & 24.03.2007, it has offered a sum of Rs. 5,03,50,000/- as additional income on account of cash received for sale of 'falts in 'Libra'. This fact can be further verified from the page Nos 2 of 'Brown Diary 06' impounded during the course of survey on 23.03.2007 & 24.03.2007. The content of these loose papers give the details on the issue, which are reproduced as under reflecting the cash element received as Rs. 5,03,50,000/- ;*

'Hill Road (Libra) Cash Receipts

50,00, 000/-	21.04.06
23,50,000/-	22.04.06
7,00,000/-	01.05.06
43,00, 000/-	01.05.06
55,00,000/-	06.06.06
10,00, 000/-	08.10.06
50,00,000/-	09.10.06
30,00,000/-	16.10.06
40,00,000/-	21.11.06
25,00, 000/-	01.12.06
50,00,000/-	15.12.06
10,00,000/-	16.12.06
28,00,000/-	2B.12.06
5,00,000/-	31.12.06
15,00,000/-	02.01.07
22,00,000/-	31.01.07
<u>40,00,000/-</u>	15.03.07
5,03,50,000	

The AO has raised query as per question number 4 of the questioner dated 03-12-2010 which is reproduced as under(Para 6.5 page 17 of the assessment order).

*"Q4. From the records, it is seen that you have purchased Flat No 801, 8th floor, 'Libra Tower' Hill Road, Bandra (W), Mumbai from Pranay Construction Pvt. Ltd. on 29th Nov. 2006. The registration record shows that market value of the flat is Rs. 73,03,666/- whereas the consideration amount paid by you is Rs. 47,00,000/- only. In this respect, it is brought to your notice that Pranay Construction Pvt. Ltd. during the course of search and seizure revealed that it has accepted cash as consideration for each flat sold. From the seized material from Pranay Construction, it is also seen that the company has received cash of Rs. 40,00,000/- on 21.11.2006 just prior to the date of registration of Flat No 801. Please explain why the said amount of Rs. 40,00,000/- is treated as unexplained investment made by you for purchasing the said flat".*

In reply to the above query, assessee filed submission dated 09-12-2010 which is reproduced as under(Para 6.6 page 17 and 18 of the assessment order.

*"That regarding the flat no 801 purchased in Libra tower at Bandra from Pranay Construction Pvt. Ltd. the assessee has paid a sum of Rs.47,00,000/- only as per agreement filed on record, the assessee vehemently denies any cash payment as per allegation by the department your honour stated that the company has received cash of Rs. 40,00,000/- on 21.11.2006 kindly confront Pranay Construction and let them make (Pranay Construction) make such averment in the presence of the assessee, such allegations are baseless and without any proof and the registrar have the prerogative to value each property as per document based on the ready reckoner rates prescribed government on standard bases without any parameters such as location, demand & supply and various other fact depending upon each property and your honour intent to crucify the assessee on such baseless ground by jumping to conclusion as per your own wishes. The assessee have made no cash investment in the said flat premises."*

It is clear from the above that no incriminating evidences have been found of alleged cash component having being paid to the builder for purchase of the flat number 801. Further, the AO during the assessment

proceedings also has not brought on record any cogent evidence to prove that the assessee has paid alleged cash component in purchase of the said flat. The same is evident from the assessment order wherein there is no reference of any such evidences. We also found that the diary found from the premises of third party i.e. builder also does not speak of any such alleged cash component received by the builder from the assessee. In the noting on the said diary there is no mention as to the name from whom amount received, the break-up of receipts, the rate, flat number, etc. The said jotting merely contain dates and amounts that to all in round figure of rupees in lakhs.

19. Furthermore, the assessee has categorically denied of making any on money and has requested the AO to grant an opportunity of cross examination of the averments made by the said builder. The said request of the appellant has not been granted. The AO has opted simply to presume that alleged on money payment and based on mathematical calculations has made the addition u/s 69C of the Act. In view of the above it is clear that the AO has made addition to the income merely on the assumption and presumption relying on the averments made by the third party without bringing on record any corroborative evidences and allowing cross examination and hence, the same is prayed to be deleted.

20. Accordingly, we do not find any infirmity in the order of CIT(A) for deleting the impugned addition.

21. In the assessment year 2009-2010, the AO has also made addition on account of jewellery amounting to Rs.34,70,292/- u/s.69C of the Act.

22. We have considered rival contentions and found that during the course of search action jewellery valuing Rs.48,94,295/- was found. The assessee has explained the jewellery as under :-

Explanation	Amount Rupees	Amount Rupees
Jewellery Found		48,94,295
Less: Credit as per Circular No.1916 dated 11-05-1994 1,450 gms @ 1,466.56	21,26,523	
Jewellery belonging to others	10,92,265	
Jewellery received as gifts	1,34,428	
Jewellery belong to mother Late Smt. Jasoda Khanchandani	8,50,360	
Jewellery Explainedx		42,03,576
Difference Jewellery offered		6,90,719

However, the AO did not accept assessee's contention and after giving credit of 500gms of gold jewellery as per the Circular No.1916 upheld the balance addition which was confirmed by the CIT(A). Thus, the assessee is in appeal before us against the net addition of Rs.34,70,292/-.

23. We found that assessee explained as per the Instruction No.1916 dated 11-5-1994 of CBDT, gold jewellery of 1700 gms (mother 500 gms + 500 gms wife + 250 gms unmarried daughter + 100 gms assessee + 100 gms son + 250 gms unmarried sister). The revised computation is tabulated herein below :-

Explanation	Amount Rupees
Jewellery Found	48,94,295
Less: Credit as per Circular No.1916 dated 11-05-1994 1,450 gms @ 1,466.56	24,93,152
Difference treated as unexplained investment	24,01,143
Less declared by the appellant	6,90,719
Net difference	17,10,424

Accordingly, we do not find any reason for not giving credit for the jewellery belonging to mother which was duly stated during the course of statement

u/s.132(4). Existence of wife, unmarried daughter, son and unmarried sister was not denied anywhere, being part of the family, who are eligible for credit of jewellery as per Circular No.1916 dated 11-5-1994. Accordingly, we direct the AO to restrict the addition to the extent of Rs.17,10,424/-.

24. Cash of Rs.3,50,000/- found on the date of search was added by the AO u/s.69C. As the assessee could not explain the same, we confirm the action of lower authorities for such addition.

25. In the assessment year 2009-2010, addition of Rs.3,85,000/- was made by the AO on account of low withdrawals. By the impugned order, CIT(A) given relief of Rs.1,65,000/-, thus, balance of Rs.2,25,000/- was upheld, against which assessee is in further appeal before us.

26. As discussed in para 24 above, we have already upheld addition of Rs.3,50,000/- out of cash found during the course of search, which pertains to the year under consideration, therefore, giving benefit of telescoping, addition of Rs.2,25,000/- upheld on account of low withdrawals, is hereby deleted.

**27. In the result, appeals of the revenue and cross objections of the assessee are dismissed, whereas appeals of the assessee are allowed in part, in terms indicated hereinabove.**

Order pronounced in the open court on this 28/04/2016.

**Sd/-**

**(JOGINDER SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

**Sd/-**

**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 28/04/2016

प्र.कु.मि/pkm, नि.स/ PS

**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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

		Date	Initial	
1.	Draft dictated on	3-3&27-4-16		Sr.PS
2.	Draft placed before author	7-3&27-4-16 (dictation pad has been enclosed along with this original file)		Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/P S
6.	Kept for pronouncement on			Sr.PS
7.	File sent to the Bench Clerk			Sr.PS
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			