

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 919/JP/2016

निर्धारण वर्ष / Assessment Year : 2007-08

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 932/JP/2016

निर्धारण वर्ष / Assessment Year : 2007-08

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 920/JP/2016

निर्धारण वर्ष / Assessment Year : 2008-09

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ ITA No. 933/JP/2016

निर्धारण वर्ष / Assessment Year : 2008-09

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 921/JP/2016
निर्धारण वर्ष / Assessment Year : 2009-10

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 934/JP/2016
निर्धारण वर्ष / Assessment Year : 2009-10

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		

आयकर अपील सं./ITA No. 922/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 935/JP/2016
निर्धारण वर्ष / Assessment Year : 2010-11

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		

आयकर अपील सं./ITA No. 923/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 936/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		

आयकर अपील सं./ITA No. 924/JP/2016
निर्धारण वर्ष / Assessment Year : 2012-13

Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	A.C.I.T., Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 937/JP/2016
निर्धारण वर्ष / Assessment Year : 2012-13

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		

आयकर अपील सं./ITA No. 938/JP/2016
निर्धारण वर्ष / Assessment Year : 2013-14

A.C.I.T., Central Circle-2, Jaipur.	बनाम Vs.	Prakash Chand Sharma, C-42, Gokul Path, Vaishali Nagar, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGMPS 2776 H		

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Rolee Agarwal (CIT-DR)

सुनवाई की तारीख / Date of Hearing : 25/05/2018
उदघोषणा की तारीख / Date of Pronouncement : 30/07/2018

आदेश / ORDER

PER: BENCH

These are set of six cross appeals filed by the assessee and the revenue for the A.Ys. 2007-08 to 2012-13 and an appeal filed by the revenue for the A.Y. 2013-14 directed against the respective orders of the Id. CIT(A) arising from the assessment framed U/s 143(3), read with Section 153A and 153B(1)(b) of the Income Tax Act, 1961 (in short the Act) pursuant to the search U/s 132 of the Act.

2. All these appeals are being heard together and for the sake of convenience and brevity, a common order is being passed.

3. The brief facts leading to the controversy in these cross appeals are that the assessee is individual and engaged in the business of financing. He is also a director in two finance companies namely Shubhdeep Finance

Co. Pvt. Ltd. and Prakash Deep Finance Co. Ltd. A search and seizure operation was carried out U/s 132 of the Act in the case of assessee and group concerns/associates on 31st July, 2012. During the course of search and seizure action, cash, jewellery, books of account and other incriminating documents were found and seized. The documents found and seized includes the documents relating to finance activities known as "100 days scheme" containing the transactions from 01/6/2009 though the assessee was engaged in this activity since long time. In the statement recorded U/s 132(4) of the Act dated 31st July, 2012, the assessee disclosed and surrendered an income of Rs.10.00 crores on account of cash, investment and other documents found and seized in the search and seizure action. Subsequently, the A.O. issued noticed U/s 153A of the Act for the A.Y. 2007-08 to 2012-13 on 10/03/2013. In response to which the assessee filed return of income for these five years declaring income of Rs. 8,46,57,240/- divided into five years. The assessee also filed return of income for the A.Y. 2013-14 on 29/7/2013 declaring total income of Rs. 14,87,160/-. The Assessing Officer while completing the assessment U/s 143(3) read with Section 153A/153B(1)(b) of the Act has made various additions in the returned income. The details of the income declared by the assessee, addition made by the Assessing Officer, which was reduced/deleted by the Id. CIT(A) are as under:

AY	Income declared	Addition made by the AO	Addition sustained by the CIT(A)
2007-08	17,29,650	46,63,770	26,63,770
2008-09	17,69,250	1,07,78,700 + 13,26,600	37,78,700 + 13,26,600
2009-10	45,40,510	1,32,75,966 + 8,32,800	22,75,060 + 8,32,800
2010-11	1,30,94,390	26,84,725 + 29,75,859	11,84,725 + 29,75,859
2011-12	3,20,29,420	82,59,551	82,59,551
2012-13	3,00,06,860	69,54,913	69,54,913
2013-14	14,87,160	2,16,92,730	Nil

Since the Id. CIT(A) has allowed part relief to the assessee, therefore, both the assessee as well as the revenue are aggrieved by the impugned orders of the Id. CIT(A) and filed cross appeals for the A.Ys. 2007-08 to 2012-13. For the A.Y. 2013-14, the Id. CIT(A) has deleted the addition made by the Assessing Officer, therefore, the revenue has filed the appeal against the impugned order of the Id. CIT(A).

4. In the appeals for A.Y. 2007-08, the assessee as well as the revenue have raised following grounds in the cross appeals:

Grounds of assessee's appeal:

- “1. The Id. CIT(A) has erred on facts and in law in estimating the undisclosed interest income at Rs. 40,00,000/- as against Rs. 13,24,230/- declared by the assessee thereby confirming an addition of Rs. 26,63,770/-.
2. The assessee craves to amend, alter and modify any of the grounds of appeal.

3. *The appropriate cost be awarded to the assessee.*”

Grounds of revenue’s appeal:

- “1. *Whether on the facts and the circumstances of the case Id CIT(A), was right in restricting the addition from Rs 46,63,770/- to Rs 26,63,770/- made on account of undisclosed interest income without appreciating the fact that based on seized material and statements given by the assessee during the course of search/post search, the opening balance of Rs 8 Crore is taken as on 01.04.2006 and on such capital the assessee earned interest income by scheme floated in all the years.*
2. *Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the “existing liability” does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.*
3. *The appellant craves the right to amend alter or add to any of the grounds of appeal given above.*”

5. Ground No. 1 of the assessee’s appeal as well as the grounds of revenue’s appeal are common regarding the addition made by the Assessing Officer in respect of undisclosed interest income on estimate basis of Rs. 46,63,770/- was restricted by the Id. CIT(A) to Rs. 26,63,770/-. From the seized material found during the course of search and seizure action, the Assessing Officer observed that the assessee floated a finance scheme which consists of 100 days duration and members of the scheme are required to pay off a fixed sum of amount for continuous 100 days, therefore, the amount given on loan was to be

repaid by the members alongwith principal and interest within a period of 100 days on daily basis. The Assessing Officer has cited an illustration that if a member took a loan of Rs. 10,000/- from the assessee, he is required to repay principal alongwith interest total amounting to Rs. 12,000/- in 100 equal installments of Rs. 120/- each. Likewise for a loan of Rs. 20,000/-, there will be 100 equal installments of Rs. 240/- each total amounting to Rs. 24,000/-. Thus, the Assessing Officer estimated the income from interest ranges from 60% to 72% as it was also disclosed by one of the assessee's employee Shri Mahaveer Prasad Sharma in his statement recorded U/s 132(4) of the Act on 31/7/2012. Since the seized record contains the entries of finance activity w.e.f. 19/6/2009 therefore, prior to the said date, there was no material disclosing any income on this activity. The Assessing Officer took the balance sheet as on 30/09/2009 showing capital of Rs. 8,72,54,810/- and estimated the undisclosed income for the period 01/4/2006 to 17/06/2009. The assessee in the return of income, declared the income from the finance scheme on estimated basis which was not accepted by the Assessing Officer and found to be on lower side considering the fund involved in the financing business prior to 01/4/2006. The Assessing Officer accordingly took opening balance of Rs. 8.00 crores as on 01/4/2006 and on said capital, the Assessing Officer

estimated interest income for the A.Y. 2007-08 at Rs. 60.00 lacs. Since the assessee declared the interest income of Rs. 13,26,230/-, accordingly, the addition of Rs. 46,63,770/- was made by the Assessing Officer on account of undisclosed interest income.

6. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) and submitted that the assessee was suffering from Tuberculosis (TB) during these years and therefore,, the assessee could not do any business of financing due to ill health. This fact was not disputed by the Assessing Officer. Considering these facts, the Id. CIT(A) estimated the interest income for the A.Y. 2007-08 at Rs. 40.00 lacs as against Rs. 60.00 lacs estimated by the Assessing Officer and consequently a relief of Rs. 20.00 lacs was granted to the assessee on this account.

7. The Id. AR of the assessee has submitted that during the search and seizure action, no evidence was found or seized relating to the quantum of funds advanced or interest income earned by the assessee prior to 01/04/2006. The Id AR has pointed out that the Assessing Officer had admitted this fact that there was no record available for the period covered by the three assessment years i.e. 2007-08, 2008-09 and 2009-10 and part period of A.Y. 2010-11. The Assessing Officer has not given

any reasonable basis for estimation of interest income but an ad hoc estimation has been made by the Assessing Officer, which was sustained by the Id. CIT(A) on ad hoc basis without having any material to support the addition made by the Assessing Officer and sustained by the Id. CIT(A). He has further contended that there is no scientific basis or sound reasoning for estimation of income as the Assessing Officer made estimation of interest income for three years at Rs. 60.00 lacs, 1.20 crores and 1.70 crores, which is very inconsistent and arbitrary. The Id AR has pointed out that the assessee has estimated income on actual earnings which is supported by the application of income during the period w.e.f. assessment year 2007-08 to 2009-10. The details of such investment is verifiable from the inflow and outflow statement produced by the Assessing Officer and is also enclosed with the impugned order of the Id. CIT(A). The assessee has declared total interest income of Rs. 82,82,470/- for these assessment years, which is matching with the application of income during the said period. Thus, the income declared is more than the investment found for these periods. Hence, the Id AR has submitted that the assessee has given all relevant details supporting the claim of the assessee alongwith the fund flow statement that the addition made by the Assessing Officer and sustained by the Id. CIT(A) on

estimation basis without any tangible material is not justified and the same may be deleted.

8. On the other hand, the Id CIT DR has submitted that the opening balance of Rs. 8.00 crores as on 01/4/2006 is not in dispute and therefore, the Assessing Officer has estimated the interest income by considering the said amount by taking a backward calculation of fund available with the assessee deployed under 100 days scheme. The Assessing Officer has duly given rebated on account of ill health of assessee during the period and therefore, estimation made by the Assessing Officer is not without any basis but it is very well passed on the scientific method of computing the income by taking the opening balance of Rs. 8.00 crores as on 01/4/2006 and then computing the backward estimation of income from that date downwards, therefore, the Assessing Officer has estimated only Rs. 60.00 lacs for the A.Y. 2007-08, which was enhanced to Rs. 1.20 crores in the next subsequent years. The margin on the scheme is so high that the amount estimated by the Assessing Officer on the capital of Rs. 8.00 crores as very reasonable and rather conservative. The Id CIT DR has further contended that as per the seized material outstanding balances were found which shows that an outstanding advance up to 31/3/2016 was Rs. 23.00 lacs comparing the

said amount of outstanding advance with the data available in the seized material the estimation of income made by the Assessing Officer is proper and justified. The Id CIT DR has thus submitted that the Id. CIT(A) has granted the relief to the assessee without any basis and the income estimated by the Assessing Officer may be restored.

9. We have considered the rival submissions as well as relevant material on record. There is no dispute that prior to 19/6/2009, no evidence was found during the search and seizure action regarding any income on account of interest from 100 days finance scheme. Though, the assessee has not disputed the fact that the assessee has been carrying out this activity since long time and also shown the income in the books of account, however, the income shown in the books of account is not matching with the entries found in the seized material. The Assessing Officer has estimated the income by taking the opening balance of capital at Rs. 8.00 crores as on 01/4/2006, which was not disputed by the assessee. However, the assessee contended that due to ill health of the assessee during the said period, as the assessee was suffering from Tuberculosis and therefore, was not able to do any business activity. Hence, the assessee's claim that the income declared by the assessee of Rs. 13,36,237/- for the year under consideration is justified and even

the total income declared by the assessee for the three assessment years i.e. A.Y. 2007-08 to 2009-10 and part of the A.Y. 2010-11 up to 17/6/2009 is matching with the application of income. The assessee has produced fund flow statement showing the income and application of income for all these years. The Id. CIT(A) has annexed the fund flow chart to the impugned order. It is pertinent to note that the assessment framed by the Assessing Officer U/s 143(3) read with Section 153A for the A.Y. 2007-08 to 2009-10 are falling in the category of reassessment as original assessment as on the date of search were not pending and therefore, in absence of abetment of assessments the orders passed by the Assessing Officer are in the nature of reassessment pursuant to the search and seizure action U/s 132 of the Act. It is settled proposition of law that in the reassessment proceedings U/s 153A of the Act, the Assessing Officer can assess an income based on seized material. In absence of any seized material regarding the interest income for the year under consideration, no addition can be made on estimated basis. It is an undisputed fact that the material found during the search and seizure action contains the entries w.e.f. 19/6/2009 and therefore, prior to the said period, no record or material was found to disclose or indicate any income on account of interest on the scheme. Only fact which can be ascertained from the documents is that the assessee was engaged in the

business activity of finance under the scheme known as 100 days scheme. However, in absence of any seized material, the Assessing Officer cannot make an addition on estimate basis. The assessee already declared and surrendered an amount of Rs. 10 crores on account of cash, investment and interest income. Hence, having regard to the facts and circumstances of the case when the Assessing Officer as well as the Id. CIT(A) has accepted the fact that the assessee was suffering from the ailment and was undergoing the treatment of Tuberculosis during the period under consideration then the estimation made by the Assessing Officer as well as the confirmed by the Id. CIT(A) without any proper and reasonable basis and particularly in the reassessment proceedings U/s 153A is not permitted. Even the Assessing Officer has not worked out the income on basis of the funds available with the assessee and employed in the business activity by considering the corresponding application of income which was found during the course of search and seizure action as well as recorded in the books of account of the assessee. Therefore, when the Assessing Officer has not found any significant discrepancy in the income offered by the assessee and corresponding application of income then there is no reason for not accepting the income offered by the assessee. Accordingly, in facts and circumstances of the case when the addition was made by the Assessing Officer purely on ad hoc estimation and without

any tangible material, the same is not sustainable and consequently is liable to be deleted. Hence we delete the addition made by the Assessing Officer and sustained by the Id. CIT(A) on this account. Accordingly, ground No. 1 of the assessee's appeal is allowed and ground No. 1 of the revenue's appeal is dismissed.

10. Ground No. 2 of the revenue's appeal is regarding relief granted to the assessee by the Id. CIT(A) in respect of interest U/s 234B of the Act. During the search and seizure action, the cash of Rs. 6.11 crores belonging to the assessee was seized. The assessee filed applications on 21/3/2013, 27/5/2013, 3/7/2013 and 17/9/2013 for adjustment of the above seized cash against the tax liability. The Assessing Officer though adjusted the said amount but against the final tax liability after levy of interest U/s 234B of the Act.

11. The assessee challenged the action of the Assessing Officer before the Id. CIT(A). The Id. CIT(A) after considering the various decisions on this issue directed the Assessing Officer to recompute the interest chargeable U/s 234B of the Act after giving the credit of the amount in the PD account.

12. Aggrieved by the order of the Id. CIT(A), the revenue has raised this issue before the ITAT. The Id. CIT-DR had submitted that as per

explanation-2 to Section 234B of the Act, no adjustment is allowed of seized cash against the tax liability, therefore, the Id. CIT(A) has committed error in allowing the relief on account of interest chargeable U/s 234B of the Act.

13. On the other hand, the Id AR of the assessee has submitted that the Id. CIT(A) has decided this issue by following various decisions on this point. The explanation-2 to Section 132B of the Act has been introduced in the statute by the Finance Act, 2013 w.e.f. 01/6/2013, therefore, the said explanation is applicable prospectively and is not application for the assessment year under consideration. The Id AR has also referred to the CBDT Circular No. 20/2017 dated 12/06/2017 and submitted that the CBDT has clarified that prior to 01/6/2013, the seized/requisitioned cash can be adjusted against the advance tax liability as held by the various courts and the department has accepted the judgments including the judgment of Hon'ble Punjab & Haryana High Court in the case of Spaze Towers Pvt. Ltd. dated 17/11/2016. Hence, the Id AR has submitted that when the explanation is applicable only prospectively and not applicable in the case prior to 01/6/2013 then the Id. CIT(A) is justified in allowing the adjustment of the seized cash against the advance tax liability.

14. We have heard the rival submissions as well as relevant material on record. The only dispute is regarding cash seized during the search and seizure action is available for adjustment against the advance tax liability and consequently chargeability of interest U/s 234B of the Act. The Id. CIT(A) has considered this issue in para 3.2.3 as under:

“3.2.3 *I have duly considered assessee's submission and also carefully gone through the assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. In this regard, AR contends that as per the law as applicable at that time, Section 132 B (l) of the Act provides for adjustment of assets seized against any existing liability. Further, AR has also relied upon the decision of Hon'ble ITAT Jaipur Bench in case of Sh. Johri Lal Sodhani in AY 2010-11 in ITA No 145/JP/2013 & CO No 09/JP/2013 and Rajan Jhiriwal Vs DCIT ITA No. 73/JP/2013.*

Now, in view of following judicial pronouncements, the liability to pay advance tax is an existing liability and cash seized during the search operation is adjustable against the existing liability:

- * Kesar Kimam Karyalaya (High Court Delhi)*
- * Kanishka Prints Pvt Ltd (ITATAhmadabad)*
- * Sudhar MShetty (ITATMumbai)*
- * Nikka Mai Babu Ram (SOT Chandigarh)*

In case of Nikka Mai Babu, Hon'ble ITAT Chandigarh has observed inter alia as under:

- "8. Quite clearly, it prescribes that the assets seized under s. 132 can be adjusted (a) against the amount of any existing liability under this Act; (b) against the amount of liability determined on completion of assessment under s. 153A; (c) against the amount of liability determined on completion of assessment under Chapter XIV-B for the block period; and (d) against any penalty levied or interest payable in connection with such*

assessment. In other words, s. 132B(1)(i) of the Act empowers the AO to recover the prescribed liabilities out of the assets seized under s. 132 of the Act. As per the CIT(A) and which has been supported by learned Departmental Representative, the liability towards advance tax does not form a part of the expression 'existing liability' appearing in s. 132B(1)(i) of the Act. In our considered opinion, even liability to pay advance tax is per the statutory provisions and we find no plausible reason to ascribe a restricted meaning to the expression 'existing liability' appearing in s. 132B(1)(i) of the Act, as being contended by the Revenue. The argument set up by the Revenue is that the expression 'existing liability' is referred in the context of the IT Act, 1961. The WT Act, 1957, The Expenditure tax Act, 1987, the GT Act, 1958, and the Interest-tax Act, 1974, and since in the other statutes, there is no concept of advance tax, therefore the expression 'existing liability' used in s. 132B(1)(i) cannot be understood to mean advance tax liability under the IT Act, 1961. In our considered opinion, interpretation placed by the Revenue is misplaced and would lead to absurd results.

9. *It is well understood that as per s. 4 of the Act, an assessee is chargeable to income-tax in respect of his total income. Sub-s. (2) of s. 4 prescribes that the income-tax so chargeable shall be deducted at source or paid in advance, where it is so deductible or payable under any provision of the Act. We have observed earlier that advance tax liability is governed by ss. 208 to 210 of the Act. Similarly, s. 140A provides for payment of self-assessment tax on the basis of any return of income required to be filed by the assessee. The relevant provisions also prescribe the dates and the amount of tax required to be paid by an assessee. Therefore, the expression 'existing liability' in s. 132B(1)(i) cannot be read to exclude a particular tax liability, if it can be shown to have existed on a particular date. If the liability to pay advance tax had arisen, it would certainly constitute a part of the 'existing liability' used in s. 132B(1)(i) of the Act.*
10. *In our considered opinion, the doctrine of purposive construction has to prevail in this situation. In the present situation, it is evident that cash was seized from the assessee during search operation and, assessee requested the Department to adjust a part of such cash receipts against the liability of advance tax which arose on account of the income surrendered during the search operation. The Department does not deny possession of the cash since the time of search. Thus, we find no justification for the Revenue to interpret the expression 'existing liability' in s. 132B(1)(i) as not referring to liability of advance tax. Under the IT Act, liability towards advance tax is a part of the scheme of recovery of*

taxes and such liability definitely falls in the expression 'existing liability' used in s. 132B(1)(i) in the facts and circumstances of the case. The reliance pleaded by the CIT(A) on the judgment of the Hon'ble Madhya Pradesh High Court in the case of Ramjilal Jagannath & Ors. vs. Asstt. CIT (1999) 156 CTR (MP) 49: (2000) 241 ITR 758 (MP) is quite misplaced. As per the Revenue, in terms of the said judgment, the seized cash cannot be adjusted towards advance tax liability. We have carefully perused the said judgment and find that the same does not prohibit adjustment of seized assets towards liability to pay advance tax. In any case, we find that judgment of the Hon'ble Madhya Pradesh High Court is relevant in a situation when s. 132(5) was on the statute, which has since been deleted by the Finance Act, 2002 w. e.f. 1st June, 2002. Sec. 132(5) of the Act required the AO to make an enquiry and thereafter make an order to deal with the seized assets. Sec. 132(5) of the Act authorizes the AO to retain in his custody such assets as in his opinion were sufficient to satisfy the aggregate amounts referred to in cls. (ii), (iia) and (iii) of s. 132(5) and obligated him to release the remaining seized assets. In this background, the Hon'ble High Court, on the facts of the case before it, held that unless an order under s. 132(5) of the Act is passed, the AO could not direct that the assets seized be adjusted towards advance tax liability. The Hon'ble High Court specifically noted that it is only after an order under s. 132(5) is passed that the assessee can make a request that the seized amount which is sought to be released in his favour be adjusted or appropriated towards the liability to pay advance tax. Though, in the context of the present assessment year before us, the provisions of s. 132(5) are not applicable and therefore, strictly speaking, the ratio of the judgment of the Hon'ble Madhya Pradesh High Court does not apply, so however it is pertinent to observe that the Hon'ble High Court has not read any blanket prohibition in the Act against adjusting the seized assets against liability for payment of advance tax. Therefore, there is no justification for the CIT(A) to rely upon the order of the Madhya Pradesh High Court in the case of Ramjilal Jagannath (supra) and deny the claim of the assessee.....”

In case of ACIT Central Circle-23 New Delhi Vs. Sh Arun Kumar Gupta, Hon'ble ITAT New Delhi in ITA No 4108/Del/2010 by respectfully following the decision of Nikka Mai Babu(supra) and K K Marketing(Delhi High Court 278 ITR 596) has upheld the decision of CIT(A) and finally directed the AO to re-compute the interest chargeable u/s 234 B &

234C of the Act accordingly after giving credit of amount seized against the advance tax liability fallen due on 15th March 2009.

In case of ACIT Vs Hans Raj Gandhi reported in 37 ITR 418, Hon'ble ITAT Chandigarh has held that assessee was entitled to adjustment of seized cash against advance tax liability and therefore no interest could be charged u/s 234A & 234B in the event of department not responding to assessee's request for adjustment of cash seized against advance tax liability.

Here I would like to refer decision of Hon ITAT Agra Bench in case of ACIT Vs. Sunil C Gupta [ITA No 290/Agra/2013 Dt of pronouncement 28/02/2014] wherein Hon'ble ITAT Agra has held that cash seized to be adjusted against advance tax liability as Explanation-2 to Section 132B of the Act is enacted with effect from 1st June 2013. In this case, Hon'ble ITAT has upheld the observations of Id CIT(A) which are as under - “—

“.....I have carefully considered the assessment order as well as the written submission of the appellant, Remand report and the rejoinder on this issue remand report and the rejoinder, in this case Search and Seizure Operation was carried out in the premises of Shri Sunil Chand Gupta on 10.03.2010 wherein cash amounting to Rs.4,31,36,000/- was seized from the residence and locker and was deposited by the department in the PD account on 10.03.2010 and 19.03.2010. During the course of search the assessee's statement was recorded u/s 134 of the I.T. Act wherein the assessee offered to pay tax on an income of Rs.10 crore for the F.Y. 2009-2010. The estimated tax liability on an income of Rs.10 crore worked out to about Rs.3 crore approx. Since the liability to pay tax had arisen and the cash being seized by the department, the appellant requested the department to adjust Rs.3 crore out of the Rs.4,31,36,000/- seized and deposited in the PD account, it is seen that the assessee made a written request on 29.03.2010 to the Chief Commissioner of income Tax which was duly received and also to the Additional Director of income Tax Investigation, Agra, it also seen that similar request for adjustment letters were written to the DCIT Circle-1, Agra on 29.03.2010 which was duly received in the office on the same day. Further, another letter was written to the CiT-1 on 21.03.2010. Letter dated 05/07/2010 was also written to the DC IT Central Circle stating that

return of income for A.Y. 2010-11 had been filed on 30/6/10 with tax payable of Rs.2,92,25,240/- and therefore requesting the AO once again for adjustment of tax liability with the cash lying in the PD account, in the circumstances, the assessee had done all it could do so as to ensure that cash lying in the PD account would be adjusted towards the advance tax liability. However, it seen that no action was taken on the assessee's petition by any of the authorities before whom the assessee has filed the petition. To my mind, it is an apparent injustice to the appellant to hold on the cash belonging in the assessee in the Government Account and at the same time charge interest for non-payment of advance tax on the due dates, it is dear that the appellant's application for adjustment has been submitted before the various authorities, the seized cash should have been either been adjusted as requested by the assessee to meet the advance tax obligations or the Assessee should have been informed the reasons why the request made by the assessee cannot be acceded to. The Hon'ble Bombay High Court in the case of CiT Vs. Shri Jyotindra B. Modi in order dated 21.09.2011 has clearly held that once the assessee offers to tax the undisclosed income including the amount seized during search, then the liability to pay advance tax in respect of that amount arises even before completion of the assessment. The Hon'ble High Court further held that section 132B(1) of the Act, thus not prohibit the utilization of amount seized during the course of search towards the advance tax liability. The Hon'bie High Court of Punjab & Haryana in the case of CIT Vs. Ashok Kumar reported in 334 ITR 355 has also held on similar facts that the assessee was entitled to adjustment of seized cash against advance tax liability and therefore, no interest could be charged u/s 234A & 234B in the event of the department no responding to assessee's request for adjustment of cash seized against advance tax liability, in view of the following judgments, the action of the AO in charging interest under 234A, 234B & 234C is not justified and hence, directed to be deleted..."

In view of facts and circumstances of the case as discussed above and respectfully following the decisions of aforementioned judicial pronouncements, AO is directed to re-compute the interest chargeable u/s 234 B accordingly after giving credit of amount of Rs. 7,77,400/= being claim made by the assessee in the computation appended with the return (out of seized cash lying in PD A/c date of search 31/07/2012) against the tax liability. Assessee's appeal stands allowed."

We further note that the CBDT vide circular No. 20/2017 dated 12/6/2017 has explained the applicability of the explanation-2 to Section 132B of the Act in para 2 to 4, which is reproduced as under:

“2. Dispute arose between the Department and the assessee with regard to adjustment of such seized/requisitioned cash against advance tax liability etc. Several Courts held that on an application made by the assessee, the seized money is to be adjusted against the advance tax liability of the assessee. Subsequently, Explanation 2 to Section 132B of the Act was inserted by the Finance Act, 2013 w.e.f. 01-06-2013, clarifying that "existing liability" does not include advance tax payable in accordance with the provisions of Part C of Chapter XVII of the Act. However, the dispute continued on the issue as to whether the amendment was clarificatory in nature having retrospective applicability or it has only prospective applicability.

3. Several Courts have held that the insertion of Explanation 2 to section 132B of the Act, is prospective in nature and not applicable to cases prior to 01.06.2013. The SLPs filed by the Department against the judgement of the Hon'ble Punjab and Haryana High Court in the case of Cosmos Builders and Promoters Ltd. 1 and the Hon'ble Allahabad High Court in the case of Sunil Chandra Gupta², have been dismissed. Subsequently, the CBDT has also accepted the judgment of the Hon'ble Punjab & Haryana High Court in the case of Spaze Towers Pvt. Ltd. 3 dated 17.11.2016, wherein it was held that the Explanation 2 to Section 132B of the Act is prospective in nature.

4. Accordingly, it has now been settled that insertion of Explanation 2 to Section 132B of the Act shall have a prospective application and so, appeals may not be filed by the Department on this issue for the cases prior to 01.06.2013 and those already filed may be withdrawn/ not pressed upon”.

Accordingly in view of the binding precedents as well as the CBDT circular, we do not find any error or illegality in the impugned order qua this issue. Hence, this ground of revenue's appeal is dismissed.

15. Grounds No. 2 and 3 of the assessee's appeal and ground No. 3 of the revenue's appeal are general in nature and does not require any adjudication.

16. Now we take the cross appeals for the A.Y. 2008-09. In these appeals the assessee as well as the revenue have raised following grounds of appeal:

Grounds of assessee's appeal:

- "1. The Id. CIT(A) has erred on facts and in law in estimating the undisclosed interest income at Rs. 50,00,000/- as against Rs. 12,21,300/- declared by the assessee thereby confirming an addition of Rs. 37,78,700/-.*
- 2. The Id. CIT(A) has erred on facts and in law in confirming the findings of A.O. that cash deposit in the bank account of Sh. Rajendra Jain Rs. 1,10,000/-, Sh. Ashok Sharma Rs. 5,65,400/- and Shri Mahaveer Prasad Sharma Rs. 6,51,200/- is out of undisclosed income of assessee.*
- 3. The assessee craves to amend, alter and modify any of the grounds of appeal.*
- 4. The appropriate cost be awarded to the assessee."*

Grounds of revenue's appeal:

- "1. Whether on the facts and the circumstances of the case Id CIT(A), was right in restricting the addition from Rs 1,07,78,700/- to Rs. 37,78,700/- made on account of undisclosed interest income without appreciating the fact that based on seized material and statements given by the assessee during the course of search/post search, the opening balance of Rs 8 Crore is taken as on 01.04.2006 and on such capital the assessee earned interest income by scheme floated in all the years.*
- 2. Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the "existing liability" does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.*

3. *The appellant craves the right to amend alter or add to any of the grounds of appeal given above."*

17. Ground No. 1 of the assessee's appeal and ground No. 1 of the revenue's appeal are common and identical to the ground No. 1 involved in the cross appeal filed for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 1 of the assessee's appeal stands allowed and ground No. 1 of the revenue's appeal stands dismissed.

18. The ground No. 2 of the revenue's appeal is also common to ground No. 2 of the revenue's appeal for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 2 of the revenue's appeal stands dismissed.

19. Ground No. 2 of the assessee's appeal is regarding the addition made by the Assessing Officer on account of cash deposits in the bank account of employees of the assessee. During the course of assessment proceedings, the Assessing Officer noted that during the search and seizure action, signed cheque books of the various persons were found. The Assessing Officer noted that there is a deposit of Rs. 1.87 crores on different dates in their bank accounts. The assessee filed explanation in respect of deposits in the bank account of these persons. The Assessing Officer finally made the addition of Rs. 1.10 lacs on account of deposit in

the bank account of Shri Rajendra Jain, Rs. 5,65,400/- on account of deposit in the bank account of Shri Ashok Sharma and Rs. 6,51,200/- on account of deposit in the bank account of Shri Mahaveer Prasad Sharma total amounting to Rs. 12,36,600/-. The assessee challenged the action of the Assessing Officer before the Id. CIT(A), but could not succeed.

20. Before us, the Id AR of the assessee has submitted that all these three persons are working with the assessee and since they are dealing the financial matters and cash, therefore, in order to protect and secure the interest of the assessee, the assessee has taken the cheques from these persons as a security for any misappropriation of fund by these persons. Merely because cheque books of these persons were found with the assessee, cannot be a reason to consider the cash deposit in these accounts as undisclosed income of the assessee. The Id AR has further contended that the statement of Shri Mahaveer Prasad Sharma was recorded U/s 132(4) of the Act at the time of search, however, no such question was asked or any statement was made in this respect. There is no dispute that these bank accounts belonging to the respective persons. The Assessing Officer has accepted all other entries in these bank accounts as belonging to the respective persons except for those deposits made in cash. These persons are assessed to tax and deposits in the bank

account is a subject matter of assessment in their hands. The Id AR has referred to the return of income filed by these persons and submitted that they have declared the income which is sufficient to cover the cash deposit made by these persons in the bank accounts. Return of income was filed prior to search and therefore, the same cannot be doubted by the department. He has further contended that the assessee had produced all relevant records as source of income and deposits made in the bank accounts of these persons. Thus, merely because, the cheque books found at the place of the assessee, the deposits made in these bank accounts cannot be treated as undisclosed income of the assessee.

21. On the other hand, the Id CIT-DR has submitted that it is not a simple case of cheque book found with the assessee but the cheque books were duly signed by these persons, therefore, the assessee was operating the bank accounts of these persons for the purpose of depositing cash. He has relied upon the orders of the authorities below.

22. We have considered the rival submissions as well as the relevant material on record. The Assessing Officer has made addition of Rs. 13,26,600/- on account of cash deposits in the bank account of three persons namely Shri Rajendra Jain, Shri Ashok Sharma and Shri Mahaveer Prasad Sharma. The Assessing Officer treated the deposits made in the

bank accounts of these persons as undisclosed income of the assessee on the basis of signed cheques of these persons were found during the search and seizure action at the place of the assessee. Though, the signed cheque book found with the assessee can be a ground for further investigation and inquiry regarding any undisclosed income of the assessee by using the accounts of these persons, however, the cheque book itself cannot be considered as an evidence for undisclosed income. The Assessing Officer has picked up the entries in the bank accounts of these persons where the cash was deposited. All other entries in these bank accounts were accepted by the Assessing Officer as carried out by these persons and not by the assessee, therefore, it is not a case of the Assessing Officer that these accounts were fully operated by the assessee. The assessee has contended that the cheque books were taken from these persons to protect the assessee's interest as these persons were working with the assessee and handling the cash and therefore, in order to protect any loss due to misappropriation of fund by these persons, the assessee has taken signed cheques of these persons. We further note that the assessee produced return of income of all these three persons wherein the incomes were declared for the A.Y. 2007-08 and 2008-09. The Id. CIT(A) while rejecting the contention of the assessee has observed that the income declared by these persons is only

equal to the amount deposit in the bank and therefore, it cannot be accepted that those deposits were made from the declared income of these persons as there must be some household expenses by these persons. Thus, the explanation and supporting evidence produced by the assessee was not accepted by the authorities below on the ground that the income declared by these persons in their return of income is only matching with the deposits and therefore, the entire source of deposit is not explained. It is pertinent to note that the assessment under consideration is reassessment U/s 153A of the Act and therefore, the addition of income can be made only on the basis of seized material. The cheque books found during the search and seizure action is not an evidence to disclose any undisclosed income of the assessee in the form of deposits of cash in the bank accounts of these persons. Only inference which can be drawn from the availability of cheque books with the assessee is that the assessee might have used the bank accounts of these persons. However, in absence of any documentary evidence of operating of the bank accounts by the assessee, the mere availability of cheque books with the assessee cannot be an evidence for making addition of the cash deposits in the accounts of these persons specifically when all these persons are regularly assessed to income tax. The assessee filed the return of income in support of explanation. Further the statement of one

of these persons namely Shri Mahaveer Prasad Sharma was recorded by the search party U/s 132(4) of the Act and no such question was asked from the said person regarding the deposits in the bank account. Therefore, when the assessee has discharged its onus by producing the return of income of these persons wherein the declared income was sufficient to cover the deposits made in the bank accounts, then in the absence of any direct evidence or tangible material to disclose the fact that the cash deposit in the bank accounts of these persons belongs to the assessee, the addition made by A.O. is not sustainable. The said deposit is subject matter of assessment in the hands of these persons, accordingly, in the facts and circumstances of the case, we delete the addition made by the Assessing Officer on this account.

23. Grounds No. 3 and 4 of the assessee's appeal and ground No. 3 of the revenue's appeal are general in nature and does not require any adjudication.

24. Now we take the cross appeals for the A.Y. 2009-10. In these appeals the assessee as well as the revenue have raised following grounds of appeal:

Grounds of assessee's appeal:

- "1. The Id. CIT(A) has erred on facts and in law in estimating the undisclosed interest income at Rs. 60,00,000/- as against Rs.

37,24,940/- declared by the assessee thereby confirming an addition of Rs. 22,75,060/-.

2. *The Id. CIT(A) has erred on facts and in law in confirming the findings of A.O. that cash deposit in the bank account of Sh. Rajendra Jain Rs. 13,200/-, Sh. Ashok Sharma Rs. 5,02,400/- , Shri Mahaveer Prasad Sharma Rs. 2,50,000/-, Sh. Sanjay Goel Rs. 50,400/- and Sh. Ajit Singh Shekhawat Rs. 16,800/- is out of undisclosed income of assessee.*
3. *The assessee craves to amend, alter and modify any of the grounds of appeal.*
4. *The appropriate cost be awarded to the assessee."*

Grounds of revenue's appeal:

1. *Whether on the facts and the circumstances of the case Id CIT(A), was right in restricting the addition from Rs 1,32,75,966/- to Rs. 22,75,966/- made on account of undisclosed interest income without appreciating the fact that based on seized material and statements given by the assessee during the course of search/post search, the opening balance of Rs 8 Crore is taken as on 01.04.2006 and on such capital the assessee earned interest income by scheme floated in all the years.*
2. *Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the "existing liability" does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.*
3. *The appellant craves the right to amend alter or add to any of the grounds of appeal given above."*

25. Ground No. 1 of the assessee's appeal and ground No. 1 of the revenue's appeal are common and identical to the issued raised in ground

No. 1 in the cross appeal filed for the A.Y. 2007-08, therefore, in view of our finding on the issue for the A.Y. 2007-08, ground No. 1 of the assessee's appeal stands allowed and ground No. 1 of the revenue's appeal stands dismissed.

26. The ground No. 2 of the revenue's appeal is also common to ground No. 2 of the revenue's appeal for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 2 of the revenue's appeal stands dismissed.

27. The ground No. 2 of the assessee's appeal is regarding the addition made on account of cash deposit in bank accounts of various persons. The identical issue was involved in the ground No. 2 of the assessee's appeal for the A.Y. 2008-09. The facts and circumstances are identical for both the assessment years. The assessee has produced the evidence in support of the source of cash deposit in the bank being return of income of these persons, in whose bank accounts, cash was found deposited. Accordingly, in view of our finding on this issue for the A.Y. 2008-09, the addition made by the Assessing Officer is deleted. Hence ground No. 2 of the assessee's appeal stands allowed.

28. Grounds No. 3 and 4 of the assessee's appeal and ground No. 3 of the revenue's appeal are general in nature and does not require any adjudication.

29. Now we take the cross appeals for the A.Y. 2010-11. In these appeals the assessee as well as the revenue have raised following grounds of appeal:

Grounds of assessee's appeal:

- “1. The Id. CIT(A) has erred on facts and in law in estimating the undisclosed interest income for the period 01/4/2009 to 19/06/2009 at Rs. 25,00,000/- as against Rs. 13,15,275/- declared by the assessee thereby confirming an addition of Rs. 11,84,725/-.
2. The Id. CIT(A) has erred on facts and in law in confirming the action of A.O. in not allowing the expenses of Rs. 29,75,859/- found recorded in search which is claimed by the assessee in earning the interest income by holding that the same is recorded in the regular books of account.
3. The Id. CIT(A) has erred on facts and in law in confirming the findings of A.O. that the sale of jewellery by Smt. Saraswati Devi, mother in law of assessee for Rs. 2,06,32,278/- is the undisclosed income of the assessee as the assessee is unable to prove the source of such jewellery.
4. The assessee craves to amend, alter and modify any of the grounds of appeal.
5. The appropriate cost be awarded to the assessee.”

Grounds of revenue's appeal:

- “1. Whether on the facts and the circumstances of the case Id CIT(A), was right in restricting the addition from Rs 40,00,000/- to Rs. 25,00,000/- made on account of undisclosed interest income

without appreciating the fact that based on seized material and statements given by the assessee during the course of search/post search, the opening balance of Rs 8 Crore is taken as on 01.04.2006 and on such capital the assessee earned interest income by scheme floated in all the years.

2. *Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the "existing liability" does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.*
3. *The appellant craves the right to amend alter or add to any of the grounds of appeal given above."*

30. Ground No. 1 of the assessee's appeal and ground No. 1 of the revenue's appeal are common and identical to the issued raised in ground No. 1 in the cross appeal filed for the A.Y. 2007-08, therefore, in view of our finding on the issue for the A.Y. 2007-08, ground No. 1 of the assessee's appeal stands allowed and ground No. 1 of the revenue's appeal stands dismissed.

31. The ground No. 2 of the revenue's appeal is also common to ground No. 2 of the revenue's appeal for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 2 of the revenue's appeal stands dismissed.

32. Ground No. 2 of the assessee's appeal is regarding disallowance of expenses found recoded in the seized material. This ground is common for A.Y. 2010-11, 2011-12 and 2012-13. During the course of search and seizure action, certain incriminating documents were found containing the entries of transaction of 100 days finance scheme. The seized material also contains the entries of expenditure pertaining to A.Y. 2010-11, 2011-12 and 2012-13 of Rs. 29,75,859/-, Rs. 82,59,551/- and Rs. 69,54,914/- respectively. The assessee in the return of income has claimed these expenses against the undisclosed income offered to tax. The Assessing Officer disallowed claim of assessee on the ground that these expenses are already recorded in the regular books of account. The assessee challenged the action of the Assessing Officer before the Id. CIT(A), but could not succeed.

33. Before us, the Id AR of the assessee has submitted that there is no dispute as to the fact that these expenses are found recorded in the seized documents. The AO has simply mentioned that the same are recorded in the regular books but has not specified how these expenses are recorded in the regular books. In fact, these are the expenditure other than those recorded in the regular books. The Ld. CIT(A) has also incorrectly mentioned that assessee has not filed any correlation chart

indicating that these expenses are not claimed in the regular books ignoring that when these expenditure are not recorded in the regular books, how any correlation chart can be filed by the assessee. As per Section 292C where any document is found in search then it is to be presumed that the contents of such documents are true. Thus, when expenses are found recorded in the seized material, the same has to be allowed for computing the undisclosed income. It is submitted that neither the AO nor the Ld. CIT(A) required the assessee to furnish any correlation chart of the expenses recorded in the regular books of accounts of the two companies vis-a-vis that recorded in the seized material. However, both the records were available before the AO from which he could have ascertained whether the expenses recorded in the regular books of accounts also find place in the seized documents. Therefore, such correlation chart of the expenses as recorded in the seized documents vis-a-vis that recorded in the regular books of accounts of these two companies is enclosed for FYs 2009-10 to 2011-12. From this chart, it can be noted that none of the expenses noted in the seized record tally with that recorded in the books of accounts. In fact, various expenses mentioned in the seized records are not at all recorded in the regular books of accounts and the expenses which are recorded in the seized record has wide variation with the similar nature of expenses

recorded in the regular books of accounts. This proves that the expenses as per the seized records are altogether different than that recorded in the regular books of accounts of these two companies.

34. On the other hand, the Id DR has submitted that the assessee has claimed the expenditure, which is found to be already recorded in the books of account. The Assessing Officer as well as Id. CIT(A) has given the finding of fact that these expenses are already recorded in the regular books of account and claimed against the income recorded in the books of account. Therefore, the claim of the assessee would be a double deduction of the same expenditure one against the income recorded in the books and again against the undisclosed income found during the search and seizure action. He has relied on the orders of the authorities below.

35. We have heard the rival submissions and perused the relevant material available on the record. There is no dispute that the amount of expenditure as claimed by the assessee against the undisclosed income for these three assessment years i.e. 2010-11 to 2012-13 were found recorded in the seized material. The undisclosed income offered by the assessee is also based on the same seized material and therefore, once the income and expenditure both are recorded in the same material, which is found and seized during the course of search and seizure action

then the entire record and entries found in the seized material has to be taken into consideration and not a part of the seized material is accepted and part can be rejected. Thus, the seized material cannot be considered or accepted in piecemeal but the evidence which is the basis of undisclosed income has to be considered as a whole. However, the question arises whether the expenses found recorded in the seized material is already taken into account as part of the expenses recorded in the books of account or not. Neither the Assessing Officer nor the Id. CIT(A) has examined the relevant record and details to find out this fact that the expenditure which is found recorded in the seized material is also part of the expenditure claimed in the regular books of account. On the direction of the Bench, the assessee has filed a complete and comparative details of all the expenditure found recorded in the books of account as well as the expenditure which is recorded in the seized material. The year wise comparative statement shows that the some of the expenditure found recorded under common head in both i.e. the books of account as well as seized material. However, many items which were recorded in the seized material are not claimed in regular books of account. Therefore, it is evident from the comparative details of the expenditure that the entire expenditure which is recorded in the seized material has not been claimed in the books of account. We find that about 50% of the items which are

recorded in the seized materials are not recorded in the books of account. However, the remaining items which are recorded in both seized material as well as books of account are under common heads, therefore it requires the verification and examination of further details of each and every sub-head of expenditure under a particular head. Hence, we find that the disallowance of the entire claim of the expenditure by the authorities below is contrary to the record and therefore uncalled for, though the possibility of some of the expenditure found in the seized material may also be claimed in the regular books of account cannot be ruled out. Therefore, to the extent of the expenditure, which is not claimed in the books of account and found recorded in the seized material, the same is an allowable claim and cannot be denied. Remaining claim of expenditure which is recorded under common heads is required further examination and verification. Accordingly in the facts and circumstances, we set aside this issue to the record of Assessing Officer for conducting a proper enquiry of the details of the expenditure and to find out whether any part of the expenditure which is found in the seized material has been claimed in the books of account and then only to that extent the claim of the assessee can be disallowed. Needless to say that the assessee to be given an appropriate opportunity of hearing before deciding this issue.

36. Ground No. 3 of the assessee's appeal is regarding the addition made on account of sale of jewellery by mother-in-law of the assessee treating the same as undisclosed income. During the course of search and seizure action, the bills relating to sale of jewellery was found and seized as annexure AS-39. In the statement U/s 132(4) of the Act, the assessee explained these bills pertains to sale of jewellery by Smt. Saraswati Devi Sharma, mother in law of the assessee. In the post search statement dated 19/10/2012, the assessee further explained that because of ill health, his mother in law Smt. Saraswati Devi Sharma was residing with him and she kept her valuables and papers at his residence. Thus, the assessee claimed that she had sold the jewellery from time to time and the sale proceeds were received by cheque and credited in her bank account. In the assessment proceedings, the Assessing Officer rejected the explanation of the assessee by holding that the assessee has routed his undisclosed income through sale of jewellery of his mother in law. The Assessing Officer has observed that Smt. Saraswati Devi Sharma never filed her return of income or net wealth. The assessee has not produced any evidence of her holdings of such huge quantity of jewellery. Further she had four daughter and one son and therefore, the Assessing Officer was of the view that it is beyond human probability that she would not given anything to her other daughters and son. Her signed cheque book

was found with the assessee, which shows that the assessee channelized his undisclosed income through sale of jewellery and gift to his family members. The summons issued to the purchaser of the jewellery could not be served and returned back by the postal authorities. The assessee challenged the action of the Assessing Officer before the Id. CIT(A) but could not succeed.

37. Before us, the Id AR of the assessee has submitted that that both the lower authorities have not appreciated the following facts which establish the availability of the jewellery in the hands of Smt. Saraswati Devi Sharma and sale of the same by her:-

- (i) Smt. Saraswati Devi Sharma is mother-in-law of assessee. She hailed from a reputed agricultural-cum-business family of Fatehpur, District Churu, Rajasthan. On the occasion of her marriage and subsequently from time to time on various social occasions, she received gold jewellery from her parental side and also from in-laws side. Further, she also received gold ornaments towards her share on sale of certain parental properties.
- (ii) Smt. Saraswati Devi was married to Shri Hanuman Prasad Sharma in the year 1958. Shri H.P. Sharma did his diploma in Mechanical engineering and qualified as an instructor from Central Training Institute of Instructors, Calcutta. He retired in the year 1997 as instructor from Industrial Training Institute (ITI), Govt. of Rajasthan, Jaipur. In course of her married life, Smt. Saraswati Devi also acquired certain jewellery out of her savings and stridhan.
- (iii) Smt. Saraswati Devi along with her husband and only son was residing at Shastri Nagar, Jaipur. However due to her ill health, in the last two years before her death on 18.08.2009 she was residing with her

daughter Smt. Kalawati Sharma, wife of assessee at Vaishali Nagar. Smt. Kalawati Sharma and the assessee were taking care of her as she was suffering from heart and kidney problem. In these circumstances, Smt. Saraswati Devi had brought with her all the jewellery and valuables to the residence of assessee and developed a close affection towards her daughter and her grandchildren.

- (iv) Due to her falling health, she decided to dispose off her jewellery and valuables and accordingly, sold most of her jewellery/valuables through the assessee in the month of April and May 2009 and deposited the same in her bank account with Central Bank of India, Vaishali Nagar, Jaipur. The assessee's wife Smt. Kalawati Sharma was nominee in this bank account. In this bank account which was opened on 15.09.2008 she deposited her savings and also the sale proceeds of the jewellery. This amount remained in her bank account for four months. Thereafter, from this bank account she issued cheque of Rs. 1 crore in the name of her daughter Smt. Kalawati Sharma, Rs. 35 lakhs each in the name of Saurabh Sharma and Himanshu Sharma, two sons of Kalawati Sharma and Rs. 40 lakhs in the name of Shruti Sharma, daughter of Kalawati Sharma on 12.08.2009 as gift from her. In the meanwhile, her health deteriorated and she was hospitalised in Soni Hospital, Sikar Road, Jaipur and therefore neither the cheques could be deposited in the bank account of donee nor the gift deed could be prepared though the stamp paper for gift declaration was purchased in her name. She ultimately expired on 18.08.2009 and therefore, cheques were deposited by the donee in their bank account on 19.08.2009. These facts were also stated by the assessee in reply to question no. 1 of his statement u/s 131 dated 19.10.2012 recorded by ADIT (Inv.) - II, Jaipur. Thus, it is evident that gift of Rs. 2.10 crores was genuinely received by the family members of the assessee from Smt. Saraswati Devi.
- (v) It may be noted that the bills of sale of jewellery and valuables by Smt. Saraswati Devi were also found and seized at Annexure-39 pages 9-62 from the residence. As per these bills, the jewellery and valuables has been sold to 5 parties, namely M/s Karni Enterprises (Prop. Shri. Abhay Bum), M/s Pankaj Jewels (Prop. Pankaj Yadav), M/s Sai Kripa Gem Stones (Prop. Uma Shankar Sharma), M/s M. R. Enterprises (Prop. Jitendra Kumar Daga) and M/s Shri Jee Jewels & Arts (Prop.

Akhil Bum). It is possible that these parties may have shifted to other place and therefore summons could not be served.

- (vi) Though Smt. Saraswati Devi had four daughters and a son, she gifted the amount received from sale of jewellery to Smt. Kalawati Sharma and her three children as they were looking after her in the last two years during her illness and thus, she developed a close affection with the family of assessee. It is for this reason that even in the bank account only Smt. Kalawati Sharma is made nominee. Therefore, only because she has not given any part of the sale proceeds of the jewellery to her other three daughters and son cannot be viewed adversely.
- (vii) Smt. Saraswati Devi Sharma has not filed any return of income but the fact remains that she owned substantial jewellery which was sold by her for which evidence was also found in search.

In view of above, the sale of jewellery by Smt. Saraswati Devi and the subsequent gift made by her to the family members of the assessee is fully verifiable. The order of lower authorities holding that gift so made by Smt. Saraswati Devi is an application of undisclosed income of assessee is thus erroneous and on surmises and conjectures. Hence, the same be directed to be excluded from application of income in the fund inflow / outflow statement.

38. On the other hand, the Id CIT DR has relied on the orders of the authorities below and submitted that the Assessing Officer has raised certain questions such as Smt. Saraswati Devi Sharma never filed return of income or net wealth and in absence of any evidence to show her

holdings such a huge quantity of jewellery, the claim of the assessee cannot be accepted. She had four daughters and one son and therefore, it is beyond human probability that a mother would give entire belongings and wealth only to one daughter excluding other three daughters and one son. Signed cheque book found with the assessee clearly shows that the assessee has manipulated and has channelized his undisclosed income through sale of jewellery.

39. We have considered the rival submissions as well as relevant material on record. There is no dispute that the sale bills of jewellery was found during the course of search and seizure action and seized as Annexure-AS-39, therefore, it is a seized material and cannot be held as a bogus claim or document manipulated or manufactured by the assessee being afterthought cooked story. Therefore, when the sale of jewellery is found as per the bills seized during the search then the transaction of sale cannot be disputed by the department. The sale proceeds of the jewellery was also undisputedly received by cheque and credited in the bank account of mother in law of the assessee. The only doubt which is raised by the Assessing Officer is that it is beyond human probability that she would not give anything to other daughters and son and had given entire her belongings to the assessee. Even if, this apprehension of the

Assessing Officer is turned out to be correct the issue is only whether the assessee has mischievously taken the entire amount of his mother in law from the bank account by using the signed cheque book with the assessee. Thus, this itself will not change the character of income and source of that amount which was found credited in the bank account of mother in law as a sale proceeds of jewellery. The mother in law of the assessee already expired on 18/8/2009 and even if she had never filed return of income or wealth tax, the same would not impute the tax liability in the hands of the assessee when this is not the income of the assessee but only the amount which was transferred from the bank account of the mother in law to the account of the assessee. The non-sharing of this amount with other daughters and son can be a family dispute and can be settled mutually between themselves and has no bearing on the taxability of the income in the hands of the recipients. Therefore, once the amount was found duly credited in the bank account of Smt. Saraswati Devi Sharma and subsequently it was transferred in the account of the assessee then the transaction cannot be doubted. Even the source of credit in the account of mother in law is found during the search and seizure action. The assessee explained that during the last days of her life, she was residing with the assessee and her daughter Smt. Kalawati Sharma, wife of assessee and thus it is natural that all her

belongings and valuables would be at the place of assessee. Accordingly, in view of the above facts and circumstances of the case, we are of the considered opinion that when the seized material itself shows the source of amount deposited in the bank account of Smt. Saraswati Devi Sharma by cheque and subsequent transfer from her account to the account of assessee, the same cannot be treated as undisclosed income of the assessee. Accordingly, we delete the addition made by the Assessing Officer on this account.

40. Grounds No. 4 and 5 of the assessee's appeal and ground No. 3 of the revenue's appeal are general in nature and does not require any adjudication.

41. Now we take the cross appeals for the A.Y. 2011-12. In these appeals the assessee as well as the revenue have raised following grounds of appeal:

Grounds of assessee's appeal:

- “1. The Id. CIT(A) has erred on facts and in law in confirming the action of A.O. is not allowing the expenses of Rs. 82,59,551/- claimed by the assessee in earning the interest income of Rs. 3,86,42,943/- by holding that the same is recorded in the regular books of account.
2. The assessee craves to amend, alter and modify any of the grounds of appeal.
3. The appropriate cost be awarded to the assessee.”

Grounds of revenue's appeal:

- “1. Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the “existing liability” does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.*
- 2. The appellant craves the right to amend alter or add to any of the grounds of appeal given above.”*

42. Ground No. 1 of the assessee’s appeal is common and identical to the issued raised in ground No. 2 in the appeal filed by the assessee for the A.Y. 2010-11, therefore, in view of our finding on the issue for the A.Y. 2010-11, this ground of assessee’s appeal stands disposed of and set aside to the record of the Assessing Officer for the same terms.

43. The solitary ground raised by the revenue is regarding the adjustment of seized cash against the tax liability. This ground of revenue’s appeal is also common to ground No. 2 of the revenue’s appeal for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 1 of the revenue’s appeal stands dismissed.

44. Grounds No. 2 and 3 of the assessee’s appeal and ground No. 2 of the revenue’s appeal are general in nature and does not require any adjudication.

45. Now we take the cross appeals for the A.Y. 2012-13. In these appeals the assessee as well as the revenue have raised following grounds of appeal:

Grounds of assessee's appeal:

- “1. The Id. CIT(A) has erred on facts and in law in confirming the action of A.O. is not allowing the expenses of Rs. 69,54,913/- claimed by the assessee in earning the interest income of Rs. 3,54,04,242/- by holding that the same is recorded in the regular books of account.
2. The assessee craves to amend, alter and modify any of the grounds of appeal.
3. The appropriate cost be awarded to the assessee.”

Grounds of revenue's appeal:

- “1. Whether on the facts and the circumstances of the case Id CIT(A) was right in allowing the appeal of the assessee without appreciating the facts that amount lying in the PD account has to be adjusted against the existing liability of the assessee but as per explanation-2 of the section 132B of the I.T. Act 1961, it has been clarified that the “existing liability” does not include advance tax payable in accordance with the provisions of part-C of chapter XVII.
2. The appellant craves the right to amend alter or add to any of the grounds of appeal given above.”

46. Ground No. 1 of the assessee's appeal is common and identical to the issued raised in ground No. 2 in the cross appeal filed by the assessee for the A.Y. 2010-11, therefore, in view of our finding on the issue for the A.Y. 2010-11, this ground of assessee's appeal stands disposed of and set aside to the record of the Assessing Officer for the same terms.

47. The main solitary ground raised by the revenue is regarding the adjustment of seized cash against the tax liability. This ground of revenue's appeal is also common to ground No. 2 of the revenue's appeal for the A.Y. 2007-08, therefore, in view of our finding on this issue for the A.Y. 2007-08, ground No. 1 of the revenue's appeal stands dismissed.

48. Grounds No. 2 and 3 of the assessee's appeal and ground No. 2 of the revenue's appeal are general in nature and does not require any adjudication.

49. Now we take the revenue's appeal for the A.Y. 2013-14, wherein the revenue has raised following grounds of appeal:

- "1. Whether on the facts and the circumstances of the case Id CIT(A) has erred in deleting the addition of Rs. 2,16,92,726/- made on account of undisclosed investment excess over the income without appreciating the facts and a detailed cash flow statement for the relevant period was prepared which clearly shows that there was undisclosed investment excess over the income.*
- 2. Without appreciating the fact that while preparing the revised flow statement, Id CIT(A) has reduced the additions deleted by him in A.Y. 2007-07 to 2012-13, which has not been accepted by the department and challenged in further appeal.*
- 3. The appellant craves the right to amend alter or add to any of the grounds of appeal given above."*

50. During the course of assessment proceedings, the Assessing Officer made addition of Rs. 2,16,92,726/- on account of undisclosed investment

being excess amount of investment over the undisclosed income for the year under consideration as estimated by the Assessing Officer. The Assessing Officer as per the revised fund flow statement prepared after considering various additions for all the years work out the opening balance as on 01/4/2012 at Rs. 22,25,416/- as against the application of income for the year is Rs. 2,39,18,142/- resulting a short fall of Rs. 2,16,92,726/-.

51. The assessee challenged the action of the Assessing Officer before the Id. CIT(A). The Id. CIT(A) after considering the certain additions which were recasted the undisclosed income and application statement and accordingly deleted the addition made by the Assessing Officer.

52. Before us, the Id CIT DR has relied upon the order of the Assessing Officer and submitted that the addition made by the Assessing Officer is an outcome of the assessment framed for the earlier five assessment years and therefore, this addition is direct consequence of the additions made by the Assessing Officer in the earlier year.

53. On the other hand, the Id AR of the assessee has submitted that the Id. CIT(A) has deleted the application of undisclosed income on account of sale of jewellery of Rs. 1,99,49,786/- and on account of investment in shares of Rs. 2,42,29,675/- for the A.Y. 2009-10 and 2010-

11 respectively. The deletion made by the Id. CIT(A) have not been challenged by the revenue, therefore, after deletion of these amounts, the alleged excess investment computed by the Assessing Officer will not survive.

54. Having considered the rival submissions as well as the relevant material on record, we note that the Assessing Officer has made this addition on the basis of a revised fund flow statement prepared after considering the various additions made in the earlier years and thereby the Assessing Officer arrived to the amount of Rs. 22,25,416/- as an opening cash balance on 01/4/2012. It is pertinent to note that this opening cash balance was worked out by the Assessing Officer by considering the investment by the assessee as application of undisclosed income on account of sale of jewellery and investment in shares as well as other items of addition made by the Assessing Officer. The Id. CIT(A) has considered this issue in para 3.1.2 as under:

“3.1.2 *I have duly considered assessee's submission and carefully gone through assessment order. I have also taken a note of factual matrix of the case as well as applicable case laws relied upon. The only issue in this ground is that if there is any shortfall after considering the outcome of appeals on various additions / application of income made in AY 2007-08 to 2012-13, then the same is to be added. In this case, I have decided appeals for AY 2007-08 to 2012-13 wherein certain additions have been*

deleted. After considering these, u a revised cash flow chart is prepared and annexed herewith as per Annexure-A. For the sake of clarity, relevant extracts of revised cash flow statement is reproduced here as under:

Assessment Year	2007-08	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
AO's Cash Flow Chart:							
Estimated op cash capital as on 01.04.06	8,00,00,000	8,58,50,000	9,35,83,400	8,16,68,227	4,22,08,139	7,37,62,067	15,53,049
add : income as above	60,00,000	1,20,00,000	1,70,00,000	1,72,99,094	3,86,42,943	3,54,04,242	0
Total	8,60,00,000	9,78,50,000	11,05,83,400	9,89,67,321	8,08,51,082	10,91,66,309	15,53,049
Less: Drawings	1,50,000	2,40,000	3,00,000	4,80,240	14,41,583	6,72,367	0
Less: Application of income as above	0	40,26,600	2,86,15,173	5,62,78,942	56,47,432	10,69,40,893	2,39,18,142
Closing balance	8,58,50,000	9,35,83,400	8,16,68,227	4,22,08,139	7,37,62,067	15,53,049	-22365093
Revised Cash Flow Chart							
Estimated op cash capital as on 01.04.06	80000000	83850000	84583400	81618013	64887600	96441528	24232510
add : income as above	6000000	12000000	17000000	17299094	38642943	35404242	0
Less: Relief allowed in estimated income	-2000000	-7000000	-11000000	-1500000	0	0	0
Total	84000000	88850000	90583400	97417107	103530543	131845770	24232510
Less: Drawings	-150000	-240000	-300000	-480240	-1441583	-672367	0
Less: Application of income as above	0	-4026600	-28615173	-56278942	-5647432	-106940893	-23918142
Add: Relief allowed in application of income	0	0	19949786	24229675	0	0	0
Closing Balance	8,38,50,000	8,45,83,400	8,16,18,013	6,48,87,600	9,64,41,528	2,42,32,510	3,14,368

On the basis of this cash flow chart, there is no shortfall in the year under consideration. Therefore, the addition of Rs. 2,16,92,726/- made by the AO on account of negative balance is hereby deleted. Assessee's appeal on this ground is allowed."

Therefore, the Id. CIT(A) has recasted cash flow statement and found that there is no short fall of fund as per the revised fund flow statement. Moreover when we have already decided the issue of jewellery in favour of the assessee, then the question of disallowance on account of short fall of fund and making excess investment does not arise. Accordingly, in

view of the facts and circumstances of the case, we do not find any error or illegality in the impugned order of the Id. CIT(A). Hence, the grounds No. 1 and 2 raised in the revenue's appeal is dismissed.

55. Ground No. 3 of the revenue's appeal is general in nature and does not require any adjudication.

56. In the result assessee's appeal being ITA No. 919, 920 and 921/JP/2016 are allowed and revenue's appeal being ITA No. 932, 933 and 934/JP/2016 are dismissed. Assessee's appeal being ITA No. 922/JP/2016 is partly allowed and revenue's appeal being ITA No. 935/JP/2016 is dismissed. Assessee's appeal being ITA No. 923 & 924/JP/2016 are allowed for statistical purposes only and revenue's appeal being ITA No. 936 & 937/JP/2016 are dismissed and the revenue's appeal being ITA No. 938/JP/2016 is dismissed.

Order pronounced in the open court on 30/07/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur
दिनांक / Dated:- 30th July, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Prakash Chand Sharma, Jaipur.

2. प्रत्यर्धी/ The Respondent- The A.C.I.T., Central Circle-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. 919 to 924/JP/2016 & 932 to 938/JP/2016)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar