

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 720/Del/2009  
(Assessment Year: 2006-07)

Realtech Project Pvt. Ltd, D-22, Defence Colony, New Delhi PAN:AADCR1098P	Vs.	DCIT, Central Circle-21, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

ITA No. 987/Del/2009  
(Assessment Year: 2006-07)

DCIT, Central Circle-21, New Delhi	Vs.	Realtech Project Pvt. Ltd, D-22, Defence Colony, New Delhi PAN:AADCR1098P
<b>(Appellant)</b>		<b>(Respondent)</b>

ITA No. 3520/Del/2012  
(Assessment Year: 2008-09)

ACIT, Central Circle-21, New Delhi	Vs.	Realtech Project Pvt. Ltd, D-22, Deference Colony, New Delhi PAN:AADCR1098P
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Sh. Kapil Goel,Adv
Revenue by:	Mrs. Paramita Tripathy, CIT DR
Date of Hearing	02/08/2017
Date of pronouncement	16/10/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

ITA No. 720/Del/2009 (Assessee ) and ITA No. 987/Del/2009 (Revenue)  
Assessment Year 2006-07

1. These are the appeals filed by the assessee and Revenue against the order of the Id CIT(A)-II, New Delhi dated 31.12.2008 for the Assessment Year 2006-07.
2. The assessee has raised the following grounds in ITA No. 720/Del/2009 appeal:-
  - “1. The order of the learned commissioner of Income Tax (Appeal) is arbitrary, against law and facts on record.

- 1.2 The learned Commissioner of Income Tax (Appeal) has erred in sustaining the addition of Rs. 1,06,10,867/- out of Rs 4,73,69,027/- of addition made by the Assessing Officer without appreciating the evidence explanation and details furnished during the course of appellate proceeding
  - 1.3 The learned Commissioner of Income Tax (Appeal) has erred in giving relief in only four out of six cases where in the original booking was cancelled ignoring the facts that in all the cases cheque & cash were returned back as per the copy of the account as well as other documentary evidence placed on record.
  - 1.4 The learned Commissioner of Income Tax (Appeal) has erred in not considering the fact that Assessing Officer has made the additions of Rs 4,73,69,027/- by considering the cash received as per Annexure - 12, as 13,78,69,027/- as against the actual cash received Rs. 9,23,80,027/- mentioned on document seized and formed part of seized material.
  - 1.5 The learned Commissioner of Income Tax (Appeal) has erred in ignoring the facts that the assessee during the course of search proceedings has voluntarily surrendered a sum of Rs. 9,05,00,000/-. Considering the paper seized during the search proceedings and has been accepted by the department
  - 1.6 The learned Commissioner of Income Tax (Appeal) has erred in justifying the action of the action of the Assessing officer in initiating the penalty proceeding u/s 271(1) (c) of the income tax Act, 1961, and levying the interest u/s 234A, B, C of the income tax Act.”
3. The revenue has raised the following grounds of appeal in ITA No. 987/Del/2009:-
- “1.(a) While deciding this, Ld. CIT (A) has not given opportunity of being heard to the Assessing Officer in accordance with the provisions of Section 250(1).
  - 1(b) Ld. CIT (A) has not given opportunity of hearing to the Assessing Officer in respect of additional evidence filed by the assessee during appellate proceedings as required under Rule 46A.
  - 2(a) In the facts- and circumstance of the case, the Ld. CIT (A) has erred in reducing the aggregate of cash of Rs. 17,78,69,027/- received by the assessee for booking of spaces by a sum of Rs. 84,61,000/- merely on account of typographical mistake which has no effect on the sum total of amount of Rs. 17,78,69,027/-received by the assessee on booking of spaces.
  - (b) That the decision of the Ld. CIT (A) has resulted in excessive relief of Rs. 84,61,000/- to the assessee. ”
  - 3(a) In the facts and circumstance of the case, the Ld. CIT (A) has erred in giving relief of Rs. 1,97,82,160/- on account of cancellation of space booked by Sh. Vikas Gupta, Deepak Chakraborty, Deepak Sanyal and Sh. Parmesh Chand relying solely upon prima facie unreliable additional evidence filed by the assessee during appellate proceedings.
  - (b) Ld. CIT (A) has not given opportunity of hearing to the Assessing Officer in respect of additional evidence filed by the assessee during appellate proceedings as required under Rule 46A.

- 4(a) In the facts and circumstance of the case, the Ld. CIT (A) has erred in allowing relief of Rs. 1,14,00,000/- in case of Sh. Vijay Kumar Mishra by holding that hand written papers seized from the assessee has more evidentiary value than the computer printouts.
- (b) While deciding so Ld. CIT (A) has not considered the fact that the computer printout carries a higher evidentiary value as the same are prepared after taking into account all the transactions entered into by any person up to the time when such printouts are taken and necessarily include the transactions made on all hand written papers as well.
- (C) Lt. CIT (A) has decided this issue on presumption that all the hand written papers have been found and seized in this case when such presumption is negated by the fact that the transactions entered into computer printouts are not matching with the transactions entered into hand written papers which proves that all the hand written papers were not seized at the time of search though their existence on the date of printouts cannot be denied".
4. The assessee is a company engaged in the business of real estate and carrying on the project at Jasola. The search and seizure operation u/s 132 of the Act was conducted on 28.03.2006 on assessee Company and related persons of M/s. Home Developers Pvt. Ltd Group cases.
5. The assessee filed return of income on 09.11.2006 declaring income of Rs. 85727130/-. During the post search enquiry Shri Yogesh Gupta, Director of the company has voluntarily surrendered an additional income of Rs. 9.05 crores in hands of the assessee on the basis of Annexure-A12, which shows the details of the sales made by the assessee collecting accounted as well as unaccounted money. However, the Id Assessing Officer during the scrutiny noted that the above annexure indicates the unaccounted cash transactions of Rs. 137869027/- and therefore, a sum of Rs. 4.73 crores is still undisclosed. Therefore, it was noted that assessee is carrying on a Joaola Project and wherein, it is dealing in cash and cheques both. The Id Assessing Officer tabulated a chart wherein, 16 persons name are recorded showing their flat no, area, rate, total amount of sales, cash, cheques and outstanding amount are shown. According to that chart the assessee has saleable area of 69121.99 sq ft for a total consideration of Rs. 39.66 crores out of which Rs. 13.78 crores is received in cash and Rs. 4.63 crores in cheque and balance sum of Rs. 21.24 crores is outstanding. Therefore, according to the above chart the Id Ao was of the view that total cash amount is Rs. 13.78 crores and the Director of the assessee has surrendered only Rs. 9.05 crores. The Id Assessing Officer determined a sum of Rs. 4.73 crores as still undisclosed income. The assessee was asked to clarify the above wherein, it was stated by the assessee that certain transactions have been cancelled and the amount has been returned. The Id

- Assessing Officer considered the explanation and rejected it as no evidence regarding return of the cash was produced, therefore, the Id Assessing Officer made the addition of Rs. 47369027/- to the returned income of assessee and passed assessment order u/s 143(3) of the Act on 31.12.2007 for Rs. 133096157/- against the returned income of Rs. 85727130/-.
6. Assessee aggrieved with the order of the Id Assessing Officer preferred appeal before the Id CIT(A), who vide order dated 31.12.2008 sustained the addition of Rs. 10610867/- and deleted the addition of Rs. 36758160/-. Therefore, assessee as well as revenue are contesting these as per grounds of appeal stated above.
  7. The Id Departmental Representative contesting the first ground of appeal submitted that the Id CIT(A) has admitted the additional evidence filed by the assessee during the appellate proceedings without following the procedures under Rule 46A of the Income Tax Rules. It was further contested that Id CIT(A) has reduced the aggregate of cash by Rs. 84.61 lakhs merely on account of typographical mistake which was not so. It was further submitted that the relief granted of Rs. 19782160/- on account of cancellation of booking was without any basis. It was further stated that relief of Rs. 1.14 crores with respect to Shri Vijay Kumar Mishra by holding that hand written papers seized from the assessee has more evidentiary value than the computer print outs. It was further contested that the addition deleted by the Id CIT(A) is only on the basis of hypothetical statements. Therefore, it was contested that the addition deleted of Rs. 36758160/- is erroneous.
  8. The Id Authorised Representative vehemently submitted that no additional evidence has been submitted during the course of appellate proceedings and therefore, same deserves to be rejected. He referred to page No. 88 of the paper book which is the show cause notice dated 14.12.2007 issued by the Assessing Officer and he further referred to page No. 91 being replied thereto on 18.12.2007 by the assessee. He further referred to page No. 95 of his paper book to show that a sum of Rs. 137869027/- was initially recorded but ultimate sum received was Rs. 73863956/-. He further submitted that certain deals were also cancelled and thereafter the net cash received was only Rs. 8.61 crores which is less than Rs. 9.05 crores surrendered by the assessee. He further referred to page No. 179 of the paper book which is the details of seized paper where the details of cancellation of the deal for Rs. 47682160/- and clerical error of Rs. 84.61 lakhs is also detected. In view of this he submitted that Id CIT(A) has correctly deleted the addition of Rs. 36758160/-. He further submitted that as the net cash amount received is less than Rs. 9.05 crores the Id CIT(A) should not have upheld even the addition of Rs. 10610867/-. It was further pleaded that since the documents seized

during the course of search were found from the premises of the Director of the Company, order should have been passed taking recourse to the provision of section 153C of the Act and not u/s 153A read with section 143(3) of the Act. For this the assessee relied upon the statement of the Shri Yogesh Gupta and further relied upon following two decisions:-

- a. Samta Khinda ITA No. 336/Del/2012 order dated 29.11.2016
- b. M/s. Harsh Deep construction ITA No. 1741/Mum/2014 order dated 11.05.2016

9. The assessee further stated that the assessee is maintaining regular books of account. no corroborative evidence to annexure A-12 was brought on record and merely on loose sheet the addition had been made despite assessee making the handsome disclosure of Rs. 13 crores.
10. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The Id CIT(A) has decided this issue as under:-

“ I have carefully considered the submissions of the appellant as well as the facts of the case. It is a fact that the appellant is carrying on the business of real estate and development of projects. Accordingly in the name of ‘Jasola’ the assessee has sold some space to various customers and recorded the transactions of such sale on the papers/computer. These papers details the name of the person who booked the space, the extent of area sold, rate per sq.ft, total sale consideration, amount received in cheque, received in cash and outstanding balance. By analysing these papers, the A.O. has arrived the aggregate cash amount received by the assessee on this project during the year at Rs. 13,7869027/-. Since the assessee has admitted as income only to the extent of Rs. 905 crores the balance of Rs. 4,7369027/- is added as income of the assessee. Whereas it is contended by the assessee that some of the deals have been cancelled and some of them have been resold to other parties. But no benefit has been given by the A.O. to such contention of the assessee. I have perused the chart as well as the papers found during the course of search and also examined repayments made by cheques by the assessee to those persons who had cancelled their bookings. As far as mistake crept in respect of Sh. Ashok Narula, there is ample justification in the contention of the assessee. As per the chart prepared by the A.O. Sh. Ashok Narula has booked an area of 2686 sq.ft. @ Rs. 5725/-, thus the total amount payable on this space is referred as Rs. 1,53,77,350/-. Out of this, the A.O. has mentioned the cash portion at Rs. 94,01,100/- and cheque amount of Rs. 10 lakh as received by the assessee. In that case the outstanding amount should have been Rs. 49,76,250/- only. However, in the chart as prepared by the AO the outstanding amount is shown at Rs. 1,34,37,250/-. There appears to be clear mistake in tabulating the figures. As per the page 8 of the Annexure 12, the details of Sh. Ashok Narula are appearing, that of cash received as Rs. 9,40,100/- and cheque of Rs. 10 lakh said to have been paid by him for purchase of space from appellant. If these figures are taken into account, the amount mentioned as outstanding in the chart is tallying. Hence, there is a mistake in tabulating the correct figures in respect of cash portion. Since the mistake is apparent due credit should be given to the appellant on this ground. Accordingly, a sum of Rs.

84,61,000/- (being the difference of Rs 94,01,100/- and Rs 9,40,100/- ) is allowed as a deduction from the aggregate cash amount.

In so far as cancellations are concerned, as per the assessee, in six cases the deal has been cancelled and a cash of Rs. 4,76,82,160/- has been returned alongwith the cheques paid by them at the time of original booking. In the case of Sh. Vikas Gupta the contention of the assessee is that the amount shown at Rs. 65,00,000/- was returned consequent to the cancellation of the deal. As per the details flat bearing No 404 is booked in his name initially and later the same has been sold to Khurana and cash of Rs

35,10,000/- was received and is part of total cash amount. There is no confirmation from Vikas Gupta on cancellation of the deal. There is no amount either received or repaid in cheque to deem it that the deal is cancelled and amount was returned to the purchaser. Under the circumstances, it is very difficult to accept the explanation of the assessee that the amount has been returned to Sh. Vikas Gupta on cancellation of deal. Hence no benefit can be given on this transaction. The next person who cancelled the deal is Mr. P.K.Jain from whom the assessee has received Rs. 800000/- as per the seized paper. The assessee has returned Rs. 40 lakh in cheque to Sh. P.K.Jain which was originally received in cheque while booking the space. To that extent there is a confirmation from Sh. P.K.Jain and the amount returned by the assessee duly recorded in the books and the cheque was encashed in the bank account. Hence the assessee should be given due credit for the cancellation of the deal and return of the cash as no person would keep his balance amount with the builder after cancellation of deal. The next deal is on account of Sh. Samir Bhutani. As per the documents, the assessee received Rs. 2,14,00,000/- for booking space of 3385 sq.ft. But no cheque amount was received from him. It is the contention of the assessee that it has repaid the full amount on cancellation. However, the said contention could not be accepted simply because no cheque was repaid to the said person in order to consider the genuineness of the claim of the assessee. The so called confirmation from this person does date. In that list the name of Sh Samir Bhutani is still figuring. Which confirms that there is no cancellation of deal? In the absence of establishing the fact of genuineness of the transaction of cancellation, the explanation of the assessee is deserves to be rejected. No credit can be given on this so called repayment of cash of Rs 2,14,00,000/- to Sh. Samit Bhutani. The next person who has cancelled the deal is Mr. Deepak Chakravorthy. Necessary details of receipt of the refund of cheque amount of Rs. 15 lakh was available from Sh. Deepak Chakravarth. This cheque of Rs. 15 lakh was duly recorded in the books of the assessee and encashed in the bank account. 000/- as per the seized paper. The assessee has returned Rs. 40 lakh in cheque to Sh. P.K.Jain which was originally received in cheque while booking the space. To that extent there is a confirmation from Sh. P.K.Jain and the amount returned by the assessee duly recorded in the books and the cheque was encashed in the bank account. Hence the assessee should be given due credit for the cancellation of the deal and return of the cash as no person would keep his balance amount with the builder after cancellation of deal. The next deal is on account of Sh. Samir Bhutani. As per the documents, the assessee received Rs. 2,14,00,000/- for booking space of 3385 sq.ft. But no cheque amount was received from him. It is the contention of the assessee that it has repaid the full amount on cancellation. However, the said contention could not be accepted simply because no Cheque was repaid to the said person in order to consider the genuineness of the claim of

the assessee. The so called confirmation from this person does address etc. The entire transaction of receiving and repaying said to have been carried in cash only. For which there is no confirmation. In the course of appellate proceedings as directed the appellant filed list of investors as on date. In that list the name of Sh Samir Bhutani is still figuring. Which confirms that there is no cancellation of deal. In the absence of establishing the fact of genuineness of the transaction of cancellation, the explanation of the assessee is deserves to be rejected. No credit can be given on this so called repayment of cash of Rs 2,14,00,000/- to Sh. Samit Bhutani. The next person who has cancelled the deal is Mr. Deepak Chakravorthy. Necessary details of receipt of the refund of cheque amount of Rs. 15 lakh was available from Sh. Deepak Chakravarthy. This cheque of Rs. 15 lakh was duly recorded in the books of the assessee and encashed in the bank account.

Therefore, it has been established that the deal is cancelled. Hence, the refund of cash of Rs. 4782160/- should be given due credit to the assessee from the aggregate amount of cash received during the year. Similarly in the case of Sh. Deepak Sanyal also, cheque amount was returned on cancellation. Consequently the cash amount mentioned Rs. 50 lakh also should be allowed as paid by the assessee on cancellation of the deal. Similar facts are ruling in the cancellation of the deal in the case of Sh. Parmesh Chand as well. The assessee has received Rs. 10 lakh by cheque and Rs. 20 lakh in cash. In consequence to the cancellation of the deal, the cheque was returned on 12.1.2006 for Rs. 10 lakh and there is a confirmation to that extent. Once the deal is cancelled, the customer would have received back the cash portion as well. Accordingly, Rs 20 lakh also to be given credit to assessee as deduction from the aggregate cash on account of this person. By virtue of above directions the appellant would get the benefit of Rs 2,82,43,160/- to be reduced from aggregate amount. Assessee is able to establish that in four out of six cases the original booking is cancelled. Thereby no amount can be treated as income on sale of space in the jasola project. As directed assessee filed details of advances received against bookings as at 31.3.2006 and on verification it is observed that the rate at which the flats were sold is ranging from Rs 5315/- to Rs 6300/-, which is as per seized documents, hence no adverse view can be taken. However the AO should verify the same in subsequent years about the consideration declared is in accordance with the rates shown or not.

In so far as entry made by hand is concerned, in some cases there are two different entries made on the computer print out. One entry as per printed version and the other one in hand writing. The hand written note refers to net cash received. In the case of Mr. Vijay Kumar Mishra, the computer print out reflecting the cash portion at Rs. 4,79,00,000/- whereas the hand written note the cash amount received is shown at Rs. 3,65,00,000/- Similarly in respect of Khurana Budhiraja, Vikas Gupta, and P.K.Jain also hand written notes are appearing about the net cash received. It is vehemently argued that the assessee has received the cash as mentioned in writing than in printing. Hence the A.O. is not correct to take printed amount than the real amount mentioned in writing. I have gone through the various seized papers and found that some of the hand written amounts mentioned on the paper is corroborated with the details appearing in other seized papers i.e page no.6 &9. In the case of Vijay Kumar Misra the cash portion is referred to as Rs. 3.65 crores as mentioned in hand on page no.1. In view of corroborative

evidence found elsewhere in the seized documents the assessee should get relief to the extent of Rs 1,14,00,000/- being the difference of Rs 47900000/- and Rs 3,65,00,000/-. In respect of Vikas Gupta the cash amount referred by hand written note is Rs. 93,85,000/- whereas the AO has considered only Rs 65,00,000/-. There is no cheque portion involved in this particular deal. The entire transaction is in cash. At any point of time any consideration is received in the form of cheque. As a consequence the total amount mentioned in hand should be taken as full consideration. Hence the difference of Rs 28,85,000/- should be taken as cash received as satisfaction for space booked. Accordingly this amount will be added to the aggregate cash amount. As far as other two persons appearing on page 1 is concerned no adjustment is required, as in Khurana case the difference of Rs 24,90,000/- is received in cheque as recorded by AO and since the total sale consideration is only Rs 60 lakhs, thereby no adjustment is required. In P.K.Jain case the deal is cancelled, hence there is no effect on the aggregate cash amount. In other cases due to lack of supporting evidences no adjustments undertaken. In the end the appellant is entitled to get the benefit of cancellations partly, hand written cash portion and mistake etc total of Rs 2,82,43,160/- ( + )Rs 1,14,00,000/- (-) Rs 28,85,000/- i.e Rs 3,67,58,160/-. Thereby the net addition sustained is Rs 1,06,10,867/- as against Rs 4,73,69,027/-. Accordingly the AO is directed to delete the balance amount of Rs 3,67,58,160/- from the total income as computed by him.”

11. Now coming to the departmental appeal and various grounds raised therein the following issues are required to be adjudicated:-
- a. Whether the Id CIT(A) has admitted the additional evidences in violation of Rule 46 A of the Income Tax Rules,
  - b. Whether the Id CIT(A) erred in granting the deduction of Rs. 84.61 lakhs holding it to be typographical mistakes.
  - c. Whether the Id CIT(A) has correctly granted the relief of Rs. 19782160/- on the basis of unreliable evidences filed by the assessee.
  - d. Whether the Id CIT(A) has correctly granted relief of Rs. 11400000/- to the assessee on account of Shri Vijay Mishra by holding that hand written papers seized from the assessee has more evidentiary value than the computer print outs.
12. On the issue of additional evidence the Id Departmental Representative could not show us which evidence filed before the Id CIT(A) were not before the Id Assessing Officer. The Id CIT(A) has mentioned that assessee has submitted before the Id Assessing Officer the details of the cancellation of the bookings. Therefore, it cannot be said that the Id CIT(A) has exceeded his jurisdiction. Furthermore, the Id CIT(A) has asked for verifying certain details such as list of investor as on date for the purpose of verifying the correctness of the claim of the assessee made before the Id Assessing Officer. Similarly, details of advances received

against booking as on 31.03.2006 was also asked by the Id CIT(A) himself. The Id CIT(A) is empowered to call for such details under Rule 46A(4) of the Income Tax Rules, 1962. In view of this we reject ground No. 1 as well as ground NO. 3(b) of the appeal of the Revenue.

13. On granting of reduction of Rs. 84.61 lakhs the Id CIT(A) has held that as per page 8 of annexure 12 where the details of cash receipt Rs. 945100/- whereas the cash portion mentioned by the Assessing Officer is Rs. 9401100/- therefore there is an apparent error which has been noted by the Id CIT(A) and credit for the same is given from the total addition. Ld DR could not point out any reason that why the above mistake should not be rectified and benefit allowed to the assessee. In view of this we do not find any error in the order of the Id CIT(A) in granting the benefit of Rs. 84.61 lakhs to the assessee.
14. The Id CIT(A), with respect to the benefit of Rs. 19782160/- cancellation of the deal, has reduced the addition after verification of the details of cheques repaid to the persons who earlier booked the space and later on got it cancelled. The Id CIT(A) has out of the 6 cases amounting to Rs. 47682160/- has accepted the claim of the assessee with respect to 4 parties. Further, the Id CIT(A) has also given the direction to the AO for verification of consideration paid by the new buyers in subsequent years. In view of this we do not find any infirmity in the order of the Id CIT(A) in granting relief of Rs. 19782160/- to the assessee on account of cancellation of bookings.
15. The last issue is with respect to relief granted by the Id CIT(A) of Rs. 11400000/- being the difference of Rs. 4.79 crores and Rs. 3.65 crores. The facts of the issue is that as per the computer printout seized in case of Vijay Kumar Mishra it showed the cash receipt of Rs. 4.79 crores wherein the date of the payment stating 'YG' being cash given to Shri Yogesh Gupta on respective dates. The revenue has submitted in its paper book page No. 34 wherein the account of Shri Vijay Kumar Mishra is provided. The amount of cash paid according to that document is as under:-

Date	Cash Paid to YG
31.05.2005	Rs. 2.25 crores
18.08.2005	Rs. 11 lakhs
27.08.2005	Rs. 25 lakhs
05.09.2005	Rs. 94 lakhs
08.11.2005	Rs. 1.04 crores

16. The above accounts shows the date of the payment as well as the amount paid by Mr. Vijay Kumar Sharma to Mr. Yogesh Gupta, Director of the Company. Whereas, according to the

hand written note the cash amount was Rs. 3.65 crores. The Id CIT(A) has accepted the argument of the assessee that assessee has received cash as mentioned in hand written note only, because some of the hand written note on that paper is corroborated with details appearing in the other seized paper the above relief was granted. We do not find any justification in the reason of the Id CIT(A) in granting the above relief for the reason that there cannot be any rule that hand written note should be given preference against computer printouts as evidence. It is also a fact that total addition has been made and confirmed by the lower authorities are based on the same computer printouts. Therefore, merely because some amounts were written in hand written notes then without ascertaining in whose hands these are written as well as for the purpose for which they are written, such notes cannot be given the preference over the other reliable evidences. Further, when on identically, in case of Shri PK Jain, Shri Samir Bhuptani as well as in case of certain other persons as per page No. 176, the Id CIT(A) has not given any credit. On verification of page No. 179 and 180 along with each and every account the cash receipts figures are hand written. Further the Id CIT(A) has mentioned that corroborative evidences were found elsewhere in seized documents but he has not referred to those documents and their relevance. The computer printout placed at page No. 34 of the paper book filed by the revenue shows the complete account maintained in the form the Books of accounts showing the details of date of payment as well as the amount paid to Shri Yogesh Gupta. The computer printout according to us is a complete account of unaccounted and accounted receipts maintained by the assessee in accounting software where cash has been received through journal references, which are also numbered, therefore, it has more credence then unorganized and non-methodical hand written jottings. In view of this we reverse the finding of the Id CIT(A) to the granting of reduction in the addition made by the Id Assessing Officer by a sum of Rs. 11400000/-. In view of this, we confirmed the addition of Rs. 1.14 crores on this account.

17. In the result the addition made by the Id Assessing Officer of Rs. 47369027/- is upheld to the extent of Rs. 22010867/-.
18. In the result, appeal of the revenue is partly allowed.
19. Now we coming to the appeal of the assessee wherein, assessee has raised 6 grounds of appeal. Ground No. 1 is general in nature and ground No. 6 is consequential in nature therefore, they are dismissed.
20. Ground No. 2 to 5 of the appeal contest the addition made by the Assessing Officer stating that addition made by the Id Assessing Officer of Rs. 4.73 crores as the cash received by the

assessee as per Annexure 12 is Rs. 13.78 crores whereas, the actual cash received is only Rs. 9.24 crores. It is further contended that assessee has already disclosed Rs. 9.05 crores surrendering voluntarily against such income. As in the appeal of the Revenue we have already upheld the addition made by the Id Assessing Officer to the extent of Rs. 22010867/-, for the reasons given therein, we dismiss the above grounds of appeal of the assessee.

21. Further, the assessee has raised an issue that above seized documents were found from the residence of the director and not the company. Therefore, the notice u/s 153C should have been issued by the Assessing Officer instead of notice u/s 153A of the Act. We reject the contention of the assessee for the reason that documents were found from the Director of the company and documents were also pertaining to the company. Even otherwise, the search was initiated u/s 132 of the Act against the company, the documents were also found of the company, therefore, the argument of the assessee does not survive as proceedings in the case of the company are held to be correctly initiated u/s 153A of the Act. Further the decision cited by the Id AR are also not with respect to relationship of director and company and therefore they are distinguishable on the facts of the case.
22. The second contention of the assessee was that no corroborative evidence in Annexure A-12 was brought into record. It is further contended that the assessee is maintaining regular books of accounts which are audited and not rejected. It is further contended that when handsome surrender of Rs. 13 crore is made the Id AO should not have made this addition. We do not find any force in these arguments for the reason that addition has been made on the basis of Annexure A-12 coupled with the statement of the Director of the company wherein answer to Question No. 6 the details of disclosure are given. Further, in answer to question No. 12 complete account of cash received by the assessee was found and explained by the directors. Hence, we do not find any infirmity in the order of the Id Assessing Officer in making the above addition.
23. In the result appeal of the assessee is dismissed.
24. In the result appeals for Assessment Year 2006-07 in ITA No. 720/Del/2009 filed by the assessee is dismissed and ITA No. 987/Del/2009 filed by the Revenue is partly allowed.

ITA No. 3520/Del/2012  
(Assessment Year 2008-09)

25. This appeal has been preferred by the Revenue against the order of the Id CIT(A)-II, New Delhi dated 26.04.2012 raising following grounds of appeal:

- “1. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in deleting the addition of Rs. 76,81,1007- made by the Assessing Officer u/s 69C of the Income Tax Act, 1961 on account of unexplained expenditure.
  - 2 That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in holding that the income/expenditure as mentioned in the documents relied upon by the Assessing Officer get covered by the surrender made in the hands of flagship concern of the group M/s Realtech Construction Pvt. Ltd. Without appreciating the fact that those documents pertained to the assessee company.
  - 3 (a) The order of the CIT (A) is erroneous and not tenable in law and on facts.”
26. The brief facts of the case that the assessee filed its return of income on 30.09.2008 which was revised on 24.10.2010 declaring income of Rs. 12600301/- . The assessee is engaged in the business of construction and undertaking development of commercial complex at Jasola by the name Project Copia. Under collaboration with Sprit Global construction ltd for development of the same.
27. During the course of survey at Realtech Construction Pvt Ltd., a group company certain incriminating material were found wherein it was noted that assessee has incurred cash expenditure for the above project. Therefore, the assessee was asked to explain the source of the above expenditure which assessee explains that same is part of the surrender made by the group entities. The ld Assessing Officer rejected the contention of the assessee for the reason that in the statements recorded of the Director it was not stated anywhere that entire expenditure has been incurred by the company in whose hand the disclosure is made. Furthermore, both the companies are separate companies and therefore, even if any other person owns the income no such credit can be given to the assessee. In view of this the AO made an addition of Rs. 76.81 lakhs in the hands of assessee by order dated 30.12.2010 u/s 143(3) of the Act wherein, the total income was assessed at Rs. 20281401/- against the returned income of Rs. 12600301/-.
28. Aggrieved by the assessment order assessee preferred appeal before the ld CIT(A), who deleted the addition for the reason that disclosure has been made in the hands of Realtech Constructions Pvt. Ltd on the basis of seized documents and on the basis of same seized documents additions has been made in the hands of the assessee. Therefore, according to him it amounted to double taxation which is against the principle of natural justice.
29. The Revenue aggrieved by the order of the ld CIT(A) has preferred this appeal.
30. The ld DR vehemently contested that the disclosure has been made in the different entity whereas the documents are found pertaining to this entity therefore, the assessee has wrongly

made the disclosure. Hence, she stated that the Id Assessing Officer in the hands of the assessee correctly makes addition as the seized paper shows the expenditure pertaining to the assessee and project owned by it. She further vehemently stated that it cannot be a case that disclosure is made by one person and despite adequate evidence against the other person no addition can be made in the hands of the other person when the first person own such disclosure.

31. The Id AR submitted that the Id Assessing Officer for making addition u/s 69C of the Act issued no notice and further, the disclosure made covers the above amount.
32. We have carefully considered the rival contentions. Undisputedly, the facts are that the Assessing Officer has found certain expenditure it as per annexure A-2, A-3, A-10, A-13, A-14 and A-5 which were pertaining to the project of the assessee. The disclosure made by the director in response to question No. 6 of the statement of Shri Yogesh Gupta dated 31.05.2006 there is reference of disclosure with respect to unaccounted expenditure of the above project in question No. 11 some of annexures of above expenditure are referred to. Further, the Id CIT(A) has dealt with this issue vide para No. 6 of his order as under:-

“6. I have considered the assessment order, written submissions filed by the AR as well as the facts of the case and the position of law.. Main contention of the appellant in this connection is that the amount mentioned on the seized papers has already been surrendered by the appellant in the hands of the group company M/s Realtech Construction Pvt Ltd. In this connection I have gone through working of surrender formed part of paper booked filed before this office and found that the transactions mentioned on the seized material forms part of the amount surrendered by the group company M/s Realtech Construction Pvt Ltd. This stand that the amount have already been surrendered in the hands M/s Realtech Construction Pvt Ltd have also been taken by the appellant during the course of assessment proceeding however the assessing officer while making the addition has not made any adverse inference regarding the fact that the amount mentioned in the seized papers have been surrendered in the hands of M/s Realtech Construction Pvt Ltd. As such I agree with the appellant that the amount mentioned on the seized papers have already been surrendered in the hands of M/s Realtech Construction Pvt Ltd. However issue before me raised in this appeal in this connection is that whether the surrender made in the hands of M/s Realtech Construction Pvt Ltd is justified and whether the surrender should not be made in the hands of appellant company. In this connection I have also gone through the order passed by the assessing officer in the case of M/s Realtech Construction Pvt Ltd. The appeal of the M/s Realtech Construction Pvt Ltd for the same assessment year is also pending before me( the issue involved in the case of M/s Realtech Construction Pvt Ltd and the issue involved in the case of M/s Realtech Project Pvt Ltd is not similar). From the assessment order of the M/s Realtech Construction Pvt Ltd I have found that this order has been passed by ACIT Central Circle 21, Delhi. The assessment order in the case of appellant company has also been passed by ACIT Central Circle 21, Delhi. Assessment orders in the case of

both the companies have also been passed on the same date i.e. 30/12/ 2010. From the perusal of the assessment order of the M/s Realtech Construction Pvt Ltd I found that amount have been surrendered and taxed in the hands of M/s Realtech construction Pvt Ltd and the same have been accepted by the assessing officer. In view of the above the amount found recorded on the seized paper have suffered double taxation which is against the principle of natural justice and as such the taxation of the amount found recorded on the seized papers is not justified in the hands of the appellant company. From the perusal of seized material on the basis of which addition have been made I found these are cash vouchers in which amount, date along with the particulars of transactions is mentioned. On the cash voucher name of the appellant company 'Realtech Project' is printed as such apparently it appears that these transactions pertain to appellant company. However in this connection the appellant have contended that all the transactions does not belong to appellant as from the reading of the details mentioned on the cash vouchers indicate that the same belong to other group constituents of Realtech group. From the perusal of the particulars I also found that contention of the appellant hold good as the transaction mentioned on the seized papers that the transactions is related to directors as well as other group constituents of the Realtech group. Further the AO has made the addition u/s 69C of the Income Tax Act. In this connection it is important to mention the judicial ruling in the case of Commissioner of Income Tax Vs Lubtec India 311 ITR 175 in which it has been held that It is quite clear that what is postulated in section 69C of the Income-tax Act, 1961, is that first of all the appellant must have incurred that expenditure and thereafter, if the explanation offered by the appellant about the source of such expenditure is not found satisfactory by the Assessing Officer, the amount may be added to his income."

33. Looking at the various annexures from which the unaccounted expenditure is found it is apparent that such expenditure are pertaining to the construction of the project. However, looking at the statement by Shri Yogesh Gupta the reference was made to Annexure A-1 to A-6 vide question No.7 in answer no reference was made to the expenditure incurred by the assessee with respect to the above project. Similarly, the reference to annexure A-10, A-13 and A14 is not found in the statement at all. As the Id CIT(A) has not co-related the amount of expenditure incurred by the assessee with the amount of seized material with respect to the respective annexures it is not correct to give the benefit of disclosure made by the Director of the assessee with respect to the above expenditure. It is also a fact that assessee has not made any disclosure with respect to these expenditure. It is also not demonstrated by the assessee that the disclosure of Rs. 25 crores made includes the above expenditure, no such finding was given by the Id CIT(A) also after verification of the details.
34. In view of these facts we set aside this ground of appeal back to the file of Id CIT(A) to verify whether the amount of these expenditure incurred of Rs. 76.81 lakhs are covered in the disclosure made by third party or not. The Id CIT(A) may call for examination such seized

material to verify the above facts. In view of this the ground No. 1 and 2 of the appeal of the revenue is set aside to the file of Id CIT(A) for re-adjudication accordingly.

35. Ground No. 3 of the appeal is general in nature and hence dismissed.
36. In the result appeal of the Revenue is partly allowed for statistical purposes.

**Order pronounced in the open court on 16 /10/2017.**

**-Sd/-**

**(H.S.SIDHU)  
JUDICIAL MEMBER**

**-Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

Dated:16 /10/2017  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi