आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 98/JP/2017
निर्धारण वर्ष/Assessment Year: 2008-09

Shri Dharam Pal Singh 75, Jai Shankar Colony New Sanganer Road, Jaipur 302 019	बनाम Vs.	The ITO Ward- 2(5) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AMIPS 2100 F		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Manish Agarwal CA and
Shri O.P. Agarwal, CA
राजस्व की ओर से/ Revenue by:Shri Varinder Mehta, CIT - DR

सुनवाई की तारीख/ Date of Hearing : 16/05/2018
घोषणा की तारीख/ Date of Pronouncement : 24 /05/2018

आदेश/ ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the ld. CIT(A)-1, Jaipur dated 30-11-2016 for the Assessment Year 2008-09.

2.1 Brief facts of the case are that the assessee is an individual. The return of income was filed on 31-03-2010 declaring income at Rs. 3,69,14,652/-.The return was processed u/s 143(1) of the Act and subsequently the assessment was completed u/s 143(3) of the Act at total income of Rs. 3,69,62,152/-. Thereafter the notice u/s 148 of the Act was

issued on the basis of some tax evasion petition. Thus the assessment was finalized by AO at Rs. 7,69,14,650/- by making addition of Rs. 4.00 crores u/s 68 of the Act. The assessee preferred first appeal before the ld. CIT(A) who has confirmed the action of the AO.

2.2 Now the assessee is in appeal before us raising following grounds of appeal.

> ''1. On the facts and circumstances of the case, the ld. CIT(A) has grossly erred in sustaining the assessment ex-parte to the assessee by applying the provisions of section 144 of the Income Tax Act, 1961.
>
> 1.1 On the facts and circumstances of the case, the ld. CIT(A) has grossly erred in sustaining the reopening of the completed assessment without there being any cogent reasons having been given.
>
> 2. On the facts and circumstances of the case, the ld. CIT(A) has grossly erred in sustaining the addition of Rs. 4 crores without any basis and further without by incorrectly interpreting the various statements referred to in the assessment order, thus the same deserves to be deleted in toto.
>
> 3. On the facts and circumstances of the case, the ld. CIT(A) has grossly erred in observing the character of the income of the revenue nature instead of appreciating that the said amount was received against proposed business transactions, thus the addition made deserves to be deleted.

3.1 During the course of hearing, the ld.AR of the assessee has not pressed the Ground No. 1 and 1.1. Hence, the same are dismissed being not pressed.

4.1 The Ground No. 2 and 3 of the assessee are regarding sustaining addition of Rs. 4.00 crores and the observation of the ld. CIT(A) regarding the character of income of the revenue nature is also challenged

4.2 The ld.AR of the assessee made oral arguments besides filed the following written submission.

> ''Under these grounds of appeal, the assessee has challenged the action of Ld. AO in making the addition of Rs. 4.00 crores u/s 68 of the Act by holding the advance received by assessee as his unexplained brokerage income.
>
> ''Brief facts pertaining to these grounds of appeal are that the assessee is engaged in the business of procuring land / property who operates from Gurgaon. In the financial year relevant to the assessment year under appeal, the assessee was approached by one Shri Rattan Singh for the purpose of procurement / acquisitions of some land in Gurgaon. It was informed by Shri Rattan Singh to the assessee that he is working for a company named M/s Vikram Electric Equipment Pvt. Ltd. (VEEPL), who had engaged Shri Rattan Singh for facilitating the acquisition of various pieces of lands and his services were sought by the company in taking possession of the land, demarcation, levelling etc. It was for the purpose of acquiring pieces of lands that the assessee was approached by Shri Rattan Singh who sought help of assessee in such acquisition / procurement, in furtherance of which Shri Rattan Singh transferred an amount of Rs. 4 crores to the assessee which was paid vide two cheques of Rs. 2 crores each dated 26.11.2007. This amount was an advance to the assessee so that the assessee becomes in a position to give advance for purchase of lands in Gurgaon. However, no further amount was given to assessee for purchasing the lands and therefore, the deal could not be completed as the complete amount was not received by assessee in the scheduled time and consequently assessee could not pay further to prospective sellers. Accordingly, the deal got cancelled and the aforesaid amount of Rs. 4 crores remained payable as on the end of the financial year relevant to the year under appeal.
>
> It is submitted that in pursuance of an investigation conducted by the Central Bureau of Investigation (CBI), the statements of assessee were recorded on 22.04.2014 and 25.04.2014, wherein the assessee has deposed and verified all the above mentioned facts, including the fact that no commission whatsoever was received by the

assessee from Shri Rattan Singh and the amount which was received was merely an advance for purchase of land. The statement so recorded by the CBI form part of the record of the Income Tax Department, since part of the same has been re-produced by the ld. AO in the assessment order itself.

However, the Ld. AO completely ignored the above mentioned facts and the circumstances of the case and incorrectly held that this amount of Rs. 4.00 crores was commission income of assessee, which action of ld.AO was later confirmed by ld. CIT(A).

In this regard, at the outset, it is submitted that addition was made in the hands of assessee merely on the basis of statements of Shri Rattan Singh recorded u/s 131 of the Act who has stated to have paid the aforesaid amount of Rs. 4.00 crores as commission to assessee, which is a clearly false statement and has been made just to safeguard himself and shift the tax liability on assessee. At this juncture, it is submitted that apart from such statements of Sh. Ratan Singh, no other corroborative material was brought on record by ld.AO for making addition.

Hon'ble jurisdictional High Court in the case of **CIT vs Pooja Agrawal ITA No. 385/2011** has held that additions made on the basis of information from investigation wing is to be supported with findings from independent enquiries.

It is further submitted that assessee was not supplied with copies of statements of Sh. Ratan Singh recorded by CBI as well as during his assessment proceedings, wherein he has contentedly stated that such sum paid by him to assessee was in the nature of commission. In fact, no opportunity of cross examination was provided to assessee when heavy reliance was placed on statements of Sh Ratan Singh for making addition, which is against the principles of natural justice.

Hon'ble Apex court in the case of **CCE Vs. Andaman Timber Industries**, **(324) ELT 641** has held as under:

"*6.* ***According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee***. *It would be pertinent to note that in the impugned order*

passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above."

Very recently, **Hon'ble Jaipur Bench of tribunal** in the case of **Sh. Pramod Jain vs. DCIT** has relied upon the view taken by Hon'ble Apex Court in Andaman Timbers and held that the statements of witness cannot be made sole basis of making assessment without giving an opportunity of cross examination and consequently it is a serious flaw which renders the order a nullity.

Hon'ble Ahmedabad bench of ITAT also in the case of **Smt. Sunita Jain vs ITO** quashed the assessment order by placing reliance on Apex Court judgement in the case of **Andaman Timber** (cited supra) as entire assessment was based upon the statements of Sh. Mukesh Choksi, which were neither supplied to assessee nor was opportunity of cross examination provided.

It is thus submitted that addition made by ld.AO on the basis of statements of Sh. Ratan Singh without providing opportunity of cross examination is against the principle of natural justice and therefore the addition so made deserves to be deleted.

It is further submitted that the statement of assessee were also recorded u/s 131 of the Income Tax Act, 1961 on 13.08.2014, wherein he had stated on oath that the aforesaid amounts of Rs. 4.00 crores was received by him as advance towards the purchase of land from farmers

and further stated that the amount was not received as commission. However, ld. AO resorted to rely upon Sh. Ratan Singh instead of assessee though such statements were not recorded during the assessment proceedings of assessee nor were such statements recorded by ld. AO. Moreover, copy of CBI report relied upon was never provided to the assessee, which is also against the principle of natural justice.

So far as merits of the case are concerned, it is submitted that the assessment in the case of Shri Rattan Singh has already been completed by the DCIT, Circle-II, Bikaner u/s 144 / 263 vide order dated 25.03.2015. The observations made by the Ld. DCIT on page 8 to 10 of the said order are reproduced at page 5 in para (d) of the present order where it has been categorically observed that the aforesaid amount of Rs. 4.00 crores was paid by Shri Rattan Singh to assessee for the purchase of land only and not as brokerage or commission. The Ld. DCIT has based this observation on the findings of the CBI, as the CBI also has found that the said amount was paid merely as an advance and not as brokerage commission. Accordingly, the Ld. AO of Shri Ratan Singh has disallowed the amount of Rs. 4.00 crores in the hands of Shri Ratan Singh which was shown by him as commission paid to Sh. Dharam Pal Singh. The relevant portion of assessment order dated 25.03.2015 of shri Ratan Singh as has been reproduced by the Ld. AO himself in the impugned re-assessment order at page 5 to 7 in point No. d, is reproduced below for the sake of convenience:

- "*In absence of any corroborative evidence filed by the Shri Rattan Singh the payment received by Shri Dharampal Singh from him amounting to Rs. 4.00 crores as commission it is in the fitness of the things that reference to the* ***findings given by the CBI authorities, who were probing and investigating into this matter, have given the finding that on enquiry from Shri Dharampal Singh it was stated by him that he did not receive any commission from Shri Rattan Singh in F.Y. 2007-08****. He further stated that Shri Rattan Singh give him Rs. 4,00,00,000/- on 26.11.2007 in two cheques of ABN Amro Bank to purchase the land at Gurgaon but as Shri Rattan Singh did not make any further payment in scheduled time hence he could not purchase the land and Rs. 4,00,00,000/- was still outstanding which Shri Dharampal Singh will pay to Shri Rattan Singh.*

- ***This finding of the CBI authority clearly indicate that the claim of Shri Rattan Singh in his statement recorded u/s 131 of having paid commission was absolutely bogus and eyewash which is not***

***acceptable at this end** and more so when he has nothing to say in this regard despite several opportunities given by the AO.*

- *The CBI authorities have also found from their investigation from M/s Vikram Electric Equipment Pvt. Ltd., company which has said to have purchase various lands at Gurgaon through the assistance of Shri Rattan Singh, who had been instrumental to the company in procurement, demarcation and taking possession of the lands at villages Kherki Daula, Sikohpur, Hassanpur and Sakatpur. For these services this company paid Shri Rattan Singh commission of Rs. 6.30 crores in F.Y. 2007-08 and on 22.11.2007 out of the said commission the company paid him Rs. 5,58,62,100/- after deducting TDS Rs. 71,37,900/- on the gross amount of Rs. 6.30 crores. **This finding of the CBI authority is correct as the same TDS amount has been claimed by Shri Rattan Singh in his return of income filed by A.Y. 2007-08** wherein he has shown gross receipts of Rs. 6,46,31,152/- which included the payment made by the above company of Rs. 6.30 crores. They have also enquired from them statement of Bank Account No. 1380300 of Shri Rattan Singh that the said account was credited with Rs. 5,58,62,100/- on 22.11.2007in form of two deposits received on transfer from account No. 1095104 amounting to Rs. 26,60,100/- and Rs. 5,32,02,000/-. **In this regard it is worthwhile to mention that from the various deals of land purchases made by the company through Shri Rattan Singh reveal all together different land details than submitted by the company before the CBI authorities which again shows that the assessee never came out with his true state of affairs at any stage of assessment proceedings as well as proceedings of section 263 before the worthy CIT, Bikaner.** The CA of assessee also misled the department by way of claim of brokerage expenses of Rs. 5,02,00,800/- to Shri Dharampal Singh who in his statement stated altogether different facts that that payment of Rs. 4,00,00,000/- through the cheques of ABN Amro Bank dated 26.11.200 were actually given for purchase of land and not as brokerage commission. **In view of above discussion and facts of the case the AO has disallowed the entire expenses claimed including commission payment of Rs.5,02,00,800/- in the case of Shri Rattan Singh for the assessment year 2008-09.***

Thus, in view of the concurrent findings of the CBI as well as the Ld. DCIT, Circle-II, Bikaner, it gets fortified that the aforesaid amount of Rs. 4.00 crores was received by assessee merely as an advance and could not have been treated as commission. It is further submitted that since this amount has already been considered and added in the income of Shri Rattan Singh, the same cannot be considered in the hands of assessee inasmuch as the same would

amount to double taxation, which fact has completely been ignored by the Ld. AO and also by Ld. CIT(A).

It is worthwhile to mention here version of Sh. Ratan Singh is not acceptable for one more reason that he paid the a huge sum of Rs.4 crores, without deduction of tax at source, which itself indicates that claim of commission is nothing else but an afterthought to shift tax liability upon the assessee. Your goodself would appreciate that no prudent person would make such a huge payment as commission without deduction of tax, more particularly when failure to deduct tax at source itself results into disallowance of entire expenditure.

At this juncture, it is further submitted that ld. CIT(A), while confirming the addition has observed that assessee could not submit the bank statements etc. in support of his contention that payments made to agriculturist were through account payee cheque. In this regard, it is submitted that the bank in which such advance of Rs.4 crores was deposited had closed and since the matter was quite old despite repeated requests, copies of bank statements could not be obtained. It is further submitted that such sum was advanced by assessee to 6 agriculturists, which information was available on record even at the time of assessment itself as Sh. Ratan Singh, in Q 4 of statements recorded on oath u/s 131 had stated about such payment and suit filed by assessee against such parties. Relevant extracts of assessment order are reproduced herewith for the sake of convenience:

प्रश्न 4: इस क्रम में आप अन्य कुछ कहना चाहते हैं तो बतला सकते है।

उत्तर : इस संबंध में जैसा कि श्री धर्मपाल सिंह जी का कहना है कि यह 4.00 करोड़ की राशि उन्होंनें मुझसे अग्रिम (एडवांस) के तौर पर प्राप्त की है और आगे जमीन विक्रेताओं को मेरे बिहाफ पर दी है, इस संबंध में मैं उनके द्वारा प्रस्तुत किये गये सिविल दावा (जो कि उनके द्वारा माननीय सिविल जज, सीनियर डिविजन, गुडगांव) वाद संख्या सीएस 809/2015 की छाया प्रति प्रस्तुत कर रहा हूँ। इस वाद पत्र में पृष्ठ संख्या 2 एवं 3 पर स्पष्टरूप से दर्शाया गया है कि उनके द्वारा 6 पार्टियों को रू. 4.00 करोड़ की राशि जमीन खरीद / बेचान के रूप मे अग्रिम के बतौर दी गई थी जब कि इस प्रकार हमारे बीच में किसी भी प्रकार का इकरारनामा नहीं है तथा ना ही कभी मेरे द्वारा 4.00 करोड़ रू. का रिकवरी का दावा डाला गया है। जो रू. 4.00 करोड़ जमींदारों को अग्रिम के रूप में दिखलाये गये हैं उसमें से श्री लद्दाराम के नाम पर 30.00 लाख का डिमांड ड्राफ्ट श्री धर्मपाल के खाते से दिनांक 04.01.2008 को बनवाया गया है जिसे दिनांक – को निरस्त करवाकर अपने खाते में जमा कराया गया है। जिस का डीडी संख्या 48120 बैंक स्टेटमेण्ट में अंकित है। इस प्रकार यह स्पष्ट है कि श्री धर्मपाल सिंह के द्वारा श्री लद्दाराम को किसी भी प्रकार का भुगतान नहीं किया गया है। इसी प्रकार अन्य पार्टियों से हमारा कोई संबंध नहीं है ना ही हमारे द्वारा किसी प्रकार का लेनदेन किया गया है।

Your honour would appreciate that on one hand, lower authorities have placed heavy reliance on the statements of Sh. Ratan Singh and on the other hand, have not considered the most important facts evident from his statements, wherein he has stated that assessee

has advanced sum of Rs.4 crores to 6 persons, for recovery of which assessee has filed recovery suit against such parties. In fact, Sh. Ratan Singh has referred case no. of such suit. Your honour would appreciate that even though assessee is not in a position to furnish bank statements etc. for the reasons mentioned above, it is also an accepted fact that no suit can be filed in the absence of documentary evidences. It is thus submitted that ld. CIT(A) has mis-appreciated the fact that no details about advance payments to agriculturist were provided by assessee, when such details were emanating from assessment order itself.

Ld. CIT(A) has drawn adverse inference by further observing that *"when VEEPL had not purchased any land during the year under consideration and in subsequent year, i.e. during F Y 2007-08 and 2008-09 through Ratan Singh, why should Sh Ratan Singh advance a sum of Rs.4 crores to Appellant for purchase of lands at Gurgaon."*

In this regard, it is submitted that advances received by assessee from Sh Ratan Singh had no connection with sums received by Sh Ratan Singh from VEEPL. Both the transactions were in relation to different lands. Further, as stated above the advance made by Ratan Singh to assessee was for further purchase of land (which Ratan Singh would have then transferors to VEEPL) but as is evident that the deal for purchase of land could not materialise as only part payment was made by Sh. Ratan Singh to assessee and therefore Shri Ratan Singh also could not transfer any land to the company VEEPL. It was for this reason that balance sheet of VEEPL does not reflect any purchase during F Y 2007-08 and 2008-09. Thus, adverse inference so drawn by ld. CIT(A) on this basis is totally incorrect and without fully and properly appreciating the facts.

Going further, ld. CIT(A) has rejected the plea of the assessee that such sum of Rs.4 crores has already been held as advance given to the assessee in the case of Sh. Ratan Singh on the premise that income has to be taxed in correct hands. In this regard, it is stated that enquiries till date suggest that such sum was taxable in the hands of Sh Ratan Singh as per the CBI enquiries as well as finding / observations of ld. AO while completing assessment of Sh. Ratan Singh. In fact, lower authorities have not been able to bring any material on record so as to prove that such sum has been wrongly taxed in the hands of Sh Ratan Singh. Ld. AO as well as ld. CIT(A) has also referred a confirmation given and signed by the assessee for which it was categorically stated that assessee had never signed any such confirmation to the best of his knowledge as he never received any commission from Ratan Singh and the confirmation referred by the ld.AO in the assessment order might have been got signed by Ratan Singh along with other papers when he was under the employment of

> the assessee as an accountant and thus the same being obtained through illegal means deserves to be ignored and excluded.
>
> In view of above, it is prayed that the addition of Rs. 4.00 crores made by ld.AO is not in accordance with law and deserves to be deleted.''

4.3 On the other hand, the ld. DR relied on the orders of the lower authorities.

4.4 We have heard both the sides and also considered various case laws relied upon. We find that the AO has made the addition of Rs. 4.00 crores u/s 68 of the Act by holding that the amount has not been recorded in the books of account in the year under consideration and it was treated by the AO from undisclosed sources. It is pertinent to note that addition u/s 68 of the Act can be made by the AO where any sum is found credited in the books of account maintained by the assessee for any previous year and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not satisfactory in the opinion of the AO. The assessee had received this amount from Shri Rattan Singh by two cheques. The AO on one hand treated this amount as brokerage income of the assessee and on the other hand made the addition u/s 68 of the Act which itself is contrary to the law. The ld. CIT(A) has confirmed the action of the AO by observing as under:-

> ‘’(xiv) Therefore, in view of the above discussion and looking to the totality of the facts and circumstances of the case, it is held that the aforesaid sum of Rs. 4 crores received by the appellant from Shri Ratan Singh was nothing but commission income of the appellant for the year under consideration and thus it is held that the AO was justified in making addition of Rs. 4 crore to the income of the appellant and hence the same is hereby sustained.’’

The ld. CIT(A) observed that this amount was commission income of the assessee and the AO was justified in making addition of Rs. 4.00 crores to the income of the assessee. In this case, the source from where the money has come to the account of the assessee is not in doubt as this amount has been received by two cheques (each of Rs. 2.00 crores) both dated 26-11-2007 from Shri Rattan Singh. The assessee claims that this amount was received by him for purchasing the land and it was not commission income. The CBI has also conducted enquiry in this case and before CBI the assessee has also deposed that this amount was an advance for purchase of the land given by Shri Rattan Singh. This addition was made only on the basis of the statement of Shri Rattan Singh recorded u/s 131 (1) of the Act. Shri Rattan Singh was an interested party who had claimed this amount of expenditure as commission from his income. The assessee was also not given an opportunity to cross examine Shri Rattan Singh for making such statement. The Hon'ble Supreme Court in the case of CCE vs Andaman Timber Industries (supra) held that *‘’not allowing the*

assessee to cross examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because the assessee was adversely affected''. Thus not providing opportunity to cross examine Shri Rattan Singh whose statement has been made the basis for making this addition is a serious flaw on the part of the Revenue. It is also important to note that CBI has also given the finding that said amount was paid merely as an advance and not as brokerage commission. The AO of Shri Rattan Singh had disallowed this amount wherein it has claimed as expenditure paid to the assessee as commission. The relevant para 5 to 7 of Shri Rattan Singh order are reproduced hereunder:-

- "*In absence of any corroborative evidence filed by the Shri Rattan Singh the payment received by Shri Dharampal Singh from him amounting to Rs. 4.00 crores as commission it is in the fitness of the things that reference to the* ***findings given by the CBI authorities, who were probing and investigating into this matter, have given the finding that on enquiry from Shri Dharampal Singh it was stated by him that he did not receive any commission from Shri Rattan Singh in F.Y. 2007-08****. He further stated that Shri Rattan Singh give him Rs. 4,00,00,000/- on 26.11.2007 in two cheques of ABN Amro Bank to purchase the land at Gurgaon but as Shri Rattan Singh did not make any further payment in scheduled time hence he could not purchase the land and Rs. 4,00,00,000/- was still outstanding which Shri Dharampal Singh will pay to Shri Rattan Singh.*

- ***This finding of the CBI authority clearly indicate that the claim of Shri Rattan Singh in his statement recorded u/s 131 of having***

paid commission was absolutely bogus and eyewash which is not acceptable at this end *and more so when he has nothing to say in this regard despite several opportunities given by the AO.*

- *The CBI authorities have also found from their investigation from M/s Vikram Electric Equipment Pvt. Ltd., company which has said to have purchase various lands at Gurgaon through the assistance of Shri Rattan Singh, who had been instrumental to the company in procurement, demarcation and taking possession of the lands at villages Kherki Daula, Sikohpur, Hassanpur and Sakatpur. For these services this company paid Shri Rattan Singh commission of Rs. 6.30 crores in F.Y. 2007-08 and on 22.11.2007 out of the said commission the company paid him Rs. 5,58,62,100/- after deducting TDS Rs. 71,37,900/- on the gross amount of Rs. 6.30 crores.* ***This finding of the CBI authority is correct as the same TDS amount has been claimed by Shri Rattan Singh in his return of income filed by A.Y. 2007-08*** *wherein he has shown gross receipts of Rs. 6,46,31,152/- which included the payment made by the above company of Rs. 6.30 crores. They have also enquired from them statement of Bank Account No. 1380300 of Shri Rattan Singh that the said account was credited with Rs. 5,58,62,100/- on 22.11.2007in form of two deposits received on transfer from account No. 1095104 amounting to Rs. 26,60,100/- and Rs. 5,32,02,000/-.* ***In this regard it is worthwhile to mention that from the various deals of land purchases made by the company through Shri Rattan Singh reveal all together different land details than submitted by the company before the CBI authorities which again shows that the assessee never came out with his true state of affairs at any stage of assessment proceedings as well as proceedings of section 263 before the worthy CIT, Bikaner.*** *The CA of assessee also misled the department by way of claim of brokerage expenses of Rs. 5,02,00,800/- to Shri Dharampal Singh who in his statement stated altogether different facts that that payment of Rs. 4,00,00,000/- through the cheques of ABN Amro Bank dated 26.11.200 were actually given for purchase of land and not as brokerage commission.* ***In view of above discussion and facts of the case the AO has disallowed the entire expenses claimed including commission payment of Rs.5,02,00,800/- in the case of Shri Rattan Singh for the assessment year 2008-09.''***

Thus all these facts and circumstances lead to the conclusion that the amount received by the assessee was not commission but advance.

Keeping these facts in view, we direct to delete the addition of Rs. 4.00 crores by allowing Ground No. 2 and 3 of the assessee.

5.0 In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 24 -05-2018.

Sd/-	Sd/-
(विजय पाल राव)	(भागचन्द)
(Vijay Pal Rao)	(Bhagchand)
न्यायिक सदस्य /Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 24 /05/ 2018
*Mishra
आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Dharam Pal Singh, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 2 (5), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.98/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar