

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI  
BEFORE SHRI R.C.SHARMA, AM AND SHRI RAVISH SOOD, JM**

ITA No. 5185/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s Suvidha Developers 501, V. Star Plaza, Opp. Rajmahal Hotel, Chandavalkar Road, Borivali (w)- 400092	<b>बनाम/ Vs.</b>	ACIT, Circle-4 Income Tax Department, Ashar IT Park, Thane, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No.		ABMFS1996E
<b>(अपीलार्थी /Appellant )</b>	<b>:</b>	<b>(प्रत्यर्थी / Respondent)</b>

अपीलार्थी की ओर से / <b>Appellant by</b>	<b>:</b>	Shri Vimal Punamiya, A.R
प्रत्यर्थी की ओर से / <b>Respondent by</b>	<b>:</b>	Shri M.C. Omi Ningshen, Sr.D.R

सुनवाई की तारीख / <b>Date of Hearing</b>	<b>:</b>	24.11.2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	<b>:</b>	16.02.2018

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-3, Thane, dated 30.08.2015, which in itself arises from the order passed by the A.O under Sec. 143(3) of the Income Tax, 1961 (for short 'Act'), dated 28.03.2013 for A.Y. 2010-11. The assessee assailing the order of the CIT(A) had raised before us the following grounds of the appeal:-

- “1. On the facts and circumstances of case and laws Ld. CIT(A) erred in conforming addition made u/s 68 amount Rs. 30,51,000/-.
2. On the facts and circumstances of case and laws Ld. CIT(A) erred in conforming addition of Rs. 22,500/- under section 40(a)(ia).
3. On the facts and circumstances of case and laws the Ld. CIT(A) erred in charging interest under section 234A & 234B.
4. On the facts and circumstances of case and laws the Ld. CIT(A) erred in initiate penalty under section 271(1)(c).
5. The assessee craves leave to add further grounds or to amend or alter the existing grounds of appeal.”

2. Briefly stated, the facts of the case are that the assessee firm which is engaged in the business of a builder had filed its return of income for A.Y 2010-11 on 09.03.2011, declaring total income of Rs. Nil. Survey proceedings under Sec. 133A of the Act were carried out at the premises of the assessee on 4/5.02.2010. The case of the assessee was thereafter taken up for scrutiny assessment and a notice under Sec. 143(2) of the Act, dated 14.09.2011 was issued and served upon the assessee. The A.O while framing the assessment observed that two diaries, viz. ‘Aakar’ and ‘Ekal’ which were found and impounded during the course of the survey proceedings from the premises of the assessee at Roul Nagar, Boiser, Talluka: Parghar, revealed cash entries of Rs.26 lac and Rs.4.51 lac, respectively. The assessee on being called upon to put forth an explanation as regards the source of the said cash entries, however, failed to divulge any information as regards the same. The A.O observed that during the course of the survey proceedings Shri Jitendra Sohanlal Jain, partner of the assessee firm on being confronted with the aforesaid details had though stated that the cash entries pertained to the transactions of the firm, but however, was unable to explain the same in detail. That despite the fact specific query calling for an explanation as regards the cash entries was called for by the A.O, but however, no reply in respect of the same was placed on record by the assessee. The A.O in the backdrop of the aforesaid facts called upon the assessee to show

cause as to why the amount of Rs. 30,51,000/- may not be treated as unexplained cash credits received by the assessee as on money and added to its total income. The assessee in its reply submitted before the A.O that Shri Jitendra Sohanlal Jain who was a partner in the assessee firm was also a partner in two other concerns, viz. Royal Developers and Woodland Developers, as well as a director in Suvidha Gruh Nirman Pvt. Ltd. It was submitted by the assessee that the aforesaid partner, viz. Shri Jitendra Sohanlal Jain had in his statement recorded during the course of the survey proceedings admitted that the cash entries recorded in the aforesaid diaries pertained to any one of the aforesaid firms, but however, had also stated that he would explain the details mentioned in the diaries after checking up with the accountants. The assessee further submitted before the A.O that Shri Jitendra Sohanlal Jain had thereafter offered an income of Rs.45 lac in both of his partnership firms, viz. Woodland Developers and Royal Developers in Financial years 2008-09 and 2009-10, respectively, and paid the tax thereon. The assessee taking support of the aforesaid disclosure of Rs. 45 lacs submitted before the A.O that now when the aforesaid unaccounted cash entries had already been offered for tax and thereafter assessed under Sec. 143(3) in the hands of the aforesaid concerns, therefore, the same could not again be subjected to tax in the hands of the assessee firm.

3. The A.O after deliberating on the aforesaid explanation of the assessee was however not persuaded to accept the same. It was observed by the A.O that the disclosure of Rs.45 lac made in the hands of the aforesaid firms, viz. Woodland Developers and Raul Developers was only a disclosure of the regular profits made by the said respective concerns as they had not filed their returns of income in the said years ,therefore, they could by no means be related to the

unexplained cash entries recorded in the aforesaid diaries. The A.O to support his aforesaid conviction that the explanation of the assessee was far from the truth, observed that the same could safely be gathered from the facts, viz. (i). diaries under consideration were found from the business premises of the assessee firm; and (ii) that in the entire statement of the aforesaid partner, viz. Shri Jitendra Sohanlal Jain which was recorded during the course of the survey proceedings, name of the aforesaid concerns, viz. Royal Developers and Woodland Developers had never crept up, let alone any disclosure having been made in the hands of the said firms in respect of unaccounted cash entries recorded in the aforesaid diaries. The A.O further observed that while for the xerox copies of the impounded material was handed over to the assessee on 15.02.2013, but however, no explanation was offered till the issuance of the show cause notice dated 15.03.2013. The A.O on the basis of his aforesaid deliberations, being of the view that the reply of the assessee was nothing better than a colourable device and an afterthought that had emerged in order to facilitate avoidance of payment of tax, therefore, concluded that the cash entries amounting to Rs.30,51,000/- belonged to the assessee firm and were to be assessed as its income from undisclosed source. The A.O further observed that now when the partner of the assessee firm had admitted in his statement that the aforesaid cash entries belonged to the assessee firm, viz. M/s Suvidha Developers, therefore, he could not retract from the said statement without placing on record any documentary evidence which could go to irrefutably substantiate his said claim. The A.O on the basis of his aforesaid observations rejected the explanation of the assessee and assessed the amount of Rs.30,51,000/- as the unexplained cash credit in the hands of the assessee.

4. The A.O further while framing the assessment observed that though the assessee had paid an amount of Rs.22,500/- to one Shri R.R. Jolani as professional fees during the year under consideration, but however, no tax was deducted at source on the said amount as per the provision of Sec. 194J of the Act. The A.O in the backdrop of the aforesaid observations disallowed the amount of Rs.22,500/- under Sec. 40(a)(ia) of the Act and added the same to the total income of the assessee.

5. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating on the contentions advanced by the assessee in respect of the cash entries appearing in the diaries, viz. 'Aakar' and 'Ekal' which were found and impounded during the course of the survey proceedings conducted on the assessee firm under Sec. 133A on 04/05.02.2010, was however not persuaded to accept the explanation of the assessee. The CIT(A) observed that the partner of the assessee firm, viz. Sh. Jitendra Sohanlal Jain had during the course of the survey proceedings admitted that the cash entries in the aforesaid diaries pertained to the transactions carried out by the assessee firm. The CIT(A) observed that the claim of the assessee furnished after a gap of almost three years from the date on which the survey proceedings were conducted that the cash entries recorded in the impounded diaries pertained to the partnership firms, viz. Woodland Developers and Raul Developers did not inspire any confidence. The CIT(A) was of the view that the explanation tendered by the assessee was clearly an afterthought which in no way could be given any credence. The CIT(A) held a conviction that the assessee could not be allowed to retract from his aforesaid admission after lapse of a substantial period of three years. The CIT(A) further deliberating on the facts of the case observed that the income of Rs.45

lacs which was offered in the hands of the aforesaid firms, viz. Royal Developers and Woodland Developers was in respect of their regular income and had nothing to do with the unaccounted cash entries recorded in the diaries impounded from the premises of the assessee during the course of the survey proceedings. The CIT(A) being persuaded to be in agreement with the observations of the A.O that as the disclosure by the aforesaid concerns was made on a percentage basis of the total turnover, therefore, the same by no means was inclusive of any unexplained cash entries recorded in the diaries which were found during the course of the survey proceedings. The CIT(A) on the basis of his aforesaid observations concluded that the disclosure of regular income by the aforesaid concerns could not be correlated with the unaccounted cash entries as had emerged during the course of the survey proceedings. The CIT(A) observed that as the diaries in which the unaccounted cash entries were recorded, were not only found and impounded from the premises of the assessee firm, but rather, its partner, viz. Shri Jitendra Sohanlal Jain had admitted that the same belonged to the assessee firm, therefore, the A.O had correctly brought the same to tax as unaccounted cash entries in the hands of the assessee.

6. The CIT(A) deliberating on the contentions advanced by the assessee that the amount of Rs.26 lac mentioned in 'Aakar' diaries were the notings in context of cancelled cheques of Rs. 8 lac, Rs.3 lac and Rs.15 lac, while for the amounts mentioned in the other diary 'Ekal' amounting to Rs.4,51,000/- were also duly recorded cheque transactions, concluded that the said explanation of the assessee could not be given any credence because, viz. (a) no such cheques were found and produced before the survey team and the AO during assessment proceedings; (b) that in 'Aakar' diary it was written as

cash amount and normally cheques transactions were never recorded on a piece of paper; (c) the cancelled cheques as stated above can always be fabricated at any time as the cheque books remained with the assessee firm; and (d) the assessee had come up with a fabricated explanation after a lapse of almost 3 years of its admission. The CIT(A) further finding favour with the observations of the A.O in the remand report that the copy of the cancelled cheques produced by the assessee as additional evidence during the course of the appellate proceedings could not be given any credence, as the same having been placed on record for the first time after a gap of 5 years was clearly a manifestation of an afterthought of the assessee, thus, declined to admit the same. The CIT(A) on the basis of his aforesaid observations confirmed the addition of the Rs.30,51,000/- made by the A.O.

7. The CIT(A) further deliberating on the issue as regards the disallowance of an amount of Rs.22,500/- made by the A.O under Sec. 40(a)(ia), observed that as the assessee had failed to deduct tax at source on the aforesaid amount, therefore, the A.O had rightly disallowed the said amount under Sec. 40(a)(ia) of the Act. The CIT(A) on the basis of his aforesaid deliberations dismissed the appeal of the assessee.

8. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. The ld. Authorized Representative (for short 'A.R') for the assessee took us through the facts of the case and the relevant observations recorded by the lower authorities. The ld. A.R submitted that the CIT(A) loosing sight of the facts available on record had erred in wrongly sustaining the addition of Rs.30,51,000/- in the hands of the assessee. The ld. A.R in order to fortify his aforesaid contention took us through the relevant pages of the 'Paper book' (for short 'APB') filed by the assessee. The ld. A.R

further in an attempt to drive home his contention that the notings of Rs.26 lac (i.e. Rs.8 lac, Rs. 3 lac and Rs.15 lac) recorded in the impounded diary, viz. 'Aakar' were not cash entries, but rather notings recorded in context of cancelled cheques, drew our attention to Page 4-6 of 'APB'. It was further submitted by the ld. A.R that the transaction of Rs.51,000/- mentioned in the other diary, viz. 'Ekal' was a booking amount received by the assessee firm which was recorded in its books of accounts on 17.08.2009 and shown in the bank statement on 04.09.2009. The ld. A.R in order to support his aforesaid contention took us through the receipt no. 067, dated 17.08.2009 issued by the assessee firm for the aforesaid amount of Rs.51,000/- received by way of a cheque no. 359970, dated 17.08.2009 (Page 7 of 'APB'). The A.R further averred that the recording of Rs.20,000/-, Rs. 3,50,000/- and Rs.30,000/- pertained to the amounts which were received by the assessee by cheques from Suvidha Gruh Nirman Pvt. Ltd. as on 05.09.2009, 10.09.2009 and 11.09.2009, respectively. The ld. A.R in order to support his aforesaid contention took us through the copy of the account of the aforesaid concern, viz. Suvidha Gruh Nirman Pvt. Ltd. appearing in its books of accounts where the aforesaid transactions stood recorded (Page 9 of 'APB'). The ld. A.R also took us through the copy of the bank account no. 30695089586 of the assessee firm with State Bank of India, Branch: Kandivali, wherein the aforesaid cheques stood deposited (Page 10-12 of 'APB'). The ld. A.R on the basis of his aforesaid contentions submitted that as the addition of Rs.30,51,000/- made by the A.O on misconceived facts had wrongly been sustained by the CIT(A), therefore, the same may be deleted. The ld. A.R further adverting to the disallowance of Rs.22,500/- sustained by the CIT(A), submitted that as the assessee had not incurred any expenses by way of professional fees in respect of which any obligation was cast upon it

to deduct tax at source, therefore, no disallowance under the aforesaid statutory provision was called for in its hands. The ld. A.R drawing our attention to Page 154-155 of APB, submitted that as during the year under consideration it had made an aggregate payment of Rs.17,500/- only towards legal fees to Shri R.R. Jollani on which no tax was required to be deducted at source, therefore, no disallowance under Sec. 40(a)(ia) was called for in its hands. Per contra, the ld. Departmental Representative (for short 'D.R') submitted that the copies of the cheques referred to by the ld. A.R were neither found during the course of the survey proceedings nor placed on record by the assessee during the course of the assessment proceedings. It was submitted by the ld. D.R that as the aforesaid impounded diaries, viz. 'Aakar' and 'Ekal' made a clear mention of cash transactions, therefore, the explanation of the assessee that the same pertained to certain accounted bank transactions/cancelled cheques could not be accepted. The ld A.R in his rejoinder rebutting the aforesaid submissions of the revenue, placed on record the copies of the relevant extracts of the seized diaries on the basis of which an addition of Rs.30,51,000/- was made by the A.O. The ld. A.R by referring to the aforesaid documents submitted that there was nothing from where it could be gathered that the amounts mentioned pertained to certain cash transactions. That as the copies produced before us by the ld. A.R were not legible, therefore, the ld. D.R was directed to make necessary verification as regards the same from the concerned A.O. The ld. D.R during the course of next hearing on 06.10.2017 submitted that though a clarification as directed by the Tribunal was sought from the A.O, vide letter dated 08.09.2017, but however, as the reply was not yet received, therefore, some further time may be allowed. That during the course of next hearing of the appeal a copy of the relevant extracts of the aforesaid impounded

diaries obtained by the assessee from the A.O was placed on record by the ld. A.R.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has primarily been sought to adjudicate as to whether the addition of Rs.30,51,000/-made by the A.O had rightly been sustained by the CIT(A), or not. We find that it remains as a matter of fact borne from the record that during the course of survey proceedings conducted on the assessee on 04/05.02.2010, two diaries i.e. 'Aakar' and 'Ekal' were found and impounded from the premises of the assessee firm. The entire controversy involved in the present appeal hinges around the entries in the aforesaid diaries aggregating to Rs.26 lac ('Aakar' diary) and Rs.4,51,000/- ('Ekal' diary), respectively. We find that as claimed by the A.O the partner of the assessee firm, viz. Sh. Jitendra Sohanlal Jain had in his statement recorded during the course of the survey proceedings stated that the entries in the aforesaid diaries pertained to the transactions of the assessee firm, which he was not able to explain at the relevant point of time. We further find that the assessee had thereafter failed to come forth with any explanation with regard to the aforesaid entries. It was only when the A.O while framing the assessment proceedings afforded a last opportunity to the assessee to put forth an explanation as regards the said entries appearing in the aforesaid diaries, that the assessee took a shift from its earlier explanation and submitted that its partner Sh. Jitendra Sohanlal Jain who was also a partner in two other firms, viz. Royal Developers and Woodland Developers, as well as a director in M/s Suvidha Grih Nirman Pvt. Ltd. had during the course of the survey proceedings stated that the entries appearing in the aforesaid diaries may pertain

to any one of the aforesaid firms and an explanation along with the details in respect of the same would be furnished in due course after consulting the accountants. We find that the assessee had on the basis of his aforesaid statement tried to relate the unexplained cash entries recorded in the aforesaid diaries to the disclosure of Rs.45 lac made by its aforesaid sister concerns, viz. Woodland Developers and Royal Developers for Financial years 2008-09 and 2009-10, respectively. We find that the assessee in the backdrop of the aforesaid facts had submitted that now when the unaccounted cash entries had already been offered for tax and assessed under Sec. 143(3) in the hands of the abovementioned firms, therefore, it would not be permissible to subject the said amount to tax again in the hands of the assessee firm. We find that the assessee on the basis of his aforesaid explanation had tried to impress upon the A.O that as the unexplained cash entries of Rs.30,51,000/- mentioned in the abovementioned diaries pertained to the sister concerns, viz. Woodland Developers and Royal Developers, therefore, the same being included in the disclosure of Rs.45 lac made by the said respective concerns had already been brought to tax. We find that the A.O being of the view that the disclosure made by the aforesaid sister concerns, viz. Woodland Developers and Royal Developers was a disclosure of the regular profits which the said sister concerns had not disclosed by failing to file their returns of income, therefore, the same could by no means be related to the undisclosed cash entries of Rs.30,51,000/- recorded in the aforesaid diaries. We further find that the A.O observed that as the disclosure of the regular profits by the aforesaid sister concerns was made on percentage basis of their total turnover, therefore, the same clearly ruled out any nexus of the same with the aforesaid undisclosed cash entries recorded in the aforesaid diaries found and impounded during the course of the survey proceedings.

10. We find that the assessee during the course of the proceedings before the CIT(A) had submitted that entries in the impounded diaries were in context of its accounted bank transactions/cancelled cheques. It was submitted by the assessee before the CIT(A) that the notings of Rs.26 lac (i.e. Rs.8 lac, Rs. 3 lac and Rs.15 lac) in the 'Aakar' diary pertained to certain cheques issued by the partner of the assessee firm, which however were subsequently cancelled. We further find that the assessee explaining the amount of Rs. 51,000/- mentioned in the other diary, viz. 'Ekal' submitted that the same was in the nature of a booking amount that was recorded in its books of account on 17.08.2009 and was shown in the bank statement on 04.09.2009. The assessee further explaining the entries of Rs.20,000/- Rs.3,50,000/- and Rs.30,000/- submitted before the CIT(A) that the same were the payments received through cheques from M/s Suvidha Gruh Nirman Pvt. Ltd. and were duly recorded in the books of account of the assessee firm.

11. We have deliberated on the facts of the case in the backdrop of the shifting explanations of the assessee which were advanced before the lower authorities in respect of the entries of Rs.30,51,000/- recorded in the two diaries, viz. 'Aakar' and 'Ekal' found during the course of the survey proceedings conducted at its premises on 04/05.02.2010. We find that though during the course of the survey proceedings the partner of the assessee firm, viz. Sh. Jitendra Sohanlal Jain had categorically stated that the transactions recorded in the aforementioned diaries pertained to the assessee firm, but however, had sought some further time for placing on record the complete details as regards the same. However, the assessee during the course of the assessment proceedings taking an absolute shift from the explanation tendered by its partner during the course of the

survey proceedings, submitted that the 'cash entries' recorded in the aforesaid two diaries did not relate to the assessee firm. We find that for the first time the assessee came forth with an explanation that Sh. Jitendra Sohanlal Jain who was also a partner in two other firms, viz. Woodland Developer and Royal Developers, had in his statement recorded during the course of the survey proceedings stated that the 'cash entries' in the aforesaid diaries may pertain to any one of the aforesaid firms. We are of the view that the assessee on the basis of its aforesaid explanation had attempted to relate the 'cash entries' of Rs.30,51,000/- recorded in the aforesaid diaries to the disclosure of Rs.45 lacs made by the aforesaid firms, viz. Woodland Developers and Royal Developers. We are of the considered view that the A.O had rightly observed that as the disclosure of Rs.45 lacs made by Woodland Developers and Royal Developers was as a matter of fact a disclosure of their regular profits which they had failed to disclose by not filing their returns of income, therefore, there was no basis for relating the 'cash entries' of Rs.30,51,000/- recorded in the aforesaid diaries with the disclosure of Rs.45 lacs made by the said sister concerns. We further find that the assessee after failing in its aforesaid explanation had thereafter claimed that the entries appearing in the impounded diaries, viz. 'Aakar' and 'Ekal' were not cash receipts, but rather, were in the nature of duly accounted bank transactions /cancelled cheques. We are of the considered view that the shifting explanations tendered by the assessee before the lower authorities as regards the entries appearing in the aforesaid diaries, viz. 'Aakar' and 'Ekal' which were found and impounded during the course of the survey proceedings from the premises of the assessee does not only inspire any confidence, but rather, leads to serious doubts as regards the transactions therein recorded. We have deliberated on the facts of the case and are persuaded to be in agreement with the lower

authorities that the attempt of the assessee to relate the undisclosed transactions recorded in the aforesaid diaries, viz. 'Aakar' and 'Ekal' with the disclosure of the regular profits of Rs. 45 lac made by the sister concerns, viz. Woodland Developers and Royal Developers, being clearly a manifestation of an afterthought, thus, could not be given any credence and had rightly been rejected by them. We further find that the subsequent explanation of the assessee that the transactions appearing in the aforesaid diaries were not 'cash entries', but rather, were notings in respect of duly accounted bank transactions/cancelled cheques in itself militates against its earlier explanation that the same were 'cash entries' relatable to the sister concerns, viz. Woodland Developers and Royal Developers.

12. Be that as it may, we find that though the shifting explanations of the assessee at the first blush would had in itself justified the rejection of the claim of the assessee and upholding the orders of the lower authorities, but however, we find that the revenue had also till date failed to dislodge the claim of the assessee that the transactions recorded in the aforementioned diaries were not 'cash entries', but rather, were the duly accounted bank transactions/cancelled cheques. We have perused the copies of the relevant extracts of the impounded diaries, viz. 'Aakar' and 'Ekal' as were produced before us during the course of hearing of the appeal. Though, a prima facie perusal of the Xerox copies of the diaries do not reveal any mention of cash against the same, but however, we cannot also remain oblivious of the fact that not only the said copies produced before us were illegible, but rather, at certain places certain scrollings of the terms 'cash' and 'amount' were found mentioned. We further find that a perusal of the xerox copies of the aforesaid diaries also reveals impressions of certain faint notings on the relevant pages. We are of the considered view that

the claim of the assessee that the entries recorded in the impounded diaries, viz. 'Aakar' and 'Ekal' were not cash transactions, but rather, were notings made in the said diaries in respect of duly accounted bank transactions/cancelled cheques requires to be verified after consulting the said entries recorded in the impounded diaries. We are of the considered view that as nothing can be safely gathered from the copies of the aforesaid diaries placed on our record, therefore, in all fairness refrain from arriving at any conclusion by relying on the same. We are of the considered view that the aforesaid claim of the assessee that the recordings in the aforesaid diaries were not cash entries, but rather, were in the nature of duly accounted transactions, in all fairness requires consideration after perusing the impounded diaries. We thus restore the matter to the file of the A.O for fresh adjudication. We may herein observe that the A.O shall during the course of the set aside proceedings adjudicate the issue after deliberating on the notings in the impounded diaries and considering the explanation of the assessee as regards the same.

13. We now advert to the disallowance of Rs.22,500/- made by the A.O under Sec.40(a)(ia), which thereafter had been sustained by the CIT(A). We find that the ld. A.R had submitted before us that as the assessee had not made any payments which were liable for deduction of tax at source under Chapter XVII, therefore, no disallowance under Sec. 40(a)(ia) of the Act was called for in its hands. We find that the assessee in support of its aforesaid contention had submitted before us the bifurcated details of the amounts which during the year under consideration were paid by it towards legal and professional charges. We are of the considered view that as we have restored the issue pertaining to the addition of Rs.30.51 lac for fresh adjudication to the file of the A.O, therefore, in all fairness we think it apt to restore the

issue as regards the disallowance made under Sec. 40(a)(ia) of Rs.22,500/- also to the file of the A.O for fresh adjudication after considering the aforesaid explanation of the assessee. Needless to say, the A.O shall during the course of the set aside proceedings afford sufficient opportunity of being heard to the assessee, who shall remain at a liberty to substantiate its aforesaid claims, viz. addition made under Sec. 68 of Rs.30,50,000/- and disallowance under Sec. 40(a)(ia) of Rs.22,500/- before the A.O. We thus in terms of our aforesaid observations restore the matter to the file of the A.O for fresh adjudication.

14. The appeal of the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 16.02.2018

Sd/-  
(R.C. Sharma)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 16.02.2018  
Ps. Rohit Kumar

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
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 (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai