

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA No. 6082/Del/2014
Assessment Year: 2011-12**

ACIT, CC-11,
ROOM NO. 364,
ARA CENTRE,
JHANDEWALAN EXTN.,
NEW DELHI
(APPELLANT)

vs. SMT. SUMEDHA PATHAK,
C-175, PUSHPANJALI
ENCLAVE, PITAMPURA,
NEW DELHI – 110 034
(AQWPP9875A)
(RESPONDENT)

AND

**CROSS OBJECTION NO. 207/Del/2015
(IN ITA NO. 6082/DEL/2014)
Assessment Year: 2011-12**

SMT. SUMEDHA PATHAK,
C-175, PUSHPANJALI
ENCLAVE, PITAMPURA,
NEW DELHI – 110 034
(APPELLANT)

VS. ACIT, CC-11,
NEW DELHI
(RESPONDENT)

Department by : Sh. S.S. Rana, CIT(DR)
Assessee by : Sh. Ved Jain, Adv. & Sh. Ashish
Goyal, CA

ORDER

PER H.S. SIDHU, JM

The Revenue has filed the appeal and Assessee has filed the Cross Objection against the impugned order dated 29.08.2014 passed by the Ld. CIT(A), New Delhi

pertaining to assessment year 2011-12. The grounds raised by the Revenue read as under:

1. *The order of the CIT(A) is not correct in law and facts.*
2. *On the facts and circumstances of the case the Ld. Commissioner of Income Tax(A) has erred in law in deleting the addition of Rs. 41,565/- made by the AO on account of profit made on sale of gold in cash.*
3. *On the facts and circumstances of the case the Ld. Commissioner of Income tax(A) has erred in law in deleting the addition of Rs. 46,09,580/- made by AO on account of investment in jewellery.*
4. *On the facts and circumstances of the case the Ld. Commissioner of income Tax(A) has erred in law in deleting the addition of Rs. 54,27,849/- made by the AO on account of interest payment to Vijay Dixit Group.*
5. *The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal.*

2. The grounds raised in the Assessee's Cross Objection read as under:-

1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of income Tax (Appeals) is bad both in the eye of law and on facts.*
2. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A against the*

appellant and the assessment framed under Section 143A/143(3) are in violation of the statutory conditions of the Act and the procedure prescribed under the law and as such the same is bad in the eye of law and liable to be quashed.

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the order passed by the AO under Section 153A is bad and liable to be quashed as the same has been framed consequent to a search which itself was unlawful and invalid in the eye of law.*
 4. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the proceedings initiated under Section 153A are bad in law in the absence of any incriminating material belonging to the assessee being found during the search.*
 5. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the notice issued under Section 153A by the AO is bad in law and as such. The assessment framed in consequence thereof is liable to be quashed.*
 6. *The respondent craves leave to add, amend or alter any of the grounds of cross objection.*
3. The brief facts of the case are that a search and seizure operation under Section 132(1) of the Income Tax Act was conducted at the residential premises and

business premises of Sh. Rajesh Kumar Kanodia who is father in law of the assessee on 28.3.2011. During the course of the assessment proceedings, the AO raised the issue of low gross profit rate in respect of the trading in bullion carried on by the assessee. Accordingly, he made an addition of Rs. 41,565/- by applying a gross profit rate of 0.2%. The AO also made an addition of Rs. 46,09,580/- on account of the jewellery found during the course of the search. The AO also made an addition of Rs. 54,27,849/- on account of unexplained interest income from Vijay Dixit Group. Aggrieved by the order of the AO, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 29.08.2014 rejected the various legal contentions raised by the assessee. However, the Ld. CIT(A) on merit deleted all the three additions. Aggrieved with the order of the Ld. CIT(A), the Revenue is in appeal and the assessee has filed Cross Objection. The Ld. AR at the threshold, submitted that he is not pressing the cross objection filed by the assessee. Accordingly, the same is dismissed as "not pressed".

REVENUE'S APPEAL

4. The Ground no. 1 & Ground no. 5 are general in nature and therefore, need not be adjudicated.

4.1 As regards Ground no. 2 relating to deletion of addition of Rs. 41,565/- on account of enhancement of the gross profit rate is concerned, we find that Ld. CIT(A) has deleted this addition on the basis of the findings recorded by him in the case of Mrs. Kumkum Kanodia for A.Y. 2008-09. The addition in the case of Mrs. Kumkum Kanodia were deleted by the Ld. CIT(A) as per the order placed at Paper Book Pages 151 to 156 on the basis of the finding recorded by the Ld. CIT(A) in the case of group concern i.e. Vasudeva Jewellers Pvt. Ltd. for A.Y. 2005-06. The relevant findings of the Ld. CIT(A) in this order were to the following effects:

"4.8.6 *I have considered the submissions of the AR and the assessment order. The AO has made the addition on the ground that the GP rate declared by the assessee was at lower side and that the GP rate in the group cases are not constant and cannot be verified from the details filed by the assessee. He proceeds to make an addition in GP rate of 0.2% to cover up the possible leakage of revenue by the assessee during the year under consideration. Thus it is noted that the entire addition is an ad hoc*

addition without any specific empirical basis. How the AO has arrived at the GP rate of 0.2% is not ascertainable from the order. The AO states in the order that the sales made by the assessee is at lesser price than the market rate on various occasions. However, this is a general statement without any specific instances which could be considered for adjudication. The AO also states that the date and timing of sale of gold cannot be said with certainty and the price of sale considered by the assessee in the cash voucher cannot be verified in the absence of any details of buyers. This observation again is not specific and cannot be subjected to adjudication at this state. Even otherwise, it is not in dispute that the appellant has furnished the books of accounts with purchase and sale details/ledgers and day to day stock register with quantitative details. There appears to be no mandate or requirement that the assessee should record the name and address of all the parties in the sale bills when the same is made across the counter in cash. The assessing

officer has not disputed the total turn over of the assessee as he has adopted the GP rate on the declared turn over itself. Further, there is also no dispute on the appellant's submissions before the AO that it has filed VAT returns before the appropriate authorities, the copies of which have also been furnished before the AO. There is also no dispute about the assessee furnishing details of purchase of gold from bank/ MMTC and furnishing of other details in support of opening stock, sales, closing stock and cash deposits in bank accounts. The AO has also not countered or pointed out any deficiencies in the modus operandi of the business model as submitted before him "reproduced at page 3 of the assessment order".

4.8.7 The AO has also not countered the summary of the arguments/ submissions taken before the AO as reproduced by him at the later part of page 3 and the beginning part of the page 4 of the assessment order. It is also observed that the AO has not reproduced the entire contents

of the written submissions of the appellant dealing with the cash sales and absence of names and addresses of the buyers in the cash sales. The relevant portion of the assessee's written submissions which have been omitted to be reproduced in the assessment order which are directly dealing with the said issues is reproduced below for ready reference:

Execution of sales and disclosures in books of accounts

It involves following steps

1 Execution of sales

- a. Orders for purchase of commodity with MMTC and other reputed organization suppliers are placed upon receipt of enquiry by the customers. Such orders are delivered by the suppliers at prevailing rates of the commodity at the time of supplies.*
- b. Upon receipt of the supplies and costs thereof it is ensured that the supplies be made at a rate so*

that at least minimum of the cost be recovered.

c. Further, as per market tend prevalent in the trade it is the practice that the supplies are made at a rate on which the orders from customers are booked by them and not on the date of delivery. Thus considering the volatile nature of market where the prices are frequently fluctuating there is an obvious likely situation where the sales are recorded at a rate that may be lower and higher than the market rates.

d. However, due precautions commensurate with the knowledge, expertise and experience of management is taken that even in adverse situations no sale be made at a price lower than costs however

since the market is uncontrollable predictable even after taking due precautions the possibility of loss in some cases cannot be ruled out where the prices of the commodity have risen after the booking received from customers.

e. For the sales so made, bills are duly raised and cash received thereof is properly accounted for in books of accounts.

f. As discussed earlier, the assessee is mainly engaged in the business of Manufacturing, fabricate, import, export, trading and otherwise dealing in Silver, Gold and Diamond Jewellery, precious and semi precious stones, Due to the nature of items and its significant valuation, the turnover runs in hundreds of crores of rupees. Since, the entire purchases are being made from

*suppliers on national international
repute and big organizations like
MMTC etc. there is a huge
pressure of timely payment to
them by us otherwise they start
charging heavy interest on daily
basis on the outstanding amount.*

*In support following documents
have already been placed on
record for your reference and
records:*

*a. Stock movement Sheet
containing details of purchases
and sale.*

*b. Copies of relevant purchases
and sales bills.*

*c. Market rates of commodity
obtained from internet in
support of cost of sales
recorded in books.*

*2. Disclosures made in accounts and
records*

a. However, considering the market and business peculiarities and cut throat competition in the line of business, the assessee is dealing, it is not practicable for the assessee to insist the purchasers, making cash purchases from the assessee, to disclose their fully names and addresses, and therefore, on cash bills names and address are not/ not fully recorded. It may be appreciated that even otherwise in if the buyer had stated wrong names and addresses, the we are bound to record whatever names and addresses has been given, as the assessee has no reason to doubt the version of the buyer. In this line of business, normally, the buyers are reluctant to disclose their identity and when the assessee has shown entire sales amount in cash, which is duly recorded in books and audited as such even by tax auditors. Without prejudice

it may also be appreciated that in any case no disclosure of names and addresses of the purchasers is not going to adversely affect the interest of the assessee or revenue.

b. The assessee is duly maintaining day-to-day quantitative details of purchase and sales made by it. The Quantitative tallies of purchases and sales made and record thereof is duly maintained which were even examined by investigating authorities and it is a matter of fact on record that no deviation thereof was found in a conclusive proof of not only the facts stated above but also the genuineness involved thereof.

c. The cash sales so made is duly recorded in the books of accounts and cash thereof after meeting necessary expenses, recorded in books is deposited in bank accounts as and when required so after considering working capital requirements and other

contingencies. As a consequential evidence reference is drawn to the fact that major amount received through cash sales was deposited in bank and duly shown in books of accounts which is an automatic acid test and proof of genuineness of facts involved.

d. In this connection reference is also respectfully drawn to sales tax returns already filed, being yet again a proof of the fact that the assessee has fully paid the sales-tax on sales, which was liable to be debited in profit and loss account. In view of the facts stated above it is thus undoubtedly that all the sales executed by the company are not only duly recorded in the books of accounts but also the accounts regularly maintained in the course of business, duly audited under the provisions of the Act and it is a matter of fact borne out by the audit reports that they are free from any qualification by the

auditors. This read is conjoint with outcomes of search wherein nothing in contradiction was found sternly suggests that it should be taken as correct, unless there are strong and sufficient reasons to indicate that they are unreliable.

4.8.8 Considering the above, I am of the view that in the absence of any specific empirical deficiencies pointed out by the AO, the accounts of the assessee could not be doubted especially in respect of the GP rate. The AO is not disputing the purchase figures nor the sales figures. He has not pointed out any instance of out of book sales or bogus purchases. The kind of observations made by the AO could be made against any assessee. There is always possibility that a businessman would be attempting to reduce the taxable profits. However, such mere possibility, without any specific evidence cannot be a ground to make an ad hoc addition. Further, it is noted that the AO has adopted a certain GP

rate without even specifically explaining why and on what basis he has adopted that rate. In the present case the appellant has been filing the VAT returns and the AR has pointed out that the trading results are in perfect synchrony with the P & L figures furnished in the return of income. Unless the AO is able to point out specific instance of sale of gold jewellery at lower than the market rate it would not be possible to uphold the decision of the AO. The whole assessment order only contains very general observations of the AO, but do not give any specific instances based on which he has made such remarks. Therefore, I do not find any merit in this kind of ad hoc additions. It is also noted that there is merit in AR's argument that the addition is otherwise unsustainable as the AO has not rejected the books of accounts. In this regard reliance has been placed by the AR on the decision of Hon'ble Delhi Bench of ITAT in the case of ACIT Vs Sh. Vijay Kumar Aggarwal (ITA

No. 4183/Del/2012 dated 28/06/2013)

wherein it has been held as under:

"4. After considering the arguments of both the sides and the facts of the case, we do not find any infirmity in the order of learned CIT(A). The Assessing Officer has mentioned that the profit on sale of paintings is ranging between 100% to 1000%. However, on what basis he made such observation is best known to hi. The learned CIT (A) has recorded the finding that in assessee's own case, last year, the gross profit disclosed was 14.78% while the gross profit in the year under consideration was better. Further, the question of application of GP rate can arise only on the rejection of books

of account as per Section 145(3). For rejection of books of account, the Assessing Officer has to record the finding that he is not satisfied about the correctness or completeness of the accounts of the assessee or the method of accounting provided under Section 145 (1) or Accounting Standards as notified under Section 145 (2) have not been followed by the assessee. In this case, the Assessing Officer has not recorded any such finding which may entitle him to reject the books of account and apply the gross profit rate. If the GP rate disclosed by the assessee is low in the opinion of the Assessing Officer, that entitles the Assessing Officer to probe deep into the accounts of

the assessee but, that by itself, is not sufficient for rejection of books of account under Section 145 (3) and application of higher GP rate. Evidently, in this case, the Assessing Officer has not rejected the books of account of the assessee and, therefore, in our opinion, the estimation of gross profit by applying the GP rate of 50 % was not justified. We, therefore, uphold the order of learned CIT (A) and dismiss the appeal filed by the Revenue”.

4.8.9 Considering all the above, I hereby delete the addition made on account of enhancing the GP rate by 0.2% made by the AO with the remark that it was being made to cover up the possible leakage of revenue by the assessee.”

4.2 Similar addition was also made in the case of Father-in-law of the assessee namely Mr. Rajesh Kumar Kanodia

for the A.Y. 2005-06 and the same was deleted by the Ld. CIT(A) relying upon the above order passed by him in the case of Vasudeva jewellers Pvt. Ltd. The appeal filed by the Revenue in the Rajesh Kumar Kanodia for A.Y. 2005-06 to 2008-09 came up before the ITAT being ITA No. 4241-4243/Del/2014 dated 28th July, 2017 wherein the ITAT has upheld the decision of the Ld. CIT(A). The relevant findings recorded by the ITAT in the above said case reads as under:

"16. We have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the AO accepted the opening stock, purchases, closing stock and cash deposits in the bank accounts which were recorded by the assessee in his books of accounts maintained in the regular course of business. The AO doubted the value of the sale for the reason that the date and timing of sale of gold could not have been said with certainty and that the price of sale considered by the assessee in the

cash voucher could not be verified in the absence of any details of buyers, however, no inflated sale was pointed out. On the contrary, the sale was duly declared by the assessee in his VAT returns filed before the appropriate authorities (copies of which were furnished before the AO). In the present case, it is noticed that the AO applied GP rate of 0.2% on estimate basis and made the ad-hoc addition. However, no specific instance of inflated purchase or suppressed sale was pointed out and no specific defect was pointed out in the books of accounts. The assessee furnished the books of account with purchase/sale details, ledger and day to day stock register with quantitative details, the same had been accepted by the AO. Therefore, the ad-hoc addition made by the AO, by applying the GP rate of 0.2% was not justified, particularly when no comparable case was brought on record

wherein such a profit was earned. We, therefore, considering the totality of the facts as discussed hereinabove are of the view that the Id. CIT(A) rightly deleted the addition made by the AO by following his own order for the assessment year 2005-06 in the case of M/s VasudevaJewellers Pvt. Ltd. (supra), against which an appeal was filed by the department before the ITAT in ITA No. 4245/Del/2014 which has been dismissed vide order dated 12.07.2016. In that view of the matter, we do not see any merit in this appeal of the department.

17. In another appeals of the department for the assessment years 2006-07 and 2007-08, similar issues are involved having identical facts, the only difference is there in the amount involved. Therefore, our findings given in former part of this order in respect of assessment year 2005-06 shall apply with the same force for the assessment years 2006-07

and 2007-08. Accordingly, the appeals of the department are dismissed.”

4.3 We find that both the parties agreed that the facts of the case are identical and hence respectfully following the aforesaid precedent of the ITAT, we upheld the order of the Ld. CIT(A) on this issue and ground no.2 raised by the Revenue stands rejected.

4.4 Apropos Ground no. 3 which is relating to addition of Rs. 46,09,580/-on account of jewellery is concerned, we find that during the course of the search on Mr. Rajesh Kumar Kanodia on 28th March, 2011, a total jewellery of Rs. 87,82,230/-was found. At the time of the search, statement of Mr. Rajesh Kumar Kanodia was recorded whereby he clarified that a part of the jewellery found pertains to the Jewellery received on approval and balance pertains to the family. Mr. Rajesh Kumar Kanodia also submitted evidences in support thereof at the time of the search itself. Based on the explanation given by Mr. Rajesh Kumar Kanodia, no seizure was made of the jewellery. During the course of the assessment, the AO asked the assessee to explain the jewellery found at the time of search. The AO accepted the explanation of the assessee with regard to the balance jewellery belonging to

the family .However he did not accept the explanation regarding the jewellery of Rs. 46,09,580/- which was received and explained at the time of the search having been received on approval. The AO was of the view that the jewellery as per the valuation report is stated to be of 18 Carat Gold whereas the ornament mentioned in the invoice are of 14 carat gold. On this basis, the AO made the addition. The Ld. CIT(A) has given a detailed reasoning for deleting the addition which are reproduced as under:

"4.3.6 I have considered the submissions of the AR. The main reason for rejecting the appellant's claim of the jewellery to be stock-in-trade of M/s PashupatiJewellers is the discrepancy noted by the AO in the invoice of M/s PashupatiJewellers. The ornaments mentioned in the invoice are of 14 carats gold whereas the valuation report mentions the same to be of 18 carat gold.

4.3.7 The AR has explained that the jewellery found at the premises were very much made of 14 carats gold and not of 18 carats gold. The invoice of M/s PashupatiJewellers was produced before the authorized officer on the day of search

itself and only on the basis of the said invoice and explanation, the jewellery found was not seized but released. The AO has not appreciated the facts and explanation. The invoice produced before the AO was not a fabricated one. This very invoice was present before the authorized officer. The jewellery was also physically present before him on the day of search. And only after comparing the jewellery as per the invoice and as physically available the authorized officer had taken a decision not to seize the jewellery but released it. Had there been any iota of doubt about items not matching with the invoice, the authorized officer would have raised question then and there itself and he would not released the jewellery. In view of this, the view taken by the AO was unsustainable and also unreasonable. The AR also stated that the AO has ignored the fact that the diamond jewellery is normally studded in 14 carats gold and it is only under rare cases that the diamond studded jewellery would be made of 18 carats gold.

4.3.8 I note here that the question of jewellery being of 18 carats gold and not of 14 carats has arisen in the assessment order. There is no evidence of the AO raising such question to the appellant during the assessment proceedings. There is also no mention of this dispute in the reply given to notice u/s 142(1) by the appellant. The AO has also not made any mention of issuing a show cause notice to the appellant to clarify as to how the gold ornaments as per valuation report were of 18 carats gold and those mentioned in the invoice were of 14 carats gold. If the AO had any observation on this issue, I am of the view that, he should have raised a specific query in this regard. Since the jewellery have already been released (not seized at all) it would be impossible at a later stage (than while releasing the jewellery) to confirm / verify the observations of the type made by the AO. If this question been raised by the authorized officer before releasing the jewellery the same could have been verify / confirmed by looking into the jewellery which was physically available before

all. But to raise such issue at a later stage would be a futile exercise. Hence even though there is merit in AO's observation based on the valuer's report, the same cannot be actually verified or confirmed as the jewellery has already been released. No jewellery seizure was made in spite of finding such huge quantity of jewellery in the premises. Therefore, the only logical inference that can be drawn is that the authorized officer verified the items in the invoice with the items physically found and observed no discrepancies. Therefore, it cannot be conclusively held that the jewellery found at the premises were not these mentioned in the purchase invoice. If there was any dispute on the same, the same was required to be clarified before release of jewellery and not later.

4.3.9 I also note here that Sh. Rajesh Kanodia has given the same explanation before the authorized officer on the day of search as well as before the AO during assessment proceedings. There is no change of stance. Thus it does not appear to be an afterthought. Therefore, I do not

find any merit in holding that jewellery which was released (presumably on the ground that the same was found in stock-in-trade of M/s PashupatiJewellers) is unexplained. I also note here that the appellant had submitted before the AO, evidences showing inclusion of the said jewellery in the closing stock of M/s PashupatiJewellers and also the breakup of the said closing stock evidencing inclusion of the jewellery.

4.3.10 During the appeal proceedings, the AR also submitted that the jewellery found during the search proceedings cannot be added in the hands of the assessee, as at no point of time assessee has claimed ownership of the said jewellery. He explained that appellant is part of the family which has 6 persons, making the entire addition in the hands of the assessee was uncalled for. He submitted that the search was carried out on Mr. Rajesh Kumar Kanodia. It was based on his statement recorded during the search that the jewellery was released. At no point of time assessee's statement has been

recorded. There was no search on the assessee. Even if any adverse inference has to be drawn, the same should be drawn against the persons in whose case search has taken place and in whose case jewellery has been found. The appellant is a lady and part of the household and in the absence of any material or evidence to demonstrate that she made the investment in the jewellery, the AO cannot assume that the jewellery pertains to her.

4.3.11 It is noted that the entire jewellery valued in hands of appellant has been held to be unexplained which cannot be true considering the financial status of the appellant. Taking into account of above factors, I here deleted addition of Rs.46,09,580/- and allow the ground."

4.5 We have gone through the aforesaid finding and after considering the same and the evidences available, we are in agreement with the findings of the Ld. CIT(A). This jewellery stands released at the time of the search itself on the basis of the invoice shown by the assessee at the time of the search itself. No doubt has been raised about the invoice. The invoice produced before the AO has

not been doubted. This very invoice was before the authorized officer at the time of the search. The jewellery was also physically present before him on the date of search. Thus, the assumption made by the Ld. CIT(A) that the Authorized Officer would have been released the jewellery only after comparing the jewellery as per the invoice and as physically available is a correct assumption. There is no doubt about items not matching with the invoice. However, the Ld. DR was fair enough to admit that there is no other difference in the item and the same are matching. Thus, the view taken by the Ld. CIT(A) is a correct one and we do not find any infirmity therein and accordingly uphold the action of the Ld. CIT(A) on this issue in dispute and therefore, the Ground no. 3 raised in Revenue's appeal is rejected.

4.6 Apropos Ground No. 4 which is relating to deletion of addition of Rs. 54,27,849/- on account of interest payment to Vijay Dixit Group is concerned, we find that this addition was made by the AO on account of the interest computed on the basis of a seized document relating to Vijay Dixit Group. The AO computed a total interest of Rs. 1,73,83,464/- on the basis of the seized document and out of which he allocated a sum of Rs. 1,19,55,614/- in the

hands of Mr. Rajesh Kanodia and Rs. 54,27,849/- in the hands of the assessee. The Ld. CIT(A) had deleted the addition made in the hands of the assessee following the order passed by him in the case of Mr. Rajesh Kumar Kanodia. The order of the Ld. CIT(A) in the case of Mr. Rajesh Kumar Kanodia came up in appeal before the ITAT. The ITAT has confirmed the order of the Ld. CIT(A) in the case of Rajesh Kumar Kanodia in ITA No. 5680/Del/2014 dated 3.04.2018. The relevant findings of the ITAT reads as under:

"14. We have considered the rival arguments made by both the sides, perused the material available on record and the Paper Book filed on behalf of the assessee. We find during the course of search at the premises of the assessee the hard disk was seized and documents bearing page no.1 to 9 were retrieved from the said hard disk which contained certain payments made to Vijay Dixit group in the form of cheques, pay orders and in shape of cash, the total of which comes to Rs.23,70,10,708/-. On being questioned by the Assessing Officer, the assessee made elaborate submissions and also filed reconciliation statement before the Assessing Officer. The assessee

admitted to have certain business transaction with Vijay Dixit group of companies. While the Assessing Officer accepted the cheque payments and the pay orders found from the retrieved documents, the Assessing Officer held that the cash payments made to Vijay Dixit group amounting to Rs.3,11,10,600/- is the cash paid by the assessee which is unexplained. Similarly, he calculated the interest paid at the rate of 3.3334% and made addition of Rs.1,60,97,818/-. The Assessing Officer similarly made addition of Rs.85,00,489/- being the overdraft obtained by the assessee as unexplained payment made to Shri Vijay Dixit group. He also made another addition of Rs.2,00,000/- being the difference in cash paid by the assessee. Thus, in nutshell the Assessing Officer made addition of Rs.3,98,11,089/- as unexplained payment to Vijay Dixit group and interest thereon at Rs.1,60,97,818/-. We find the Id. CIT(A) deleted the addition made by the Assessing Officer, the details of which have already been reproduced in the preceding paragraphs. We do not find any infirmity in the order of the Id. CIT(A). A perusal of the order of the Id. CIT(A)

shows that page no.5 of the retrieved document shows certain cash deposit in ICICI and Bank of Baroda and the party against such transaction is mentioned as Senior Builder Ltd. A perusal of the bank account of Senior Builder Ltd. which was furnished before the Assessing Officer shows that these transactions are duly reflected in the bank account of Senior Builder Ltd. Rs.12,00,000/- shown as deposit in bank of Baroda on 21.01.2011 is very much reflected and matches with the bank account statement of Senior Builder Ltd.. Similarly, an entry of Rs.2,00,000/-on 08.02.2011 also matches with the credit entry in the bank statement of Senior Builder Ltd. maintained with the Bank of Baroda. The various deposits on other dates in the bank accounts of Senior Builder Ltd. also tally with the paper retrieved from the hard disk of the assessee. The bank account of Senior Builder Ltd. maintained with Bank of Baroda also is a disclosed account and not a concealed account. Therefore, we agree with the finding given by the Id. CIT(A) that it would be difficult to say that the amounts duly transacted through banking channels by Senior Builder Ltd could be unexplained. We

further find that despite receiving detailed reply including reconciliation of the payments made by the assessee group and despite having the copies of bank account of Senior Builder matching with the entries on page no.5, the Assessing Officer never cross-checked the same with Vijay Dixit group. The interest calculated by the Assessing Officer at the rate of 3.3334% per month has also no basis. The various factual findings given by the Id. CIT(A) could not be controverted by the Id. DR. We find the Assessing Officer has accepted the cheque payments and pay orders mentioned on the papers retrieved from the hard disk but has conveniently ignored the explanation of the assessee regarding the cash payment although the cash payments were reflected in the bank account of Senior Builder Ltd. When Senior Builders Ltd. is an assessee and the bank account is not an undisclosed one, therefore, all those cash deposits made in the bank account could not have been from the assessee. In this view of the matter and in view of the detailed reasoning given by the Id. CIT(A), we find no infirmity in his order. Accordingly, the order of the Id. CIT(A) is

upheld and the ground raised by the Revenue is dismissed.”

4.7 We find that both the parties fairly admitted that the facts are identical and issue is covered by the aforesaid decision of the ITAT, hence, respectfully, following the aforesaid precedent, we uphold the order of the Ld. CIT(A) and accordingly ground no. 4 raised by the Revenue stands rejected.

5. In the result the Revenue's Appeal as well Assessee's Cross Objection stand dismissed.

Order pronounced on 04/06/2018.

Sd/-

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Dated: 04/06/2018

SR BHATNAGAR

Copy forwarded to: -

1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR, ITAT
- TRUE COPY

By Order,

ASSISTANT REGISTRAR