

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

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

आयकर अपील सं./ITA No. 442 & 443/JP/2018
निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15

Arvind Gotewal, S/o- Shreeram Gotewal, B-7, Shiv Marg, Bani Park, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABUPG 9494 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar &
Ms. Isha Kanoongo (Adv)
राजस्व की ओर से / Revenue by : Shri Varinder Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 24/07/2018
उदघोषणा की तारीख / Date of Pronouncement : 27/07/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

Both these appeals filed by the assessee emanates from the common order of the Id. CIT(A)-I, Jaipur dated 28/03/2018 for the A.Y. 2013-14 and 2014-15 respectively. The only issue involved in these appeals are against confirming the addition of Rs. 5,68,00,000/- in the A.Y. 2013-14 and Rs. 3,78,50,000/- in the A.Y. 2014-15.

2. The assessee is individual and filed his return of income for the A.Y. 2013-14 on 27/02/2014 declaring total income of Rs. 11,71,020/- and

return of the A.Y. 2014-15 was filed on 28/03/2015 declaring total income of Rs. 13,83,590/-. The assessment was finalized U/s 143(3) of the Income Tax Act, 1961 (in short the Act) at Rs. 5,79,71,020/- in the A.Y. 2013-14 and Rs. 3,92,33,590/- in the A.Y. 2014-15 by making disallowance U/s 69A of the Act.

3. Being aggrieved by the order of the Assessing Officer, the assessee carried the matter before the Id. CIT(A), who had confirmed the action of the Assessing Officer in both the assessment years.

4. The brief facts of the case are that the appellant has filed its return of income for the AY 2013-14 on 27/02/2014 declaring total income at Rs. 11,71,020/- which includes remuneration and business income from handicraft business. A search was conducted at the residential premises of Shri Aditya Malpani, wherein certain documents were seized and as per these documents, various payments were made to the appellant by SNG group amounting to Rs. 9,46,50,000/- including payments through cheques of Rs. 3,18,00,000/- during the period 16.03.2013 to 29.09.2013 for purchase of property. A copy of these documents as well as statement of Shri Aditya Malpani was provided to the appellant during the assessment proceedings. Initially in his statement, the assessee has denied any transaction as recorded on these papers. During the course of

assessment proceedings, the AO has recorded the statement of Shri S. N. Gupta of SNG group, wherein it was stated by him that all the entries made on these papers were not related to him, however he has purchased a land at Ajmer Road and the purchase consideration was paid to Shri Aditya Malpani, who in turn had paid the said money to the appellant. However, Shri S. N. Gupta did not confirm the exact amount for such purchase. It was also stated by Shri S. N. Gupta that the registered sale deed for the land was executed by the appellant on behalf of Saluja group. During the assessment proceedings, the AO has obtained two sale deeds dated 09/05/2013, executed by the appellant as Authorized Representative of M/s Saluja Construction Co. Ltd. and M/s Chetanya Buildcon Pvt. Ltd. The AO has further recorded the statement of Shri Aditya Malpani, wherein it was again confirmed by him that these seized documents were related to the sale of land to M/s SNG and M/s Yaduvanshi Lands Pvt. Ltd.

5. While pleading on behalf of the assessee, the Id AR has submitted as under:

1. A search and seizure operation on the residential premises of Shri Aditya Malpani/SNG Group were took place on 26.02.2014. During the course of search loose papers were found at the residential premises of Shri Aditya Malpani. The main paper on the basis of which additions have been made is page 5 of annexure A-2 which is scanned and reproduced below:

Annex. A -

TO SNG BY ADITYA				TO ARVIND GOTEWALA BY SNG			
Date	Amt	Remarks	S.no	Date	Amt	Remarks	
15-03-2013	1100000	Advance by Aditya	1	16-Mar	1100000	Advance by Aditya	
18-Mar	2400000	Contribution in 50 by Aditya	2	18-Mar	5000000	24 by Aditya	
20-Mar	2200000	Contribution in 177	3	20-Mar	17700000	22 By Aditya	
21-Mar	1200000	direct to Agotewala	4	21-Mar	1200000	By Aditya	
22-Jan	700000		5	23-Apr	2500000	[10+15]	
01-Apr	1300000		6	25-Apr	6000000	8 by aditya	
26-Mar	300000	direct to SNG by Rohit Kayathwal	7	26-04-2013	2500000		
08-Apr	200000		8	22-Apr	500000	to narayan yadav for rosta by Aditya	
06-Apr	500000		9	27-Apr	4500000		
13-Apr	2000000	direct to SNG Ramesh Mundra Payment	10	29-Apr	3500000	55.00 S.no 10+11+12	
25-Apr	8000000		11	30-Apr	1750000	55.00 S.no 10+11+12	
27-Apr	2500000	direct to SNG Ramesh Mundra Payment	12	01-May	250000	55.00 S.no 10+11+12	
27-Apr	200000		13	04-May	5000000	[60 given 10 taken back]	
22-Apr	500000		14	09-May	2350000	for registry (3.5 by Aditya)	
09-May	400000		15	25-Aug	1000000	to mohan ji	
09-May	350000		16	29-Aug	2000000	to mohan ji	
	200000	direct to SNG Aditya Customer Rohit Kr Vijay	17	04-Sep	1000000	to mohan ji	
	337500	direct to SNG Aditya Customer Rohit Kr Vijay	18	29-Sep	5000000	to mohan ji	
	200000	direct to SNG Aditya Customer Rohit Kr Vijay					
21-May	2500000	to Mohan ji by Aditya for Agotewala Pymnt					
25-Aug	1000000	direct to SNG By Gaurav Gupta adjsted in Int of DDM					
12-09-2013	500000						
Cash Total	21687500		Cash Total	4353000	000		
Cheque Total	6887750	as per details available with aditya	Chq Total	31800000		As per receipts	
G.Total	28575250		G.Total	34650000			

161

Submitted to SNG on 04/10/13
 1.
 2.
 3.
 4.

During the course of assessment proceedings statement of Shri Aditya Malpani was recorded from there the page no. 5 was seized and he was examined with reference to this paper. A copy of the statement of Shri Aditya Malpani is available By paper book page number 1 to 2. Shri Aditya Malpani is his statement recorded on 16.03.2016 deposed that this paper has recording of payments made in respect of land purchased at Garden Estate, D-Block, Mahapura, Ajmer Road, Jaipur by SNG Group and Yaduvanshi Landbase Pvt Ltd through Shri Arvind Gotewala. Similarly statement of Shri Satya Natayan Gupta of SNG Group was also recorded on 16.03.2016 u/s 131 of the Income Tax Act, 1961. He was also examined with reference to this page. Shri S.N. Gupta deposed that this paper was in respect of payments made by him in respect of land purchased at Ajmer

Road from Saluja Group of companies and registration of land has also been completed. A copy of statement of Shri S.N. Gupta is available on paper book page number 3 to 5. Thus Shri Aditya Malpani and S.N. Gupta have confirmed that the page no. 5 of annexure A-2 was having recordings and notings of payments made by them for purchase of land from Saluja Group of companies through Shri Arvind Gotewala.

It is submitted that the assessee i.e. Shri Arvind Gotewala was authorized by Saluja Constructions Company Ltd, 30, Community Centre, Basant Vihar, New Delhi as well as by Chetanya Buildcon Pvt. Ltd, 30, Community Centre, Basant Vihar, New Delhi for executing sales or land situated at Mahapura, Jaipur to SNG Real Estate Pvt Ltd and Yaduvanshi Landbase Pvt Ltd. Copy of resolutions passed by the companies authorizing to Shri Arvind Gotewala for executing sale deeds in respect of the aforesaid land are available on paper book page number 6 to 7. Subsequently the land in question was sold as under: -

Sr. No.	Particulars of land	Seller	Purchaser	Amount as per deed/ mode of payment	Date of registration
(i)	Mahapura Land	M/s Chetanya Buildcon Pvt. Ltd through authorized representative Shri Arvind Gotewala	SNG Real Estate Pvt. Ltd through director Shri S.N. Gupta	70600000 (Amount transacted by Cheque)	09.05.2013
(ii)	Mahapura Land	Saluja constructions Company Ltd. through authorized Representative Shri Arvind Gotewala	½ share by SNG Real Estate Pvt. Ltd through director Shri S.N. Gupta and Yaduvanshi Landbase Pvt. Ltd. through director Shri Mohan Lai Yadav	8200000 (Amount Transacted by Cheques)	09.05.2013

Copies of title deeds in respect of the aforesaid transactions are available on paper book page number 8 to 22.

It is submitted that on being question by the Learned Assessing Officer regarding the aforesaid payment noted on page no. 5 the assessee submitted that he acted only as an authorized person for selling the

aforesaid lands. The land belonged to the aforesaid two companies and the consideration was also received by them. It was further submitted by him that the entire consideration as shown on page no. 5 of annexure A-2 was accounted for by the aforesaid companies. The accounting of the amounts noted on page 5 are explained as under: -

Sr.No.	Date	Amount	Remarks
1.	16-Mar	1100000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
2.	18-Mar	5000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
3.	20-Mar	17700000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
4.	21-Mar	1200000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
5.	23-Apr	2500000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
6.	25-Apr	6000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
7.	26-04-13	2500000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
8.	22-Apr	500000	It related to Shri Narayan Yadav as mentioned in the paper itself.
9.	27-Apr	4500000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
10.	29-Apr	3500000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
11.	30-Apr	1750000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
12.	01-May	250000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
13.	04-May	5000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
14.	09-May	2350000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
15.	25-Aug	1000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
16.	29-Aug	2000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
17.	04-Sep	1000000	Accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date
18.	29-Sep	5000000	Rs. 4716000/- is accounted in the books of Chetanya Buildcon Pvt. Ltd. on the same date and Rs. 2,84,00,000/- is accounted in the books of M/s Saluja Constructions Company Ltd
		62850000	

Copy of accounts as appearing in the books for of Chetanya Buildcon Pvt Ltd and Saluja Constructions Company Ltd for the aforesaid period are available on paper book page number 23 to 26. Thus it is submitted that the entire payments noted on this page stand fully accounted for in the books of the sellers name M/s Chetanya Buildcon Pvt. Ltd and M/s Saluja Constructions Company Ltd for which Shri Arvind Gotewala was authorized. Thus when the amount was fully accounted for nothing remained to be explained. There was no case for treating any amount as unexplained u/s 69A of the Income Tax Act, 1961. Moreover Shri Arvind Gotewala apparently was an authorized person. He was not the owner of the lands hence no addition could have been made his hands. The Learned Assessing Officer completely failed to appreciate the facts in the right perspective and unwantedly indulged in making addition that too in a wrong hand.

2. Full sale consideration disclosed by the sellers in their IT returns: -

It is submitted that the apparent consideration shown in the sale deeds is as mentioned above Rs. 7,06,00,000/- in the hands of Chetanya Buildcon Pvt Ltd and Rs. 82,00,000/- in the hands of Saluja Constructions Company Ltd. The perusal of the sale deeds disclosed that these amount have been received fully by cheque. In the sale deeds there is no recitation of receipt of any cash amount. However the companies have accounted for full consideration in their books of accounts which is as under:

Sr .No.	Name of company	Consideration as per sale deed dated 09.05.2013	Full consideration in the books of accounts	Consideration shown in the IT returns
(i)	Chetanya Buildcon Pvt. Ltd	70600000	153166000	153166000
(ii)	Saluja Constructions Company	8200000	18262000	18262000

It is submitted that for purposes of stamp duty the sale consideration disclosed was less but in the accounts books and for purposes of income tax returns full consideration has been disclosed which includes the cash amount also. This full consideration disclosed by both the companies covers/includes/ accounts for the cash transactions noted on page 5 of annexure A-2 which amount to Rs. 6,23,50,000/- (excluding an amount of

Rs. 5,00,000/- which pertain to Shri Narayan Yadav as mentioned on page no. 5 itself.) It is submitted that out of this amount of Rs. 6,23,50,000/- Rs. 2,50,00,000/- pertains to Assessment Year 2013-14 and Rs. 3,73,50,000/- pertains to Assessment Year 2014-15. The Learned Assessing Officer was most unjustified in treating the amount of Rs.2,50,00, 000/- as unexplained investment u/s 69A of the Income Tax Act, 1961 in the hands of the assessee. The above facts lay thread bare and make it abundantly crystal clear that the cash payments noted on page 5 of annexure A-2 stand fully accounted for by the seller companies in their books of account and the companies have offered capital gains on such total amount of sale. Copy of IT returns and computation of total income of M/s Chetanya Buildcon Pvt Ltd and M/s Saluja Constructions Company Ltd are available on paper book page number 27 to 37. For your kind perusal. Thus the addition of Rs. 2,50,00,000/- made in the hands of the assessee deserves to be deleted. The Learned Assessing Officer was wrong to hold that the assessee failed to explain the notings on page 5. The Learned Assessing Officer further erred in holding that the amount received belonged to the assessee.

Both the companies also wrote letters dated 21.03.2016 addressed to the Learned Assessing Officer to the effect that as against the sale consideration noted in the title deed dated 09.05.2013 they have booked the full sale consideration including the cash amount in their accounts books for the actual consideration. Chetanya Buildcon Pvt. Ltd has addressed letter dated 21.03.2016 that the document no. 2013397019732 on 09.05.2013 was for actual sale consideration of Rs. 15,31,66,000/- as against Rs. 7,06,00,000/- shown in the sale deed. Similarly Saluja Constructions Company Ltd have also addressed letter dated 21.03.2016 stating that document no. 2013397019746 was for actual consideration of Rs. 1,82,62,000/- as against Rs. 82,00,000/- shown in the sale deeds. Copies of these letter are available on paper book page number 38 to 39. These

papers are of the nature of conclusive evidence. There was no case for the Learned Assessing Officer to reject them without bringing any material on record to controvert these. These papers make it ample clear that the assessee was not involved in any way in the sale consideration amount. No addition could be made on account of sale of land or on account of payments noted on page 5 of annexure A-2.

3. Addition of Rs. 3,18,00,000/- alleged to be by cheque: -

The Learned Assessing Officer has also made addition of Rs. 3,18,00,000/- in the hands of the assessee on the basis of the same page no. 5 of annexure A-2 as it is noted that Rs. 3,18,00,000/- was paid by cheque. However the paper does not contain the following:-

- (i) Details of cheque number
- (ii) Date on which cheques were tendered
- (iii) Name of the bank
- (iv) How many cheques were issued
- (v) Person in whose favour cheques were issued.

In view of the above deficiency a duty was cast upon the Learned Assessing Officer to have obtained the aforesaid particulars from the purchasing party i.e. SNG Group. No effort was made by the Learned Assessing Officer Learned Assessing Officer to obtain the detail. Although statements of Aditya Malpani and S.N. Gupta was obtained. In the facts and circumstances of the case there was no basis for making addition in the hands of the assessee. In any case any amount of cheque would have to go the some bank account. The Learned A.O. has not established that any such amount was received by cheque in the bank account of the assessee. Further it is case where the assessee has acted as an authorized person for M/s Chetanya Buildcon Pvt. Ltd. and M/s Saluja Constructions Company Ltd. Both these companies have accounted for payments made by cheque as mentioned in their title deeds. M/s Chetanya Buildcon Pvt. Ltd has accounted for sale consideration of Rs. 7,06,00,000/- by cheques. The

details are available in the sale deed. Copy of which is available on paper book page number cited supra. Similarly M/s Saluja Constructions Company Ltd has accounted for some of Rs.82,00,000/- as mentioned in the sale deed vide cheque no. 302436 dated 26.04.2013 of SBBJ, Pital Factory, Jaipur. It is the submission of the assessee whether the amount was by cash or by cheque it did not belong to the assessee and there was no case for making any addition in his hands. Further when the transaction of cash have been fully accounted for in the hands of both the companies, how could it be that the payments by cheque would remain unaccounted. In these facts and circumstances the addition made in the hands of the assessee is totally misplaced, uncalled for and unwanted. The therefore deserves to be deleted.

4. The provisions of section 69A have wrongly been applied –

It is submitted that the Learned Assessing Officer has made the additions in the hands of the assessee u/s 69A of the Income Tax Act, 1961. The provisions of section 69A are not at applicable to the facts of the case. The provisions are quoted below: -

Unexplained money, etc.

69A. Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.

The provisions are applicable only when the assessee is found to be the owner of any money, bullion, jewellery or other valuable article. In the case there was no search at the premises of the assessee and nothing like money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article was found. Therefore these provisions are not

applicable. The addition has wrongly been made and deserves to be deleted.

5. Addition has been on presumption, assumption and conjectures: -

It is submitted that instead of dealing with the core issue and basic facts the Learned Assessing Officer has included in verbose and loquacious. It is submitted that at the initial stage being scared and under the wrong advise of the then counsel the assessee avoided stating the facts for which he should have been forthright. The Learned Assessing Officer has indulged in repeating this omission and commission of the assessee time and again which leads nowhere. The documentary evidences are superior in nature and have to be accepted. It is established position of law that verbal statements shall be subservient to registered documentary evidences. In this case the cash payments reflected on page 5 are fully accounted for by the companies who sold the land. Therefore it is of little significance that the assessee did not divulge these facts right in the beginning. But this mistake of the assessee cannot be used as a weapon by the Learned Assessing Officer for making additions. He learned Assessing Officer cannot be blind to stark broad day light facts. He supposed not to ignore the established facts and evidences put before him. The Learned Assessing Officer has just made the addition on the basis of assumption that it was the assessee who sold the land. The Learned Assessing Officer has further presumed that the cash payments noted on page 5 belonged to the assessee. Whereas the Learned Assessing Officer had no case to reject the evidences put before him i.e. the sale deeds, the copy of accounts and copy of IT returns of the companies, the statements of the purchasing parties. The Learned Assessing Officer had no case to controvert these evidences which were of conclusive nature. In these circumstances the additions made by the Learned Assessing Officer on the basis of presumption, assumption and conjecture deserve to be deleted. It is submitted that the

selling group i.e. Saluja Constructions Company Ltd Group is admitting the sale of land to SNG Group and SNG Group is admitting purchase of land from Saluja Constructions Company Ltd Group then where is the case of treating the sale in the hands of the assessee. The assessment order is nothing but a cook and bull story or just making castles in the air just devoid of any merit.

6. Receipt of commission by the assessee of Rs. 9,00,000/-

It is submitted that the assessee received a sum of Rs. 9,00,000/- as commission for arranging sale and acting as authorized person for getting the sale registered on behalf of Saluja Constructions Company Ltd Group. In this regard a copy of bill raised by the assessee on 03.05.2013 is available on paper book page number 40. The assessee received payment on 07.05.2013 of Rs. 8,10,000/- after deduction of TDS of Rs. 90,000/-. The receipt of commission stands disclosed in the IT return for Assessment Year 2014-15. Copy of IT return and computation of total income and copy of account of Chetanya Buildcon Pvt Ltd reflecting the aforesaid commission of Rs.9,00, 000/- are available on paper book page number 41 to 45. The receipt of commission reflects the extent of involvement of assessee in the transactions.

Copies of submissions made before the Learned Assessing Officer are also available on paper book page number 46 to 52. Copies of submission made before the learned CIT appeal are also available on page no. 58 to 90.

The learned CIT appeal while dismissing the appeal of the assessee has observe in para IV on page 10 of the appellate order as :-

I have duly considered the submission of the appellant assessment order and the material placed on record. It is noted from the registered sale deeds dated 09.05.2013 that the appellant has sold the lands at Jaipur as

Authorised Representative of M/s Chetanya Buildcon Private Limited and M/s Saluja Construction Ltd. to M/s SNG Real Estate Pvt. Ltd. (50% Share) and M/s Yaduvanshi Landbase Pvt. Ltd (50% Share) for sale consideration Rs. 7.06 Crore and Rs. 82 Lakh respectively and the said payments were made through cheques. It is further noted that vide letter dated 21.03.2016, addressed to the Assessing Officer, these two Saluja Group Companies has confirmed that higher sale consideration was booked by them in their books of accounts on account of sale of land at Jaipur. It would be appropriate to reproduce the scanned images of these two letters as under:

Thus, it could be summarized as under:

Sold by	Actual Consideration	Sale consideration as per registered sale deed	Payment made in cash
M/s Chetanya	15,31,66,000	7,06,00,000	8,25,66,000
M/s Saluja	1,82,62,000	82,00,000	1,00,62,000
Total	17,14,28,000	7,88,00,000	9,26,28,000

It may be mentioned that as per the copies of income tax returns for the Assessment Year 2013-14, available on record, M/s Chetanya and M/s Saluja has declared the sale consideration of the lands at Jaipur at Rs. 15,31,66,000/- and Rs. 1,82,62,000/- respectively. However, it is noted from their computation of income that a number of lands were sold at Jaipur by these companies during the Assessment Year 2013-14 and the lands sold for consideration of Rs. 15,31,66,000/- and Rs. 1,82,62,000/- were stated to be sold on 22/03/2013 whereas, the registered sale deeds were executed on 09.05.2013, which pertained to the Assessment Year 2014-15 and not to the Assessment Year 2013-14.

It is further noted that in the seized document, the payment through cheque as per registry was stated at Rs. 3,18,00,000/- and as per the details of cheques stated in the registered sale deeds, I fail to find out any single cheque of Rs. 3,18,00,000/- or a number of cheques, whose total comes to

Rs. 3,18,00,000/-. It is further noted that vide board resolutions dated 30.04.2013 of M/s Chetanya and M/s Saluja, the appellant was authorized only to sign and execute all sale related documents such as Sale Deed etc. pertaining to the land of these companies at Jaipur and the appellant was not authorized to collect payment from the buyers from these companies. However, the fact remained that the payments were collected by the appellant from SNG group, as confirmed by Shri SN Gupta and Aditya Malpani for sale of land.

It is also noted from the copy of account of M/s SNG group in the books of accounts of M/s Chetanya that 2.60 hectares of land at Jaipur was sold to M/s SNG and M/s Yaduvanshi for a sale consideration of Rs. 15,31,66,000/- and the payments amounting to Rs. 5.50 Crore, including cash of Rs. 4.50 Crore and cheque of Rs. 1 Crore, was received during the Financial Year 2013-14, against the outstanding amount of Rs. 9,81,68,000/-, the payment to the tune of Rs. 12,81,66,000/-, including cheque payment of Rs. 9.06 Crore and cash payment of Rs. 3,75,66,000/- was made. It appears that excess payment in cash was made to M/s Chetanya Buildcon P. Ltd. to explain the cash entries in the seized documents.

Similarly, It is noted from the copy of account of M/s SNG Group as appearing in the books of accounts of M/s Saluja that 0.31 Hectares of land at Jaipur was sold by M/s Saluja for a consideration of Rs. 1,82,62,000/- on 22.03.2013 and the cash payment of Rs. 50 lakh and chques payment of Rs. 1.50 Crore was received during the Financial Year 2012-13 itself i.e. a sum of Rs. 17,38,000/- was received in excess by M/s Saluja. It is pertinent to mention here that the cheque no. 302436 dated 26.04.2013 for a sum of Rs.82,00,000/- as stated in the registered sale deed dated 09.05.2013 is not appearing in the copy of account of SNG Group in the books of accounts of M/s Saluja as submitted during the appellate proceedings. It is interesting to note that during the Financial Year 2013-14, sum of Rs. 3 Crore through

cheques and Rs.. 50,62,000/- in cash was also received by M/s Saluja leaving behind excess payment of Rs. 3,68,00,000/- of M/s SNG group as on 31.03.2014.

The appellant has filed so many documents related to M/s Chetanya and M/s Saluja but did not file the copies of the documents dated 22/03/2013 through which the sales amounting to Rs. 15,31,66,000/- and Rs. 1,82,62,000/- were recorded by them in their books of accounts. I fail to understand that on what basis these companies have declared the sale of land under consideration in the Assessment Year 2013-14, when the sale deed was registered on 09/05/2013 only i.e. in the FY 2013-14 relevant to the AY 2014-15. It appears that the entries in the books of accounts of the seller companies have been made to explain the cash received by the appellant from Shri Aditya Malpani as stated in the seized documents under consideration. However, the same cannot be accepted in view of the detailed reasons mentioned earlier. It is also to be noted that the appellant was also a director in a number of companies dealing in real estate. It is pertinent to mention here that as per the seized documents and as admitted by the seller companies, the total cash payment was to the tune of Rs. 8,28,50,000/-, whereas, the cash Rs. 6,28,50,000/- was stated to be paid by SNG Group/Aditya Malpani. The AO is hereby directed to inform to the AO of SNG Group (SNG Estate and Yadhuvanshi) and M/s Chetanya/Saluja accordingly. The question is when the buyer has made cash payments to the extent of Rs. 6,28,50,000/- only, then who had made the balance cash payment of Rs. 2 Crore. It is further noted that Shri S N Gupta, in his statement has not confirmed the transactions stated on the seized documents. In fact, he did not even confirm the amount of transaction for purchase of property at Ajmer Road. On the other hand, in his statement, it was stated by Shri Aditya Malpani that he has paid the sum of Rs. 9,46,50,000/- stated on the seized documents for purchase of

land for SNG Group and he did not specify that the said payments were made for purchasing land from M/s Chetnaya/Saluja.

Therefore, in view of the above discussion, conduct of the appellant and the findings of the AO as recorded in the assessment order, it is held that the AO was justified in making addition of Rs. 5.68 Crore to the income of the appellant and hence, the same is hereby sustained.

The above finding given by the Learned CIT(A) is contrary to the facts of the case as the assessee was not owner of land. The Learned CIT(A) did not consider the statement of Shri Satya Narayan Gupta as well as Shri Aditya Malpani on this account. Shri Satya Narayan Gupta and Aditya Malpani has categorically stated that they have made payments on behalf of Chaitnaya Buildcon Pvt. Ltd. and Saluja Construction Company for the purchase of land in Jaipur. M/s Chaitanya Buildcon Pvt. Ltd. and M/s Saluja Construction Company has accepted that the payment was duly accounted for in their books of accounts and the same has been received through the assessee from Shri Satya Narayan Gupta against sale of land. The assessee has also shown commission income in his return that was also accepted by the Learned Assessing Officer.

Moreover the Learned CIT(A) on page 15 of the order has also given direction to inform Assessing Officer's of SNG group and M/s Chaitnaya Buildcon Pvt. Ltd and M/s Saluja Construction Company for the discrepancies found in the statement of cash payment and receipt on this account. When the Learned CIT(A) has given direction for this and this means the transaction pertains to them. According to Learned CIT(A) the purchase and sales transactions are between Satya Narayan Gupta (SNG Group) and Yaduvanshi Group (M/s Chaitnaya Buildcon Pvt. Ltd and M/s Saluja Construction Company). Then how the addition can be sustained in

the hands of the assessee. Therefore the whole addition deserves to be deleted.”

6. On the other hand, the Id CIT DR has relied on the orders of the authorities below.

7. We have heard both the parties and perused the material available on the record. A search and seizure operation was carried out at the premises of Shri Aditya Malpani and SNG Group on 26/2/2014. Loose papers were found and on the basis of which, additions have been made. In these loose papers, amount of cash and cheque was written with dates. In the statement, Shri Aditya Malpani has stated that this paper has recording of payments made in respect of land purchased at Garden Estate, D-Block, Mahapura, Ajmer Road, Jaipur by SNG Group and Yaduvanshi Landbase Pvt. Ltd. through Shri Arvind Gotewala (the assessee). Shri Satya Narayan Gupta of SNG group has also stated that this paper is in respect of payments made by him in respect of land purchased at Ajmer road from Saluja Group of companies. He also stated that the registration of the land has also been completed. These statements are filed in the paper book. The assessee Arvind Gotewala was authorized by Saluja Constructions Company Ltd., 30- Community Centre, Basant Vihar, New Delhi as well as by Chetanya Buildcon Pvt. Ltd. at the same address for executing the sale of land situated at Mahapura, Jaipur

to SNG Real Estate Pvt. Ltd. and Yadubanshi Landbase Pvt. Ltd.. A copy of resolution passed by these companies authorizing the assessee Shri Arvind Gotewala for executing the sale deed were also available in the paper book. The land was sold by Chetanya Buildcon Pvt. Ltd. to SNG Real Estate Pvt. Ltd.. The sale deed was signed by Arvind Gotewal on behalf of Chetanya Buildcon Pvt. Ltd.. Similarly, Saluja Constructions Company Ltd. also sold land through Arvind Gotewal i.e. 1/2 portion to SNG Real Estate Pvt. Ltd. and 1/2 to Yaduvanshi Landbase Pvt. Ltd.. The amount reflected in the seized material is also accounted for in the books of Chetanya Buildcon Pvt. Ltd.. The amount of cheques and cash reflected in the seized material also reflected in the books of Chetanya Buildcon Pvt. Ltd. and Saluja construction Company Ltd.. The details of the same are in the written reply produced (supra) of the assessee. The entire payment including the cash reflected on these pages is fully accounted for in the books of seller Chetanya Buildcon Pvt. Ltd. and Saluja Construction Company Ltd.. In such a situation, the claim of the assessee that he was working just as a authorized person to facilitate the registration formalities appears to be genuine. The land towards which payments were made was owned by Chetanya Buildcon Pvt. Ltd. and Saluja Construction Company Ltd.. The amount of cash/cheque paid by buyer are reflected in books of sellers. Thus there is no scope to make addition in the hands of assessee who was

acting just as authorized agent. In such a situation, in our considered view, there is no scope for making addition U/s 69A of the Act in the assessee's hand. Therefore, the appeal of the assessee is allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 27/07/2018.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(भागचंद)
(BHAGCHAND)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 27th July, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Arvind Gotewal, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 3(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 442 & 443/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar