

आयकर अपीलिय अधिकरण] पुणे न्यायपीठ “बी” पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE

BEFORE MS. SUSHMA CHOWLA, JM AND
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA Nos.1048 & 1049/PUN/2015
निर्धारण वर्ष / Assessment years : 2010-11 & 2011-12

Prasanna Kantilal Mehta,
Flat No.404, C Wing,
Hyde Park Society, Near
Market Yard,
Pune – 411037.

..... अपीलार्थी /
Appellant

PAN : AGVM6117F.

बनाम v/s

The Dy. Commissioner of Income Tax,
Central Circle – 1(1), Pune.

..... प्रत्यर्थी /
Respondent

Assessee by : Shri Pratik Sandbhor.

Revenue by : Shri Avadesh Kumar &
Shri Sudendhu Das.

सुनवाई की तारीख / Date of Hearing : 23.01.2019	घोषणा की तारीख / Date of Pronouncement: 28.02.2019
---	---

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the assessee are emanating out of separate orders of the Commissioner of Income Tax – (Appeals) – 11, Pune both dated 27.02.2015 for the assessment years 2010-11 & 2011-12.

2. Before us, at the outset, both the parties submitted that though the appeals filed by the assessee are for different assessment years but the facts and issues involved in both the appeals are identical / inter-

connected except for the assessment years and the amounts involved and therefore the submissions made by them while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together. In view of the aforesaid submissions of both the parties, we, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is an individual and stated to be engaged in trading of Pharmaceutical items and is a Director of Mehta Life Sciences Research Pvt. Ltd. AO has noted that assessee has not filed original return u/s 139(1) of the Act for A.Y. 2010-11 & A.Y. 2011-12. A search action u/s 132A of the Act was conducted in Mehta Group of cases on 29.09.2010. Since the warrant of authorization u/s 132(1) of the Act was issued in the case of assessee, notice dated 28.02.2011 u/s 153A of the Act was issued and served on assessee. In response to notice u/s 153A of the Act, assessee filed his return of income for A.Y. 2010-11 on 19.12.2012 declaring total income of Rs.13,06,380/-. The case was taken for scrutiny and thereafter assessment was framed u/s 153A r.w.s. 143(3) of the Act vide order dt.28.02.2013 and the total income was determined at Rs.73,62,878/-.

With respect to A.Y. 2011-12, assessee had filed return of income on 19.12.2012 declaring total income at Rs.8,33,180/-. The case was selected for scrutiny and thereafter, the assessment was framed u/s 143(3) of the Act vide order dt.28.02.2013 and the total income was determined at Rs.30,83,180/-.

Aggrieved by the orders of AO, assessee carried the matter before Ld.CIT(A), who vide orders dt.27.02.2015 (in appeal No.PN/CIT(A)-11/DCIT Cen. Cir1(1)/PN/25/2014-15) granted partial relief to assessee with respect to A.Y. 2010-11 and dismissed appeal of assessee for A.Y. 2011-12 (in appeal No.PN/CIT(A)-11/ DCIT Cen. Cir1(1)/PN/26/2014-15). Aggrieved by the orders of Ld.CIT(A), assessee is now in appeal before us. Assessee has filed the concise grounds in ITA No.1048/PN/2015 for A.Y. 2010-11 which reads as under :

“1. On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the addition of Rs.15,50,000/- for unexplained cash found kept in bank lockers.

2. On the facts and in the circumstances of the case, the CIT(A) has erred in sustaining the addition of Rs.24,31,407/- for unexplained investment in flat purchased at Hyde Park Society, Pune.

4. Thereafter, assessee filed the following additional ground in ITA No.1048/PUN/2015 for A.Y. 2010-11.

“On the facts and in the circumstances of the case, the addition made on account of unexplained investment in property u/s 69 is not sustainable on facts as well as in law, in as much the said investment relates to A.Y. 2009-10 and therefore if any addition if at all warranted could have been made in A.Y. 2009-10 and not in A.Y. 2010-11”

5. With respect to additional ground, it is assessee's submission that the additional ground being a legal ground and since it goes to the root of the issue involved in the appeal, the same be admitted. It was further submitted that the issue raised in additional ground was never taken before AO or Ld.CIT(A). With regard to raising an additional ground and the admissibility, he relied on the decision of Hon'ble Apex Court in the case of National Thermal Power Co., Ltd., Vs. CIT reported

in 229 ITR 383 (SC) and the decision of Hon'ble Bombay High Court in the case of Pruthvi Brokers and Shareholders reported as 349 ITR 336. Ld.D.R. did not seriously object to the additional ground raised now by the assessee.

6. On the issue of admission of additional ground raised by the assessee, considering the aforesaid facts and in view of the ratio laid down by the Hon'ble Apex Court in the case of National Thermal (supra), we admit the additional ground of appeal filed by the assessee for adjudication.

7. As far as A.Y. 2011-12 is concerned, the only effective ground raised by assessee in ITA No.1049/PN/2015 reads as under :

“The learned CIT(A) erred in accepting the additions made in regards to the source of cash found in the lockers, as made in the assessment, without taking into consideration the facts as stated by the assessee.”

8. Ground No.1 for A.Y. 2010-11 and ground No.1 for A.Y. 2011-12 being inter-connected are considered together. It is with respect to addition of the alleged unexplained cash found in bank lockers.

8.1. AO has noted that Anti Corruption Bureau (ACB), Mumbai had conducted a search in the case of Shri Prasanna K. Mehta (assessee) on 09.06.2010. Consequent to search action, three bank lockers belonging to the assessee were operated by ACB and total cash of Rs.46,50,000/- was found in those three lockers. The three lockers were freezed by ACB and intimation was forwarded by them to Income Tax Department (Investigation Unit), Pune on 25.09.2010. The locker-wise details of the cash found in the 3 lockers as noted by AO in page 3 of the assessment order is reproduced below :

Sr. No	Lockers No.	Bank & Branch	Name of holders	Cash found from lockers by CBI (Rs.)
1	2	Corporation Bank, S. Sarasbaug Branch, Pune	Shri Prasanna Mehta	22,50,000/-
2	149	IDBI Bank Camp Branch, Pune	Shri Prasanna Mehta	3,00,000/-
3	138	State Bank of Hyderabad Bibwewadi Branch, Pune	Shri Prasanna Mehta	21,00,000/-
Total :				Rs.46,50,000/-

The statement of assessee was recorded u/s 131(1A) of the Act on 25.09.2010 to verify the source of cash found by ACB in his lockers. AO has noted that during the course of recording of statement, assessee failed to explain the source of cash found and he could not submit any evidence. During the course of post search enquiries, assessee was again asked to explain the cash found in the bank lockers. In response to the query, assessee submitted that cash of Rs.38 lacs was withdrawn on 24.09.2009 from the bank account of Mehta Lifestyle & Research Pvt. Ltd. It was further assessee's submission that Police Department had seized duplicate masks on 23.09.2009 and assessee had withdrawn cash of Rs.38 lakhs on 24.09.2009 as he was of the view that his bank account might be freezed. He submitted that the aforesaid cash withdrawal from the bank account of Mehta Lifestyle & Research Pvt. Ltd., was kept in the aforesaid three bank lockers. AO noted that assessee could not give any satisfactory explanation for the balance amount of Rs.8,50,000/-. AO has also noted that assessee had admitted additional income of Rs.8,50,000/- for F.Y.2009-10 in Mehta Lifestyle & Research Pvt. Ltd. To verify the contention of the assessee that the amount was withdrawn from the bank account of Mehta Lifestyle & Research Pvt. Ltd. and was deposited in lockers, specific information was called for from the banks u/s 133(6) of the Act with regard to the operation of lockers during the

period from 01.04.2008 to 29.09.2010 (date of seizure operation by the Income Tax Department). On the basis of the inquiries, AO did not find the submission of the assessee acceptable that the amounts were withdrawn from the bank account of the Corporation Bank and were kept in the lockers of the assessee.

9. AO also perused the Income Tax Returns of the assessee, his wife and his company to verify the assessee's claim whether returns reflect the assessee's capability to keep Rs. 46,50,000/- in lockers. On perusal of the income tax returns, it was found that they have not filed return of income from A.Y. 2009-10. Further, assessee had given written statement that in earlier years assessee and his wife had income which was below the taxable limit. In view of these facts, the cash of Rs.46.50 lacs found by the ACB in lockers of assessee were treated as "unexplained money". AO taxed the "unexplained money" in two years based on the last date of operation of lockers. AO noted that locker No.138 maintained with State Bank of Hyderabad wherein the cash of Rs.21 lacs was found and the locker No.149 with IDBI Bank wherein the cash of Rs.3 lacs was found were last operated by assessee in Financial Year 2009-10 relevant to A.Y. 2010-11. He therefore for A.Y. 2010-11 treated Rs.24 lacs as "unexplained money" u/s 69A of the Act. The balance amount of Rs.22.5 lacs was added as income for A.Y. 2011-12. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who granted partial relief to the assessee by observing as under :

"4.3 The submissions made by the Ld. Counsel for the appellant are carefully examined in the light of the facts of the case, findings in the assessment order. The main contention of the appellant is that out of the cash of Rs. 46,50,000/- found in the three lockers, cash to the extent of Rs. 38,00,000/- was out of cash withdrawal

of Rs. 38,00,000/- made on 24.09.2009 from the bank account No. 62069200352 held in the name of M/s Mehta Life Sciences & Research Pvt. Ltd. The balance cash of Rs. 8,50,000/- is stated to have been offered in the hands of the appellant for the year under consideration as the appellant is not in a position to explain the source of the cash to this extent. The contention of the appellant that the cash to the extent of Rs. 38,00,000/- was out of cash withdrawals from the bank account of the said company has no merit. Firstly, as pointed out by the Assessing Officer, there was noticeable time lag of 20 days between cash withdrawal from bank account No. 62069200352 and locker first operated by appellant on 15/10/2009. If the contention of the appellant that amount was withdrawn from the regular bank account of the company anticipating seizure of amount lying in the bank account by the Police due to on-going duplicate masks case, the amount so withdrawn would have been kept in the locker in a day or two in the lockers instead of keeping the cash with the appellant for 20 long days. Further, no sensible person more so Director of the said company would keep the amount in his personal locker if he was anticipating seizure by Police or any other agency. On the contrary, in such situations, the balance lying in the regular bank accounts of the company would be left untouched as any cash withdrawn and kept either in the lockers or in the residence of the appellant may be construed as ill-gotten money earned out of supply of duplicate masks. Secondly, it is very difficult to believe that the business cash so withdrawn was kept in the lockers for more than one year that too in the individual lockers of the appellant. The claim of the appellant that Police. Department had registered an FIR against the appellant' in the matter of duplicate masks and therefore the cash was withdrawn from the said bank account of the company and kept in the lockers for period of more than one year defies any logic as no prudent businessman would keep funds drawn from regular bank accounts idle for more than one year. Thirdly, the locker in Corporation Bank and State Bank of Hyderabad were operated several times during the period between date of withdrawal of cash from the company's bank account and seizure of cash by the Department and it is highly improbable that the cash was left untouched during this entire period when the lockers were operated on several occasions and such conduct of the appellant does not accord with human probabilities. Fourthly, as mentioned by the Assessing Officer initially the appellant stated on oath that a part of the cash belongs to appellant HUF and subsequently when it was found that there was no such HUF in existence, the appellant changed his version and claimed that the entire cash was out of cash withdrawal from the aforesaid bank account of the company. Fifthly, as observed by the Assessing Officer that there were many instances of cash deposits in the cash book during the relevant period and the sources of which was not provided by the appellant either during the assessment proceedings or in the present proceedings. Thus, the appellant failed to establish the 'nexus between the cash drawn from the bank account and the cash found in the lockers with any credible evidence and the sources of the cash found in the lockers are not explained satisfactorily even at this stage.

4.3.1 At this juncture, reference can be made to the oft-quoted decision of Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT reported in 214 ITR 801 wherein it is held that the taxing authorities are entitled to look into the surrounding circumstances to find out the reality and the matter has to be considered by

applying the test of human probabilities – CIT vs. Durga Prasad _ More [1971] 82 ITR 540, at pp. 545, 547 (SC), In the present case, the claims made by the appellant do not pass the test of human probability as enunciated by the Hon'ble Supreme Court in the cases referred above.

4.3.2 Thus, the appellant failed to establish the nexus between the withdrawals from bank account No. 62069200352 on 24/09/2009 and the cash found in his individual Lockers on 25/09/2010. In such circumstances, the Assessing Officer is justified in drawing adverse inference and treating the money to the extent of Rs. 24,00,000/- as unexplained cash u/s 69A of the IT Act in this year on the basis of date of last operation of the lockers. However, out of Rs. 24,00,000/-, a sum of Rs. 8,50,000/- was already offered to the tax as undisclosed income in the return of income filed for this year in response to notice u/s 153A and the same was also assessed in the assessment order. A copy of the statement of total income filed by the appellant with the return of income furnished u/s 153A and the capital account for the year ended 31.03.2010 are attached to the order as Annexure-A for ready reference. Consequently, the addition made by the Assessing Officer on account of undisclosed cash is restricted to 15,50,000/- (24,00,000-8,50,000) and the appellant get consequential relief of Rs.8,50,000/- on this ground. Ground of appeal No.1 is partly allowed.”

Aggrieved by the order of Ld.CIT(A), assessee is now before us.

10. Before us, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A). He further submitted that the cash of Rs.38 lacs was withdrawn from the bank of Mehta Life Science Pvt. Ltd., and kept in the bank locker. In support of his contention that cash was available with Mehta Life Science (supra) he placed on record the audited Balance-Sheet as on 31.03.2010 & 31.03.2011 which showed cash balance of Rs.44.54 lacs and 46.72 lacs respectively. He therefore submitted that AO has wrongly made addition u/s 69A of the Act and that the same be deleted. Ld.D.R. on the other hand, pointed to the detailed findings of AO and submitted that since assessee could not explain the deposits of cost in his lockers, the addition be fully justified.

11. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to addition of

cash found in the lockers of the assessee which has been held by the Revenue to be unexplained. It is assessee's contention that the cash belonging to Mehta Life Science (supra) of which assessee was Director was withdrawn and kept in his locker. Before us, Ld.A.R. in support of his contention that the cash was available with the company and the same withdrawn from the bank account of company and in support of which has placed the copy of audited Balance-Sheets as on 31.03.2010 and 31.03.2011. The Balance-Sheet reveals the cash balance of Rs.44,54,363/- and Rs.46,72,208/- on 31.03.2010 and 31.03.2011, respectively. In such a situation, when the cash was available with the company, the submission of the Ld.A.R. that Rs.38 lacs cash belonging to the company which was withdrawn on 24.09.2009 was deposited in the bank locker of the assessee cannot be simply brushed aside. It is the case of Revenue that the cash withdrawn from company was kept in the bank locker of assessee cannot be accepted in view of the fact that there was time lag between the date of withdrawal of cash and the date of operation of the locker. However, Revenue has not controverted the submission that there was no cash available with the company. In the present case, it is seen that the cash was found in lockers on 25.09.2010. The locker with State Bank of Hyderabad (locker No.138) from where cash of 21 lacs was found was operated on 30.11.2009 (first time after the withdrawal of cash from company on 24.09.2009). In such a case the submission of assessee cannot be discarded without any contrary material on record.

12. As far as locker with IDBI bank (Locker No.149) from which Rs.3 lac was found is concerned, as per the details noted by AO, the 1st date immediate after the withdrawal of cash (on 24.09.2009) on which locker

was operated was 24.08.2009. In such a situation, the submission of assessee that it is out of withdrawal from bank cannot be accepted and therefore addition of Rs. 3 lac does not call for any interference.

As far as locker with Corporation Bank (Locker No.2) from which cash of Rs.22,50,000/- was found and which has been added as income for A.Y. 2011-12 is concerned, the 1st date immediate after the withdrawal of cash on 24.09.2009 on which the locker was operated was on 15.10.2009 and subsequent dates. In such a scenario, the assessee submission of cash withdrawn from company and deposited cannot be simply brushed aside without any material to the contrary. However when out of Rs.38 lacs that were withdrawn from company's account and out of which Rs.21 lac that was kept in locker of State Bank of Hyderabad has been accepted by us hereinabove, then the balance cash of company which is available is only to the extent of Rs.17 lacs which can be said to have been kept in the bank locker and thus explained. Therefore, the addition to the extent of balance amount of Rs.4 lacs (Rs.21 lacs – Rs.17 lacs) + Rs.3 lacs as upheld in para hereinabove is upheld for A.Y. 2011-12. **Thus, the ground No.1 in the appeals are partly allowed.**

13. 2nd ground and additional ground is with respect to addition made towards investment in house property.

13.1. AO noticed that assessee has acquired a house property at Hyde Park during the year jointly with his wife for Rs.57 lacs. Assessee was asked to furnish the source of purchase of property, to which assessee inter-alia submitted that the source was out of accumulated savings, gift. AO noted that assessee and his wife were non-filers of income tax and from A.Y. 2005-06 to 2011-12, they had filed return of income for

A.Y. 2008-09 only and that assessee had submitted that in earlier years, the income of both the assessee and his wife were below taxable limit. He further observed that assessee had shown personal withdrawals on lower side. He therefore, after considering the incomes declared by assessee, the household expenditure at Page 16 of the assessee's order worked out that assessee could explain the source of income only to the extent of Rs.20,43,000/- and therefore the balance amount of Rs.36,56,498/- was treated as to be investment from undisclosed sources and made its addition u/s 69 and 69B of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A) who granted partial relief to the assessee by observing as under :

“5.3 The arguments of the appellant are carefully examined with reference to the facts of the case, findings in the assessment order and other material placed on record. The first contention of the appellant in this regard is that the subject property was jointly owned by the appellant and his wife Mrs. Sonali P. Mehta and total consideration, including stamp duty and registration charges was Rs. 59,98,750/-. It is stated that out of the total investment of Rs. 59,98,750/-, the appellant's share in the property was 50% i.e. Rs. 29,99,375/- and the balance pertained to his wife. There is merit in the contention of the appellant. When the property was held jointly by the appellant with his wife and when the wife was having independent source of income as is evident from return of income filed for the A.Y. 2008-09, it is not correct to treat the entire investment as that of the appellant. In fact, the AO himself has treated an amount of Rs. 1,69,154/- declared by the spouse of the appellant in her return of income for the A.Y. 2008-09 as one of the explainable sources for the investment in the property. Further, in the agreement of sale dated 04.04.2009, the occupation of Smt. Sonali Prasanna Mehta, wife of the appellant is shown as 'Business'. Therefore, in my considered opinion, only 50% of the investment amounting to Rs. 29,99,375/- in the property can be considered in the hands of the appellant.

5.3.1 It is now examined whether the appellant had sources of income to explain his share of investment of Rs. 29,99,375/- in the said property. The claim of the appellant in this regard is that he had income accruals of Rs. 9,87,896/- up to 31.03.2004 and Rs. 20,54,348/- for the period from 01.04.2004 to 31.03.2010 as under:

Sr. No.	Name	F. Year	Source	Amount
1	Prasanna K. Mehta	2004-05	Income Accruals	48,254
2	Prasanna K. Mehta	2005-06	Income Accruals	94,589
3	Prasanna K. Mehta	2006-07	Income Accruals	1,15,636
4	Prasanna K. Mehta	2007-08	Income Accruals	1,91,486
5	Prasanna K. Mehta	2008-09	Income Accruals	2,98,003
6	Prasanna K. Mehta	2009-10	Income Accruals	13,06,380
Total				20,54,348

As already mentioned, the Assessing Officer considered accruals form F.Y. 2004-05 only on the basis of income shown in the returns filed u/s 153A.. To the total accruals of Rs., 20,54,348/ as shown in the above chart, the Assessing Officer added gift of Rs. 3,00,000/- received from his brother during the F.Y. 2008-09, addition of Rs. 1,20,000/- already made on account of inadequate personal drawings. In addition, the Assessing Officer also considered income of Rs. 1,69,154/- declared. by his wife in the return of income for the A.Y. 2008-09. From the resultant figure, drawings for household expenses of Rs. 6,00,000/- was deducted and the net surplus available for investment was arrived at Rs. 20,43,502/-. The income accruals claimed by the appellant for different years are dealt with herein below:

(i) Income accruals up to 31.03.2004:

5.3.2 The appellant reiterated its claim for income accruals of Rs. 9,87,896/- up to 31.03.2004 and submitted that the Assessing Officer is not justified in not taking into consideration the said accruals of Rs. 9,87,896/-. But even in the present proceedings, the appellant has not furnished any evidence to show that there were so much savings and accruals and even if there were accruals up to 31.03.2004 as claimed by the appellant, it was not explained in what form these accruals were available as on 31.03,2004. Further, as mentioned by the Assessing Officer, both appellant and his wife were non-filers from A.Y. 2005-06 to A.Y. 2011-12 and they had filed returns for A.Y. 2008-09 only and for the earlier years returns had not been filed stating that the appellant and his wife had no taxable income. In such circumstances, the claim of appellant of having income accruals up to 31/03/2004 defies any logic and it was rightly rejected by the Assessing Officer.

(ii) Income accruals from 01.04.2004 to 31.03.2010:

5.3.3 In case of income accruals from 01.04.2004 to 31.03.2010, the aggregate accruals considered by the Assessing Officer was Rs.20,54,348/-. However, on verification of the details furnished by the appellant, it is noticed that the property at 403 Hyde Park was purchased on 04.04.2009 and therefore the income accrued during the period 01.04.2009 to 31.03.2010 which includes undisclosed cash of Rs.8,50,000/- found deposited in the locker subsequent to the investment in the said property, cannot be given credit for investment made In the property. Therefore, the claim of the appellant that income accrual of Rs.13,06,380/- relating to this year was also available for investment in the said property cannot be accepted and the Assessing Officer ought not to have allowed

the credit for the accruals during the year while computing the unexplained investment in the said property. Accordingly, from the explained part of the investment considered by the Assessing Officer. income accruals of Rs.13,06,380/- for the year under consideration are excluded and explainable sources are recomputed as under:

Sr. No.	Name	F.Year	Source	Amount
1	Prasanna K. Mehta	2004-05	Income Accruals	48,254
2	Prasanna K. Mehta	2005-06	Income Accruals	94,589
3	Prasanna K. Mehta	2006-07	Income Accruals	1,15,636
4	Prasanna K. Mehta	2007-08	Income Accruals	1,91,486
5	Prasanna K. Mehta	2008-09	Income Accruals	2,98,003
6	Prasanna K. Mehta	2008-09	Gift from Brother	3,00,000
<i>Total</i>				10,47,968
<i>Less : Household expenditure as considered by the AO</i>				6,00,000
				4,47,968
<i>Add: Addition already made on account of inadequate personal drawings</i>				1,20,000
Accruals available for investment as on 31.03.2009				5,67,968

Thus, out of the appellant's share of investment of Rs.29,99,375/- in the property, the appellant had explainable sources to the extent of Rs.5,67,968/- and for the balance investment of Rs. 24,31,407/- (the appellant is not in a position to explain the source of investment. Accordingly, out of the total addition of Rs. 36,56,498/- made by the AO on this ground (addition to the extent of Rs. 24,31,407/- is confirmed. The appellant gets consequential relief of Rs.12,25,091/-. Ground of appeal No.2 is partly allowed."

Aggrieved by the order of Ld.CIT(A), assessee is now in before us.

14. Before us, Ld.A.R. reiterated the submissions made before lower authorities and submitted that the addition be deleted. He further submitted that though the agreement for purchase of property was registered on 06.04.2009 but the payment of Rs.26,86,125/- for the purchase of property was made in A.Y. 2009-10. In support of his contention that the payments have been made in A.Y. 2009-10, he placed on record the chart of payments made for purchase of property and also placed on record the copy of bank statement which showed the payments made. He therefore submitted that if any addition was warranted, the same could have been made only in the year of payment i.e., A.Y. 2009-10 and not in A.Y. 2010-11. He also placed reliance on

the decision of Allahabad High Court in the case of CIT Vs. Shree Ram Jaiswal (1997) 226 ITR 235 (All). He therefore submitted that the addition be deleted. Ld.D.R. on the other hand supported the order of Ld.CIT(A).

15. We have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to addition on account of unexplained investment in property. AO had noted that assessee had purchased a house property for Rs.57 lacs. He after considering the submissions of assessee about the source of investments, held that assessee could explain the source only to the extent of Rs.20,43,000/-. He accordingly treated the balance amount of Rs.36,56,498/- as investment from unexplained sources. When the matter was carried before Ld.CIT(A), CIT(A) after considering the submissions, held that out of assessee's share of investment of Rs.29,99,375/- in the property, assessee had explainable source to the extent of Rs.5,67,968/- and therefore he confirmed the addition to the extent of Rs.24,31,407/-.

16. Before us, Ld.A.R. has submitted that for the acquisition of property, assessee had paid Rs.17.50 lacs on 14.03.2009 and Rs.9,36,125/- on 17.03.2009 and thus aggregate payment of Rs.26,86,125/- was made in A.Y. 2009-10. The payments have been made by cheques and which are also reflected in the bank statement of the assessee. Before us, Revenue has not brought any material on record to controvert the aforesaid submission of assessee of having made the payment of his share in A.Y. 2009-10. Before us, no material has been placed on record by Revenue to demonstrate that the

payments have been made in the impugned assessment year. In such a situation, when no payment for acquisition of house property has been made in A.Y. 2010-11, no addition on account of unexplained investment can be made in A.Y. 2010-11. The addition if at all was required to be made could have been made in A.Y. 2009-10 when the payment was made and for our aforesaid conclusion, we rely on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Shree Ram Jaiswal (1997) 226 ITR 235 (All). We therefore direct the deletion of addition made for unexplained investment in A.Y. 2010-11. **Thus, the ground No.2 and additional ground of assessee is allowed.**

17. **In the result, both the appeals of assessee are partly allowed.**

Order pronounced on 28th day of February, 2019.

Sd/- (SUSHMA CHOWLA) न्यायिक सदस्य / JUDICIAL MEMBER	Sd/- (ANIL CHATURVEDI) लेखा सदस्य / ACCOUNTANT MEMBER
--	---

पुणे Pune; दिनांक Dated : 28th February, 2019.

Yamini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(A) – 11, Pune.
4. Pr.CIT(Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण "बी" / DR, ITAT, "बी" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.