

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. A. D. JAIN, VICE PRESIDENT
AND SHRI. T.S. KAPOOR, ACCOUNTANT MEMBER**

ITA No.390 to 396/LKW/2014
Assessment Year:2003-04 TO 2009-10

Smt. Anju Singh 105, Gaura Bagh, Kursi Road Lucknow		ACIT Central Circle 1 Lucknow
TAN/PAN:AMNPS2089Q		
(Appellant)		(Respondent)

Appellant by:	Shri Rakesh Garg, Advocate Ms. Sweta Mittal, FCA		
Respondent by:	Shri S. K. Madhuk, CIT (DR)		
Date of hearing:	07	02	2019
Date of pronouncement:	08	03	2019

ORDER

PER BENCH:

This is a group of seven appeals filed by the assessee against the consolidated order of the Id. CIT(A) dated 30/12/2011. The assessee originally had taken a number of legal grounds along with grounds on merits, however, which were later on simplified and concise/revised grounds of appeals were filed vide letter dated 2/5/2018. All the appeals except appeal in assessment year 2009-10 involve similar issues and these were heard together, therefore, for the sake of convenience, a common and consolidated order is being passed. For the sake of convenience concise/revised grounds of appeal taken by the assessee in assessment year 2003-04 are reproduced below:-

1. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing the order which is illegal, improper and against the principles of natural justice.

2. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in passing the order without giving adequate opportunity of being heard.

3. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in sustaining the addition u/s 69 of Income-tax Act on account of unexplained investment in the following properties on the basis of report Ld. Valuation Officer, which itself suffers from various infirmities:

i. Plot No. 28, 29, 30 & 31, Gaura Bagh, Lucknow.

ii. Plot No. 37 & 38, Gaura Bagh, Lucknow

iii. Plot No. 25 & 26 Gaura Bagh, Lucknow

iv. Plot No. 35, 45, 46 & Khasra No.45 situated at Gaurabagh, Kursi Road, Lucknow (1/2 share, other 1/2 share belonging to Shri Mahesh Singh Patel).

4. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in not giving full benefit of amount surrendered by Shri K. N. Singh Patel,

5. The Ld. Commissioner of Income-tax (Appeals) has erred in law and on facts in not granting relief sought by the appellant in appeal.

6. The appellant craves leave to add, amend, alter or withdraw any ground of appeal or raise any new ground of appeal during the pendency of appeal.

2. Besides above grounds taken in assessment year 2003-04, the assessee has taken a further ground being ground No.5 in assessment years 2004-05 and 2005-06, challenging the order of the Id. CIT(A) in sustaining further additions. Such ground of appeal in these years reads as under:-

ASSESSMENT YEAR 2004-05:

5. The Id. CIT(A) has erred in law and on facts in sustaining the addition of Rs.8,06,600/- under section 69 of the Act on account of undisclosed investment in purchase of plots or land.

ASSESSMENT YEAR 2005-06:

5. The Id. A.R. of the assessee has erred in law and on facts in sustaining the addition of Rs.2,86,500/- under section 69 of the Act on account of undisclosed investment in purchase of plots or land.

3. The appeal in assessment year 2009-10 involve only one ground challenging the order of the Id. CIT(A) in upholding the addition of Rs.2.50 lakhs made by the Assessing Officer on account of low household expenses.

4. The brief facts as noted in the assessment order in various years are that a search and seizure operation under section 132A of the Act was carried out on Harsingar Gutkha/Patel group of cases on 19/11/2008 and several commercial and residential premises of the assessee were covered under this operation. Simultaneously, survey proceedings under section 133A of the Act were also carried out at many places belonging to the assessee group and its business associates. As a result of search/survey operations, various documents were seized/impounded, resultant to which the group as a whole agreed to surrender a sum of Rs.10 crores as undisclosed income/investment. The declaration to this effect was originally made by Shri O. N. Singh Patel, Shri Mahesh Singh Patel, Smt. Anju Singh and Smt. Anita Singh. Subsequently, on 25/2/2009 an affidavit was filed by Shri. K. N. Singh Patel, who is the head of the family, showing therein detailed declaration and head-wise amount of undisclosed income/investment.

In the affidavit, Shri. K. N. Singh Patel owned up the whole surrender of Rs.10 crores and furnished details of assets/investments which were made by him during several years in the name of his family members, namely, Smt. Anju Singh, Shri Mahesh Singh, Smt. Rajni Patel, etc. The Assessing Officer during the assessment proceedings in the case of the assessee, required the assessee to prove and demonstrate the source of funds for making investment in various immovable assets and in reply the assessee submitted that the plots were purchased by her in various years and construction was done by her father-in-law and the construction cost was duly covered by the declaration of surrender made by her father-in-law Shri. K. N. Singh Patel. The reply of the assessee to this effect as reproduced by the Assessing Officer at page 17 of his order is reproduced below:-

1. Plot No. 25 at Gaurabagh, Kursi Road, Lucknow. Purchased on 03.07.2007 for Rs.2,29,760/- in cash.

2. Plot No. 26 at Gaurabagh, Kursi Road, Lucknow. Purchased on 02.06.2003 for Rs.1,51,800/- vide demand draft no. 181040 dated 30.05,2003 for Rs.1,28,000/- and balance in cash.

It has further been stated by assessee that construction on both the above plots 25 & 26 was done by father-in-law of assessee Shri K.N. Singh Patel in the financial year 2007-08. The cost of construction has been included by him in the surrendered amount of Rs.90 lacs in that year.

3. Plot No, 28-29 at Gaurabagh, Kursi Road, Lucknow. Purchased on 30.05.2003 for Rs.3,03,600/- vide demand draft no. 181010 dated 24.05.2003 for Rs.2,56,000/-and balance in cash.

4. Plot No.30 at Gaurabagh, Kursi Road, Lucknow. Purchased on 30.05.2003 for Rs.1,51,800/- vide demand draft no. 181010 dated 24.05.2003 for Rs.1,28,000/- and balance in cash.

5. Plot No. 31 at Gaurabagh, Kursi Road, Lucknow. Purchased on 02.06.2003 for Rs.1,51,800/- vide demand draft no. 181009 dated 24.05.2003 for Rs.1,28,000/- and balance in cash.

It has further been stated by assessee that construction on the above plots Nos. 28, 29, 30 and 31 was done by father-in-law of assessee, Shri K.N. Singh Patel in the financial year 2008-09. The cost of construction has been included by him in the surrendered amount of Rs.125 lacs in that year.

6. Plot No. 37 at Gaurabagh, Kursi Road, Lucknow. Purchased on 30.05.2001 for Rs.96,200/-.

7. Plot No. 38 at Gaurabagh, Kursi Road, Lucknow. Purchased on 30.05.2001 for Rs.1,00,200/-.

It has further been stated by assessee that construction on the above plots 37 and 38 was done by father-in-law of assessee Shri K.N. Singh Patel in the financial year 2002-03. The cost of construction has been included by him in the surrendered amount of Rs.75 lacs in that year.

8. Plot No. 45 at Gaurabagh, Kursi Road, Lucknow Purchased on 14.06.2001 for Rs.93,200/-.

It has further been stated by assessee that construction on the above plot alongwith other adjoining plots in the name of Shri Mahesh Singh Patel was done by father-in-law of assessee Shri K.N. Singh Patel in the financial years from 1999 to 2002-03 and approximately Rs.22 lacs was the cost of construction which has been borne by Shri K.N. Singh Patel.

9. Plot No. 418 and 420 at Mahona, Bakshi Ka Talab, Lucknow. Purchased on 18.02.2005 for Rs.2,86,500/- vide demand draft no. 197331 dated 11.02.2005 and balance in cash."

5. The Assessing Officer referred the matter relating to investment in construction in various properties to the Valuation Officer. In the

Valuation Report submitted by the Valuation Officer and in those estimated investments declared by the assessee, there were certain differences and, therefore, the Assessing Officer held that the valuation as done by the Valuation Officer will have to be taken into account and, therefore, he added the difference in cost of construction between the cost of construction declared by the assessee and estimated by the Valuation Officer. When the Valuation reports were confronted to the assessee, the assessee submitted that the investment made in assessment year 2002-03 cannot be taken into account, as the same was beyond the period covered under search. However, the Assessing Officer did not accept the contention of the assessee and instead he divided the amount of investment in assessment year 2002-03 into six years and added back the proportionate amount from assessment years 2003-04 to 2008-09. After taking into account all these factors, the Assessing Officer held that the assessee had made total investments in various years as under:-

A.Y.	Total investment during the year
2003-04	99,77,772/-
2004-05	3,13,331/-
2005-06	71,02,423/-
2006-07	65,25,577/-
2007-08	48,97,496/-
2008-09	53,98,482/-
2009-10	12,65,195/-
Total	Rs.3,54,80,276/-

6. The Assessing Officer after noting down the investments made by the assessee on the basis of DVO's report and other adjustments, allowed the benefit of declaration made by Shri. K. N. Singh Patel during

the respective assessment years. The respective assessment years for which Shri. K. N. Singh Patel had made surrender in the name of the assessee and as considered by the Assessing Officer are as under:-

- (i) In assessment year 2003-04, the Assessing Officer has held the investment to the tune of Rs.99,77,772/-, out of which he allowed the relief on account of surrender made by Shri. K. N. Singh Patel to the extent of Rs.86,00,000/- and, therefore, made a net addition of Rs.13,77,772/-.
- (ii) Similarly, in assessment year 2005-06, the Assessing Officer made an addition of Rs.3,13,331/- and did not allow any relief on account of declaration made by Shri. K. N. Singh Patel, as he held that the amount declared by Shri. K. N. Singh Patel in this year was NIL.
- (iii) Similar is the finding in assessment year 2005-06 wherein against the investment of Rs.71,02,423/-, the Assessing Officer did not allow any relief on account of surrender made by Shri. K. N. Singh Patel by holding that the amount surrendered by Shri K.N. Singh Patel in this year in the name of Anju Singh was Nil.
- (iv) During assessment year 2006-07, again the Assessing Officer did not allow any relief on the same ground.
- (v) Same was the position in assessment year 2007-08.
- (vi) However, during assessment year 2008-09, the Assessing Officer held that the investment disclosed by the assessee was Rs.53,98,482/- against which Shri. K. N. Singh Patel had surrendered an amount of Rs.90,00,000/-, therefore, he did not make any addition during this year.

(vii) During the assessment year 2009-10, again the Assessing Officer did not make any addition by holding that the surrender made by Shri. K. N. Singh Patel was more than the amount of investment assessed in the hands of the assessee. During this year against the investment of Rs.12,65,195/-, Shri K. N. Singh Patel had surrendered an amount of Rs.1,25,00,000/-

7. All these facts noted together reflect that the Assessing Officer during these years though gave credit for the surrender made by Shri. K. N. Singh Patel wherein the surrendered amount was more than the investment made by the assessee, but, in the process, he ignored the excess surrender made by Shri. K. N. Singh Patel for these years. On the other hand, wherever as per Valuation Report, the assessee had made investment in a particular year which was not covered by the surrender of Shri K.N. Singh in that year he made the addition. This is what the grievance of the assessee is whereby it is aggrieved that the Assessing Officer and the Id. CIT(A) should have taken a holistic view of the issue and should have considered the entire surrender amount with respect to the declaration made by Shri K. N. Singh in the case of assessee irrespective of difference in years.

8. On appeal before the Id. CIT(A), the Id. CIT(A) deleted part additions made by the Assessing Officer which were made by the Assessing Officer in various six years starting from assessment year 2003-04 and which was based on the investments made before assessment year 2002-03 by holding that the investment made before assessment year 2002-03 were not covered by the search period and, therefore, the action of the Assessing Officer in dividing the investment of assessment year 2002-03 into six parts and allocating the same to six assessment years was not justified and, therefore, he deleted the same.

The Id. CIT(A) also allowed relief to the assessee by ignoring the Valuation Report estimates as the difference between declared value and valuation report was less than 15%.

9. For the sake of convenience, the year-wise findings of the Id. CIT(A) are reproduced below:-

ASSESSMENT YEAR 2003-04:

"3.7.3. I have considered the submission made. The assessee was found to have invested in land from May 2001 onwards, and in the properties under reference, investment in land was made in August 1999 in "plot no. 46 by Shri Mahesh Singh Patel and in plots no. 31 and 38 in May 2001 by the appellant. Thus, it cannot be outrightly rejected that 'no construction was made in the earlier years, more so when in respect of all other years, the Assessing Officer has accepted the version of the assessee regarding investment being made, subject to the report of the DVO. The assessee has shown investment in various years and even in the assessment year 2008-09 investment in building at Plot No. 35, 45 & 46, Khasra No, 45, Gaura Bagh, Kursi Road, Lucknow has been shown at Rs.3578200 by the assessee herself. No evidence was apparently found in the course of the search that the construction had not taken place in the earlier years as claimed, but took place in the subsequent years. Even the claim of investment made in all the other years has been accepted by the Assessing Officer subject to variation as per the valuation report. Even the DVO has estimated the value in the years as claimed by the assessee without giving any contrary finding and the Assessing Officer has adopted the value as estimated by the Valuation Officer. Once the Assessing Officer has accepted the value estimated by the Valuation Officer in various years and has also accepted the investment made by the assessee in the years relevant to the assessment years for which the proceedings were pending before him, there does not appear any justification, for not accepting the investment made in the earlier years as no evidence has been brought on record in support of the claim that no investment was made in the assessment years prior to

assessment year 2003-04 as claimed by the assessee. Thus, spreading over the investment of earlier years by the Assessing Officer in respect of properties being building at Plot No, 35, 45 & 46, Khasra No. 45, Gaura Bagh, Kursi Road, Lucknow and building at plots no. 37 & 38, Gaura Bagh, Kursi Road, Lucknow is not justified and the unexplained investment in various year shall be estimated by considering the valuation as made by the Valuation Officer in the respective years. Further, it has been held in Income-tax Officer v. Ram Nath Aggarwal [2004] 2 SOT 471 (ITAT ASR. Bench) (SMC) that the valuation of an asset is not an exact science. Mathematical calculation 'is not possible. The valuation of the immovable property is also estimated on the basis of the facts and circumstances. Therefore, it could not be said that whatever the Valuation Officer had stated was final word in the matter. The word 'estimate' itself suggests that there is always possibility of some amount of inaccuracy and uncertainty. It was, therefore, obvious that report of the 'Valuation Officer could not be held as true and correct. There is always a room for error or omission. The Commissioner (Appeals) was justified in allowing 10 per cent relief on account of difference of opinion.

Keeping in view the entire facts of the present case, the Commissioner (Appeals) had correctly decided the issue and, therefore, there was no reason to interfere with his order.

In the result, the appeal was to be dismissed.

3.7.4. In the case of Bimla Singh v. CIT [2009] 308 ITR 71/222 CTR (Pat.) 404 during search it was found that the assessee had made huge investment in house property. According to the assessee they had invested a sum of Rs.11,15,000 in construction of the house but according to the report of the valuer, cost of construction was Rs.12,99,700. It was held that in valuation of the house property bona fide difference is bound to occur. In the absence of any statutory provision, no hard and fast rule can be laid down in regard to the percentage of difference which can be ignored. The difference between the assessee and the valuer was less than 15 per cent. Not only this, the construction of the house was spread over a period of 7 years. In the facts of the present case the difference between the plea of the assessee on the issue

on investment on house property and valuer's report was so meager that one would assume it to be bona fide difference fit to be ignored.

3.7.5. Hence, as the difference in the revised estimate made by the Valuation Officer and that claimed by the assessee works out to less than 15% in respect of the three buildings, and valuation is only an estimate, therefore, in view of the decisions relied upon by the appellant and those mentioned above, the same shall be ignored for computing the unexplained investment and the investment shown by the assessee in respect of building at Plots No. 28, 29, 30 & 31, Gauri Bagh, Kursi Road, Lucknow (difference of 7.77%) and building at Plots No. 37 & 38, Gaura Bagh, Kursi Road, Lucknow (difference of 8.22%) shall be adopted for various years in place of estimate made by the Assessing Officer. In the years in which the credit can be given for investment made by Shri K. N. Singh Patel, as done by the Assessing Officer, the required credit shall be given. Hence, the investment made by the assessee during various years (in Rs.) is recomputed as under:-

TABLE-A

A.Y	Investment in value of property at:			Total
	<i>Plots No. 28,29, 30 & 31 Gaura Bagh (as shown by the assessee)</i>	<i>Plots No. 37 & 38, Gaura Bagh, Kursi Road, Lucknow (as shown by the assessee)</i>	<i>Plots No. 25 & 26, Gaura Bagh, Kursi Road, Lucknow (as estimated by the Valuation Officer)</i>	<i>investment during the year.</i>
2002-03		5552400		5552400
2003-04		2485258		2485258
2004-05				0
2005-06	2332200		4286242	6618442
2006-07	3543900		2394017	5937917
2007-08	2318200		2113458	4431658

2008-09	2141300		959090	3100390
2009-10	1174400		0	1174400
2010-11			2606599	2606598
2011-12				0
Total	1,151,0,000	80,37,658	1,23,59,406	2,93,00,465

3.7.6 Similarly, the share of the assessee in the building at Plot No. 35, 45 & 46, Khasra No. 45, Gaura Bagh, Kursi Road, Lucknow is taken as that shown by the assessee himself and assuming 50% share of the appellant as the difference in the estimate of the DVO and the investment shown by the assessee works out to 10.22% and can be ignored:

TABLE-B

A. Y.	Total investment as shown by the assessee	Share of Smt. Anju Singh Patel
2202-03	1750000	875000
2003-04	2030000	1015000
2004-05	276800	138400
2005-06	258000	129000
2006-07	257000	137500
2007-08	225000	112500
2008-09	3578200	1789100
Total	8393000	4196500

3.7.7 The total investment (in Rs.) in various years accordingly works out as under:-

TABLE-C

A.Y.	investment as per Table-A	Investment as per Table-B	Total investment during the year
2002-03	5552400	875000	6427400
2003-04	2485258	1015000	3500258
2004-05	0	138400	138400
2005-06	6618442	129000	6747442
2006-07	5937917	137500	6075417
2007-08	4431658	112500	4544158
2008-09	3100390	1789100	4889490
2009-10	1174400	NIL	1174400

For the year under consideration, the total investment is recomputed at Rs.3500258 in place of Rs.9977772 computed by the Assessing Officer and after allowing credit for a sum of Rs.8600000 for the disclosure made by Shri K. N. Singh Patel as done by the Assessing Officer, no addition is liable to be made for the A.Y. 2003-04 resulting into consequential relief of Rs.1377772. Hence, grounds no, 5 and 6 are partly allowed while ground no. 7 is allowed."

10. In assessment year 2004-05, the Id. CIT(A) allowed part relief by holding as under:-

"4.1 Grounds no. 1, 2, 3 and 4 are rejected in view of the findings made in para 3.3, 3.4.1, 3.5 and 3.6 in respect of these grounds of appeal in the appeal for A.Y. 2003-04.

4.2 Grounds no. 5 and 6 are partly allowed in view of the finding in paras,3.7 to 3.7.7 and the addition is reduced to Rs.138400 in place of Rs.313331 made by the Assessing Officer resulting into consequential relief. Ground no. 7 is rejected as no amount had been offered as undisclosed investment by Shri K. N. Singh Patel for the year under consideration as investment made on behalf of the appellant.

4.3 Grounds no. 8 and 9 are against the addition of Rs.806600 made by the Assessing Officer by observing as under:-

The position of undisclosed investment in respect of above referred properties with regard to cost of acquisition is as under:-

(i) Plot No. 26 purchased for Rs.1,28,000/- by the way of demand draft and stamp duty amounting to Rs.23,800/-. It has not been made clear as to from which bank account this amount has been withdrawn. In the available bank accounts, no such entry is seen. This amount has, therefore, been paid out of the undisclosed income of the assessee and is, therefore, added to his total income u/s 69 of the I. T. Act, 1961.

(ii) Plot No. 28, 29 purchased for Rs.3,03,600/- by the way of demand draft and stamp duty amounting to Rs.47,600/-. It has not been made clear as to from which bank account this amount has been withdrawn. In the available bank accounts, no such entry is seen. This amount has, therefore, been paid-out of the undisclosed income of the assessee and is, therefore, added to his total income u/s 69 of the I.T. Act, 1961.

(iii) Plot No. 30 purchased for Rs.1,28,000/- by the way of demand draft and stamp duty amounting to Rs,23,800/-. It has not been made clear as to from which bank account this amount has been withdrawn. In the available bank accounts, no such entry is seen. This amount has, therefore, been paid out of the undisclosed income of the assessee and is,

therefore, added to his total income u/s 69 of the IT, Act, 1961.

(iv) Plot No. 31 purchased for Rs.1,28,000/- by the way of demand draft and stamp duty amounting to Rs.23,800/-. It has not been made clear as to from "which bank account this amount has been withdrawn. In the available bank accounts, no such entry is seen. This amount has, therefore, been paid out of the undisclosed income of the assessee and is, therefore, added to his total income u/s. 69 of the I. T. Act, 1961.

Therefore, the total undisclosed investment in respect of cost of acquisition of properties is Rs.8,06,600/- which is being added to the total income of the assessee u/s 69 of the LT. Act, 1961. Satisfaction is recorded that the assessee has furnished inaccurate particulars of his income and, therefore, penalty proceedings u/s 271(1)(c) of the Income-tax Act, 1961 are being initiated separately for this default (Addition, Rs.8,06,600/-)

4.3.1. During the course of the appeal, the appellant has submitted as under:-

III – Purchase of other properties, aggregating Rs.13,22,860

40. The said addition which pertains to different assessment years, is wholly inconsistent with the facts of the case and material and information available on record, as may be seen from the details furnished below:-

a). Addition of Rs.8,06,000 in the assessment year 2004-05: A detailed explanation was given vide letter dated 26.08.2010 and the said explanation stands fully supported by the seized material in the form of ledger account of capital account as appearing in the books of Anju Agencies, proprietary concern of the appellant. The said ledger account covers the investment to the extent of Rs.6,40,000 and the balance of Rs.1,66,600 is covered by the disclosure of Rs.3,00,000 as made by Sri K.N. Singh Patel under the head "other unexplained investment /expenditure etc."

Photocopy of the letter dated 26.08.2010 and copy of ledger of capital account is enclosed at pages 55 to 58 of this submission.

4.3.2 I have considered the submission made. The appellant has enclosed the copy of capital account! in the ledger of Anju Agencies for A.Y. 2004-05 in which withdrawals of Rs.512000 and Rs.128000 are made on 22.05.2003 and 30.05.2003 for purchase of land vide cheques no. 15397 and 153979 respectively. However, the details of balance amount of Rs.166600 are not mentioned in the statement of Shri K.. N. Singh Patel. Hence, the addition is reduced to Rs.166600 as the appellant has not filed any evidence to explain the source of expenditure incurred and grounds no. 8 and 9 are partly allowed. Ground no. 10 is rejected as the Assessing Officer had allowed adequate opportunity of being heard .to the appellant.

4.4 Grounds no. 11 and 12 are general in nature and do not require any separate adjudication.

4.5 In the result, the appeal for A.Y. 2004-05 is partly allowed."

11. In assessment year 2005-06, the Id. CIT(A) allowed part relief by holding as under:-

"5.1 Grounds no. 1, 2, 3, and 4 are rejected in view of the findings made in paras, 3.3, 3.4.1, 3.5 and 3.6 in respect of these grounds of appeal in the appeal for A.Y. 2003-04.

5.2 Grounds no. 5 and 6 are partly allowed in view of the finding in paras 3.7 to 3.7.7 and the addition is reduced to Rs.6747442 in place of Rs.7102423 made by the Assessing Officer resulting into consequential relief. Ground no. 7 is rejected as for the year under consideration, no amount had been offered as undisclosed investment by Shri K. N. Singh Patel relating to the investment made by the appellant.

5.3 Grounds No. 8 and 9 are against the addition of Rs.286500 made by the .Assessing Officer by observing as under:-

"The position of undisclosed investment in respect of above referred properties with regard to cost of acquisition is as under:-

(i) Plot No. 418 &420 at Mahona, Bakshi Ka Talab purchased for Rs.2,00,000/- by the way of demand draft and stamp duty amounting to Rs.86,500/-. It has not been made clear as to from which bank account this amount has been withdrawn. In the available bank accounts, no such entry is seen. This amount has, therefore, been paid out of the undisclosed income of the assessee and is, therefore, added to his total income u/s 69 of the I. T. Act, 1961.

Therefore, the total undisclosed investment in respect of cost of acquisition of properties is Rs,2,86,500/- which is being added to the total income of the assessee u/s 69 of the I.T. Act, 1961, Satisfaction is recorded that the assessee has furnished inaccurate particulars of his income and, therefore, penalty proceedings u/s 271(1)(c) of the I.T. Act, 1961 are being initiated separately for this default. (Addition Rs.2,86,500/-)

5.3.1 During the course of the appeal, the appellant has submitted as under:

b) Assessment Year 2005-06: The addition of Rs.2,86,500 has been made on account of property purchased on 18.02.2005, The explanation letter dated 26.08.2010 as referred to above also covers fully the said investment. The ACIT has rejected the said explanation merely by saying that name of the bank has not been given whereas the fact remains that the name of the bank i.e. Allahabad Bank has been given in the said explanation. Photocopy of the letter dated 26.08.2010 is placed at pages 59 to 61 of this submission.

5.3.2 No further evidence has been filed in this regard. Hence, both these grounds of appeal are rejected as no evidence has been filed to explain the source of investment in plots and the addition of T286500 made is hereby confirmed.

5.4 Ground no. 10 is also rejected as the Assessing Officer had provided adequate opportunity of being heard.

5.5 Grounds no. 11 and 12 are general in nature and do not require any separate adjudication.

5.7 In the result, the appeal for A.Y. 2005-06 is partly allowed."

12. In assessment year 2006-07, the Id. CIT(A) allowed part relief by holding as under:-

"6.1 Grounds no, 1, 2, 3 and 4 are rejected in view of the findings made in paras 3.3, 3.4.1, 3.5 and 3.6 in respect of these grounds of appeal in the appeal for A.Y. 2003-04.

6.2 Grounds no. 5 and 6 are partly allowed in view of the finding in paras 3.7 to 3.7.7 and the addition is reduced to Rs.6075417 in place of Rs.6525577 made by the Assessing Officer resulting into consequential relief. Ground no. 7 is rejected as for the year under consideration, no amount had as undisclosed investment by Shri K. N. Singh Patel relating to the investment made by the appellant.

6.3 Grounds No.8 & 9 are general in nature and do not require any separate adjudication.

6.5 In the result, the appeal for A.Y. 2006-07 is partly allowed."

13. In assessment year 2007-08, the Id. CIT(A) allowed part relief by holding as under:-

"7.1 Grounds no. 1, 2, 3 and 4 are rejected in view of the findings made in paras 3.3, 3.4.1, 3.5 and 3.6 in respect of these grounds of appeal in the appeal for A.Y. 2003-04.

7.2 Grounds no. 5 and 6 are partly allowed, in view of the finding in paras 3.7 to 3.7.7 and the addition is reduced to Rs.4544158 in place of Rs.4897496 made by the Assessing Officer resulting into consequential relief. Ground no. 7 is rejected as for the year under consideration, no amount had been offered as undisclosed

investment by Shri K. N. Singh Patel relating to the investment made by the appellant.

7.3 Grounds no. 8 and 9 are general in nature and do not require any separate adjudication.

7.4 In the result, the appeal for A.Y. 2007-08 is partly allowed."

14. In assessment year 2008-09, the Id. CIT(A) allowed part relief by holding as under:-

"8.1 Grounds no. 1, 2, 3 and 4 are rejected in view of the findings made in paras 3.3, 3.4.1, 3.5 and 3.6 in respect of these grounds of appeal in the appeal for A.Y. 2003-04.

8.2. Grounds no. 5 is partly allowed in view of the finding in paras 3.7 to 3.7.7 and the investment worked out is reduced to Rs.4889490 in place of Rs.5398482 made by the Assessing Officer. The Assessing Officer has not made any addition on account of unexplained investment in construction as a sum of Rs.9000000 had been offered as undisclosed investment by Shri K. N. Singh Patel relating to the investment made by the appellant while the total investment during the year worked out to Rs.5398482 as per the Assessing Officer in buildings. The Assessing Officer has also added a sum of Rs.229760 as unexplained investment in purchase of plots. However, in view of the sum of Rs.9000000 offered for tax by Shri K. N. Singh Patel on account of investment made by Smt. Anju Singh, this addition of Rs.229760 is also not warranted as the same along with unexplained investment in construction worked out is less than the total amount of disclosure made and the addition of Rs.229760 is also deleted. However, Ground no. 6 is rejected as no evidence for the withdrawals made during the year from the proprietary concern in this regard has been field in the course of the appeal. Further, Ground no. 7 is also rejected as the Assessing Officer had provided adequate opportunity of being heard.

8.3. Grounds No.8 and 9 are general in nature and do not require any separate adjudication.

8.4 In the result, the appeal for A.Y. 2008-09 is partly allowed."

15. In assessment year 2009-10, the Id. CIT(A) dismissed the appeal by holding as under:-

"9.2.2. I have considered the reply and the addition made. As no specific details with regard to the amount considered under section 69C were furnished, therefore, the benefit of the so called surrender made by Shri K.N. Singh Patel cannot be allowed and the addition of Rs.2,50,000/- made is hereby confirmed, as no evidence for the source of acquisition of these household goods was furnished and the assets have been valued at Rs.10,00,000/- and have been equally considered in the hands of all the four family members. Hence, both these grounds of appeal are rejected.

9.3 Ground no. 4 is rejected as the Assessing Officer had provided adequate opportunity to the appellant before making the assessment.

9.4 Grounds no. 5 and 6 (inadvertently mentioned as Grounds no. 8 and 9) are general in nature and do not require any separate adjudication.

9.5 In the result, the appeal for A.Y. 2009-10 is hereby dismissed."

16. At the outset, the Id. A.R. of the assessee invited our attention to the findings of the Assessing Officer and the Id. CIT(A), by which they have not allowed set off to the assessee for investments made by her in the years in which declaration of surrender made by Shri K. N. Singh was more than the investment declared by the assessee; whereas, on the other hand, the authorities below had made additions where the investments made by the assessee was more than the amount declared by Shri K. N. Singh in that particular year. The Id. A.R. of the assessee submitted that this action of the authorities below is not justified at all,

as the undisputed fact is that the properties in all the years remained the same and the surrender by K. N. Singh Patel was made against same properties. It was argued that the authorities below should have considered total value of various properties with the surrender amount of Shri K. N. Singh and should not have considered the comparison on year-to-year basis. It was further argued that even if the investment is to be considered year-wise, then in those years where the amount of surrender was more than the investment, the same should have been carried forward for adjustment in the next year. The Id. A.R. of the assessee further argued that in all the years, the Id. CIT(A) has ignored the valuation arrived at by the Valuation Officer by holding that the difference between the declared value and those estimated by the Valuation Officer was less than 15% and the Id. CIT(A) has accepted the valuation declared by the assessee. Therefore, it was argued that when Id. CIT(A) has ignored the valuation reports, the findings of Valuation Officer with respect to year-wise investments should also be ignored. It was further argued that it will amount to double taxation of the same investment declared and surrendered by Shri K. N. Singh as Shri K. N. Singh has already surrendered an amount of Rs.10 crores which represented investment made in the name of various relatives which included the assessee also. It was submitted that in the case of the assessee, Shri K. N. Singh had surrendered an amount of Rs.3,01,00,000/- whereas the value of all the properties as declared by the assessee from assessment year 2003-04 onwards was Rs.2,47,96,758/- and in this respect our attention was invited to a chart showing the value of investment in various properties as declared by the assessee and the amount of surrender made by Shri K. N. Singh in the name of the assessee. Our specific attention was invited to the order of the Id. CIT(A) in assessment year 2003-04 where after analyzing the entire facts, the Id. CIT(A) had reduced the amount of addition to Nil by

holding that the value of investment in that year was Rs.35,00,258/- whereas Shri K. N. Singh had surrendered Rs.86,00,000/- in this year. It was submitted that while Rs.86,00,000/- as surrendered in assessment year 2003-04 was accepted; whereas set off in the name of the assessee was allowed only to the extent of Rs.35,00,358/- which was highly unjustified.

17. Arguing ground No.5 of the appeal in assessment year 2004-05 regarding addition of Rs.8,06,600/- in respect of undisclosed investments made by the assessee, the Id. A.R. of the assessee submitted that the Id. CIT(A) has reduced the addition to Rs.1,66,600/- by holding that such amount remained to be unexplained. The Id. A.R. of the assessee in this respect submitted that deletion made by the Id. CIT(A) in this respect was supported by withdrawals in capital account which the Id. CIT(A) has noted in para 4.3.2 of his order and the balance amount of Rs.1,66,600/- should have been considered as part of surrender made by Shri K. N. Singh.

18. Arguing ground No.5 in assessment year 2005-06, the Id. A.R. of the assessee submitted that this addition was made by the Assessing Officer on account of property purchased on 18/2/2005 and explanation was submitted vide letter dated 26/8/2010 which the Assessing Officer has rejected merely by saying that the name of the bank has not been given; whereas the name of the bank i.e. Allahabad Bank was mentioned in the said letter. The Id. A.R. of the assessee submitted that though investment was covered by explanation in letter dated 26/8/2010, but still addition can be set off against the surrender of Shri K. N. Singh.

19. Arguing the only ground No.5 of appeal in assessment year 2009-10, the Id. A.R. of the assessee submitted that the Assessing Officer had

made addition on account of low household expenses to the tune of Rs.2.50 lakhs which was not based upon any incriminating material and the addition was made arbitrarily, therefore, it needs to be deleted.

20. The Id. D.R., on the other hand, placed reliance on the orders of the Id. CIT(A) and submitted that Id. CIT(A) has allowed substantial relief to the assessee wherever the year of investment and year of surrender was same. It was submitted that investment made by assessee in earlier years cannot be covered by surrender of Shri K. N. Singh in succeeding years.

21. We have heard the rival parties and have gone through the material placed on record. We find that the main dispute between the parties is that the declaration of surrender made by Shri K. N. Singh, head of the family should be completely set off against the investments made by the assessee in various years. This grievance has been taken by the assessee in ground No.4 in all the appeals. Therefore, we first take up this ground for adjudication. The Revenue has not allowed complete set off of surrender against the investment, as there was difference in the years of investment estimated by the assessee and the years in which Shri K. N. Singh had made surrender. From the records it is apparent that Shri K. N. Singh had made total surrender of Rs.3,01,00,000/- for the construction made by Smt. Anju Singh in various properties and the surrender was made and in the affidavit Shri K. N. Singh had mentioned that such amount of Rs.3,01,00,000/- was invested by him in the name of Smt. Anju Singh. The year-wise amount of surrender made by Shri K. N. Singh in the name of Smt. Anju Singh is as under:-

(1)	Assessment Year 2003-04	:	Rs.86,00,000/-
(2)	Assessment Year 2008-09	:	Rs.90,00,000/-

(3) Assessment Year 2009-10	:	<u>Rs.1,25,00,000/-</u>
Total	:	<u>Rs.3,01,00,000/-</u>

22. We further find that Shri K. N. Singh in the affidavit had affirmed as under:-

"8. That during the course of said search and seizure action, Shri Mahesh Singh Patel elder son of the deponent gave a statement whereby an additional income of Rs. 10 Crores. (Ten crores) was agreed to be disclosed on behalf of various persons. A copy of the said statement dated 19.11.2008 is enclosed and the same has been marked as ANNEXURE – 1 hereto.

9. That the Authorized officers sought for ratification of the said statement, from other family members also namely (i) Shri Om Narain Singh Patel (second son of the deponent) (ii) Smt. Anita Singh wife of Shri Mahesh Singh Patel and (iii) Smt. Anju Singh wife of Shri Om Narain Singh Patel. Copies of the said statements are enclosed and the same have been marked as ANNEXURE – II, III, & IV hereto.

10. That it is clarified and submitted that all the statements referred to above i.e. the statements given by (i) Shri Mahesh Singh Patel, (ii) Shri Om Narain Singh Patel, (iii) Smt. Anita Singh and (iv) Smt. Anju Singh pertain to the disclosure of consolidated sum of Rs. 10 Crores (Ten crores), as additional income.

11. That looking to the fact that the deponent himself has been instrumental in setting up various "business entities" and/or creating various "source of income" acquisition of capital assets etc, and he himself has been playing a pivotal role in running and managing such "business entities"/"source of income" and "investments" appearing in the names of various business and other entities, "individuals", "groups of individuals", and in keeping with letter and spirit of the statements referred to in paras 8, 9 & 10 hereinafore, the deponent himself has owned the said disclosure of income of Rs.10 Crores (Ten Crores) and he undertakes and agrees to pay taxes as are payable with reference to the same.

12. That, in this respect, it is clarified that pursuance of the said undertaking, the deponent himself had already arranged for payment of taxes aggregating Rs. 1 Crores, through four separate cheques, as per particulars given below:-

Sl. No.	Cheque No.	Date	Amount (Rs.)
(i)	836761	15/12/2008	25,00,000
(ii)	836763	25/12/2008	25,00,000
(iii)	836762	05/01/2009	25,00,000
(iv)	836764	25/01/2009	25,00,000

which have been drawn on his own Bank Account No. 2410000100132967 at Punjab National Bank, Rakabganj.

13. That the present statement is being given under section 132(4) of the Act and is of clarificatory in nature of the statements/ rectification referred in paras 9, 10 & 11 and the said statements rectifications should be deemed to have been telescoped in the present statement.

14. That as far as the "Manner" in which the said income aggregating Rs.10 Crores (Ten Crores) has been earned, is given hereunder:-

(i) The deponent hails from District Kannauj and while living in that area, he had developed strong linkage with the rural class and also with the small time perfumers operating in that region;

(ii) During the course of his association with such class of people, he has been rendering assistance to them in selling their products at "fair price". Although such services were being rendered on humanitarian ground and out of concern for upliftment of the backward class of the society as a whole, without there being any commercial angle involved in the same, the deponent has been occasionally getting gifts in cash and/or in kind from the persons of that starta, out of their sense of gratitude for the deponent;

(iii) *At that stage, he had an opportunity to interact with small time perfumers and on account of such an "interaction" he had developed a very strong sense for processing of herbs, blending, mixing and re-mixing of perfumes and perfumery products and in order to try his luck in this larger field, he shifted to Lucknow in early 1980's and continued the activities that were being carried on by him while at Kannauj, this time in a much wider area and diversified field.*

(iv) *After he got settled at Lucknow, he continued to assist the inhabitants of his native place in the manner mentioned above and hi lieu number of the persons who felt benefited, both socially as well as economically by the advice and assistance rendered by the deponent.*

All these sources taken together constitute the "manner" in which the deponent got enriched to the extent of the disclosure of Rs.10 Crores (Ten) as made during the course of search that had commenced oh 19.11.2008.

15. That the sums so collected by the deponent from time and over a period of years, remained invested on the date of search as per details given below:-

(a) Financial Year 2002-03

SI. No.	Name.	Head of Expenditure/Investment etc.	Rs.
(i)	Anju Singh	Construction & acquisition of Capital Assests At Gaura Bagh, Kursi Road, Lucknow	75,00,000
(ii)	Anju Singh & Mahesh Singh	Construction & acquisition of Capital Assests At Gaura Bagh, Kursi Road, Lucknow	22,00,000
(iii)		Other unexplained investment/ Expenditure Etc.	2,00,000
		Total	99,00,000

(b) Financial Year 2003-04

SI. No.	Name	Head of ExpenditureAnvestment etc.	Rs.
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(i)	Mahesh Singh	Construction & acquisition of Capital Assets at Farm House Chandrika Devi Road	70,00,000
(ii)		Other unexplained investments/ Expenditure etc	3,005000
		Total	73,00,000

(c) Financial Year 2004-05

SI. No.	Name	Head of Expenditure/Investment etc.	Rs.
(i)		Other unexplained investments/ Expenditure etc.	5,00,000
		Total	5,00,000

(d) Financial Year 2005-06

SI. No	Name	Head of Expenditure/Investment etc.	Rs.
(i)	Smt. Rajni Patel	Construction & acquisition of Capital Assets At Gaura Bagh, Kursi Road, Lucknow	30,00,000
(ii)	Anju Singh	Land at Aadar Khera BKT	3,00,000
		Megha Workshop	2,00,000
(iii)	Sanatan Cold Storage Ltd.	Loan to Farmers	75,00,000
(iv)		Other unexplained investments/ Expenditure etc.	3,00,000
		Total	1,13,00,000

Financial Year 2006-07

SI. No	Name	Head of Expenditure/Investment etc.	Rs.
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(i)	Om Narain Singh	Land of Farm House IIM Road	2,00,000
(ii)	Pankaj Verma	Land at Amrapali Road, Hardoi Road	5,00,000
(iii)		Other unexplained investments/ Expenditure etc.	3,00,000
		Total	10,00,000

Financial Year 2007-08

Sl. No.	Name	Head of Expenditure/Investment etc.	Rs.
(i)	Anju Singh	Construction & acquisition of Capital Assets at Gaura Bagh, Kursi Road, Lucfcnow	90,00,000
(ii)	Mahesh Patel & Anita Singh	Construction & acquisition of Capital Assets at Faizabad Road, Lucknow	50,00,000
(iii)		Other unexplained investment/Expenditure etc.	10,00,000
		Total	1,50,00,000

Financial Year 2008-09

Sl. No	Name	Head of Expenditure/Investment etc.	Rs.
(i)	Anju Singh	Construction & acquisition of Capital Assets at Gaura Bagh, Kursi Road, Lucknow	1,25,00,000
(ii)	Mahesh Singh	Construction & acquisition of Capital Assets at Gaura Bagh, Kursi Road, Lucknow	1,75,00,000
(iii)	Om Narain Singh	Farm House, IIM Road (Land Only)	30,00,000
(iv)	PPPL	Excess stock	60,00,000
(v)	Bajjnath Charitable & Educational Trust	Construction & acquisition of Capital Assets	40,00,000

(vi)	Sanatan Cold Storage Ltd.	Construction & acquisition of Capital Assets	25,00,000
(vii)	Cash Seiuzed	At various places	25,00,000
(viii)	Maa Sharda Buildtech Pvt. Ltd.	Construction of Building	50,00,000
(ix)		Other unexplained mvestment/Expenditure etc	20,00,000
			5,50,00,000
			10,00,00,000

16. That income aggregating Rs.10 Crores (Ten) as spread over in different financial years and as stood reflected at the "relevant time" in the acquisition of capital asset/other investment and expenditure etc. remained undisclosed earlier, as the deponent has all along been under a bonafide belief that the sums (which come to be invested in the aforesaid manner) were not of taxable nature., as the receipts were by way of gifts only nor liable for taxation.

17. That for the reason that with the passage of time, the deponent does not have in the possession all the relevant details and evidences in support of the same, which may reach the level of acceptability by die Income tax department, the deponent has been advised to surrender the same as additional income for being taxed solely in his hands, irrespective of the names in which the investment/expenditure etc stands/incurred.

18. That the disclosure is being made by the deponent in a bonafide manner and with a view to extend all the cooperation to the Income Tax Department, so as to avoid litigation and to buy mental peace for the deponent himself and his family members, and for the sake of expeditious completion of assessment and/or other related proceedings.

19. That the additional income as aforesaid, has been surrendered on the stipulations that: -

(i) the statements that is being given in terms of the present sworn statement should be treated as statement given by the deponent under section 132(4) read with explanation 5 to section 271(1)(c).

(ii) the income so disclosed by the deponent should be treated to cover the effect of all such material/ information, in whatever form, that had been found during the course of search/ survey and/or that may be found to be so related later to the said search/survey in *Patel Group* as a whole, that had commenced on 19.11.2008.

(iii) entire income as aforesaid shall be assessed in the hands of the deponent only, without affecting the assessments of any other "business entities" "other entities" "individuals" and or "group of individuals" forming the "Patel Group" etc.

(iv) the additional income so surrendered by the deponent shall be allowed to be accounted for in the books of account and other relevant records related to the "persons" concerned, in the name of the deponent himself.

(v) all taxes as are payable on such additional shall be borne exclusively by the deponent himself and he himself shall be held liable to pay and discharge 'the same';

(vi) complete waiver from interest if any, found to be payable under any provisions of the "Act" shall be considered sympathetically.

(vii) Immunity from penalty under section 271(1)(c) and/or any other penal provisions under the Act shall be granted not only to the deponent but also to other "persons" forming part of 'Patel Group* as a whole, wherever the additional income and/ or part thereof is accounted for or deemed to have been accounted for/accounted;

(viii) complete immunity from prosecution and /or other such provisions shall be granted in the case of the deponent and/or other person(s) forming 'Patel Group' who are found/held to be affected by the said disclosures; and

(ix) the conduct of the deponent, the matter of disclosure of income shall be duly reciprocated by the Income-tax Department and neither he himself nor any other person or persons belonging to Patel Group shall be subjected to any harassment and their assessment shall be completed expeditiously;

20. That it is further stated that the deponent is aggregating to all such adjustments as to the year of taxability of the additional income aggregating Rs.10 Crores (Ten Crores) or part thereof as may be found to be pertinent at the stage of completion of assessment."

23. From the above contents of the affidavit along with facts about surrender of Shri K. N. Singh, it is apparent that at the time of surrender, Shri K. N. Singh had owned up the investments made in the name of various family members including the assessee. There is no dispute regarding identification of property, as undisputedly the properties declared by Shri K. N. Singh in the name of the assessee remained the same. Against the total surrender of Rs.3,01,00,000/- for investments in the name of assessee, the amount of addition, as sustained by the Id. CIT(A) is as follows:-

Assessment year 2003-04	Rs.35,00,258/-
Assessment year 2004-05	Rs.1,38,400/-
Assessment year 2005-06	Rs.67,47,442/-
Assessment year 2006-07	Rs.60,75,417/-
Assessment year 2007-08	Rs.45,44,158/-

Assessment year 2008-09	Rs.48,89,490/-
Assessment year 2009-10	Nil
Total	Rs.2,58,95,165/-

24. Against the above year-wise sustained addition, the Id. CIT(A) allowed relief to the assessee on account of his surrender in various years and upheld the addition for balance while he ignored the excess surrender during some years. The working of such addition is as per table below:-

Assessment year	Addition sustained by Id. CIT(A)	Relief allowed on account of surrender	Net addition	Excess surrender ignored
2003-04	Rs.35,00,258	Rs.86,00,000/-	Nil	Rs.50,99,742/-
2004-05	Rs.1,38,400/-	Nil	Rs.1,38,400/-	Nil
2005-06	Rs.67,47,442/-	Nil	Rs.67,47,442/-	Nil
2006-07	Rs.60,75,417/-		Rs.60,75,417/-	Nil
2007-08	Rs.45,44,158/-	Nil	Rs.45,44,158/-	Nil
2008-09	Rs.48,89,490/-	Rs.90,00,000/-	Nil	Rs.41,10,510/-
2009-10	-	Rs.1,25,00,000/-	Nil	Rs.1,25,00,000/-
Total	Rs.2,58,95,165/-	Rs.3,01,00,000/-		2,17,10,252/-

25. These all facts indicate that Mr. K. N. Singh has been subjected to tax for his surrender which was represented by investments in various properties in the name of various persons. In the name of persons the same investment has been subjected to tax wherever the amount of surrender in a particular year was less than investment in that year and on the other hand no benefit has been given for the excess of surrender

over the amount of investment. In these circumstances, we are of the opinion that the Revenue should have taken a holistic view of the position and total investment in a property during the period under search should have been compared with the total surrender towards that particular property. The assessee in her reply to Assessing Officer, reproduced by us in earlier part of this order, had also confirmed that surrender was made by Shri K. N. Singh Patel on account of construction in various properties and there is no mention of yearwise construction. We further find that in the assessment of Shri K. N. Patel in various years the Assessing Officer himself has completed the assessment after holding that the total surrendered amount has to be compared with total cost of construction estimated by the Valuation Wing. The relevant findings of Assessing Officer in the case of Shri K. N. Patel are reproduced below:-

"Several of the immovable properties owned by the family members of the assessee were referred to the valuation wing of the Department and the estimate of cost of construction was obtained. As a result, the value of investment in almost all the properties has been estimated on the higher side by the valuation wing. The assesseees were confronted with the valuation report and their comments and counter comments of the valuation wing were obtained. Thereafter, the final comments of the assessee were once again obtained.

Vide reply dated 30.12.2010, the assessee has submitted as under:

"With reference to the above cited subject and regarding explanation for construction in the following building before 01.04.2002:

- 1. Construction at Plot No. 32, 49, 50, 52, 53 and Khasra No.46, Gaura Bagh, Kursi Road, Lucknow.*
- 2. Construction at Plot 37, 38, Gaurabagh, Kursi Road, Lucknow.*
- 3. Construction at Plot No. 35, 45, 46, Gaurabagh, Kursi Road, Lucknow.*

We are here to submit that as the some construction was done before 01.04.2002 as already mentioned in the report submitted by the DVO and in support to which affidavit of the assessee, before your honour is being enclosed at Annexure-A, B and C respectively.

In addition to above we are enclosing the comparison at annexure-D, between the amount surrendered by the assessee in various properties and valuation done by the DVO of Income Tax Department.

Your honour will appreciate that even if no leverage of variation of 15% is considered the amount surrendered is much more than the valuation done by the valuation officer Rs.73,23,639.59 to be precise.

It is hereby requested to considered the above facts before the finalizing the assessment and let us know if any other explanation/clarification is required by your honour in this regard."

A reconciliation chart of valuation and surrender has been submitted by the assessee which is as under:

<i>1. Total value as per valuation officer</i>	<i>213,262,452.55</i>
<i>2. Less:Expenses prior to FY 02-03 as per valuation report</i>	<i>-19,914,044.14</i>
<i>3. Less:Expenses incurred after FY08-09</i>	<i><u>-71,093,822.00</u></i>
<i>4. Remaining valuation for the period Between FY 02-03 to 08-09</i>	<i>122,254,586.41</i>
<i>5. Out of above, expenses directly incurred and recorded in the respective books of accounts</i>	
<i>-By Maa Sharda Buildtech</i>	<i>-10,041,204.00</i>
<i>-By Baijnath Charitable Trust</i>	<i>-28,372,502.00</i>
<i>-By Mahesh Singh for Megha Bajaj, Faizabad Road</i>	<i>-13,964,520.00</i>
	<i>-----</i>
<i>6. Amount to be covered under the surrender of K.N. Singh</i>	<i>69,876,360.41</i>
<i>7. Amount actually surrendered by K.N. singh against construction (as per sheet enclosed)</i>	<i><u>-77,200,000.00</u></i>
<i>8. Net difference</i>	<i>-7,323,639.59</i>

Alongwith the above chart, the assessee has furnished details of amount surrendered by Shri K.N. Singh Patel against construction and these are as under:

<i>F.Y.</i>	<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
<i>2002-03</i>	<i>Construction of Anju Singh</i>	<i>7500000</i>	
	<i>Construction of Anju Singh & Mahesh Singh</i>	<i>2200000</i>	<i>9700000</i>
<i>2003-04</i>	<i>Construction of Mahesh Singh</i>		<i>7000000</i>
<i>2005-06</i>	<i>Construction of Rajni Patel</i>		<i>3000000</i>
<i>2007-08</i>	<i>Construction of Anju Singh</i>	<i>9000000</i>	
	<i>Out of unexplained investment/ Expenditure for Vikas Nagar Megha Bajaj</i>	<i>500000</i>	
		<i>5000000</i>	<i>14500000</i>
<i>2008-09</i>	<i>Construction of Anju Singh</i>	<i>12500000</i>	
	<i>Construction of Mahesh Singh</i>	<i>17500000</i>	
	<i>Construction of Om Narain Singh</i>	<i>3000000</i>	
	<i>Construction of Baijnath Charitable trust</i>	<i>4000000</i>	
	<i>Construction of Maa Sharda Buildtech Pvt. Ltd.</i>	<i>5000000</i>	
	<i>Out of unexplained investment/ Expenditure For Vikas Nagar</i>	<i>1000000</i>	
			<i>43000000</i>
			<i>77200000</i>

The above reconciliation submitted by the assessee is not acceptable because the amount was surrendered as a whole against various properties and there is no justification for excluding the cost of construction prior to F.Y. 2002-03. It has already been admitted by the assessee vide letter dated 13.12.2010 that the year wise and property wise details of investment were not known to him at the time of surrender. However, the description of property is also not mentioned in the affidavit and it is not ascertainable as to against property what amount has been surrendered. Therefore, the amount has to be compared with the total cost of construction as estimated by the valuation wing. It is also noteworthy that the valuation officer has estimated only the cost of construction of the properties and the cost of acquisition of land has not been considered by him. Whereas, in the total amount of surrender the cost of acquisition as well as the cost of construction both are included by Shri K.N. Singh Patel.

As has been seen above, the total surrendered amount against construction and acquisition of capital assets is Rs.7,72,00,000/- as per the affidavit. The valuation officer has estimated the cost of construction at Rs.21,32,62,452/-. Out of this, the amount incurred after F.Y. 2008-09 is Rs.7,10,93,822/- and the amount

invested by various assessees as per books is Rs.5,23,78,226/-. The balance amount left, therefore, is Rs.8,97,90,404/- and this does not include the cost of acquisition of various properties. Therefore, the actual net difference in the cost of construction as estimated by the valuation wing and as surrendered by Shri K.N. Singh Patel is actually much more than being claimed by the assessee now.

The benefit of surrender made by Shri K.N. Singh Patel is, therefore, being restricted in respective hands only to the extent of surrendered amount which includes the cost of acquisition of assets. The difference in cost of construction that remains after allowing the benefit of surrendered amount is therefore, being added in the respective hands with respect to various properties in various years.

As far as the comments on the three affidavits being submitted now, it will be sufficient to state that no supporting evidences have been enclosed to substantiate the claim made in the affidavits. Therefore, these cannot be taken to be true. In this regard, reference is again drawn towards the case of Sri Krishna Vs CIT, Kanpur & Others reported in 142 ITR 618 (Alld.),. This is a judgment delivered by the jurisdictional High Court and the ratio laid down by this judgment is as under:-

"It is neither a rule of prudence nor a rule of law that the statements made in an affidavit which remains uncontroverted, must invariably be accepted as true and reliable. Ordinarily, in the absence of denial, the statements may be accepted as true but if there are circumstances which suggest that the statements on affidavit should not be accepted as true, the absence of denial by the other side, would not by itself be sufficient to clothe the statements .on .affidavit. with truthfulness and reliability."

In view of above facts, all the arguments made by the assessee e again disposed off and rejected.

The various details and documents submitted by the counsel of assessee have been examined. After examination of all details and documents, including the seized/impounded documents, the assessment in the case of assessee for this year is completed on total income of Rs.1,00,94,010/-."

26. In the above assessments of Shri K. N. Singh, the Assessing Officer has not made any addition and has accepted the returns filed by him u/s 153A of the Act which means that he has accepted the declaration of surrender made by Shri K. N. Singh in the respective years of surrender. Therefore, keeping in view all the facts and circumstances, we set aside the order of learned CIT(A) on this account and remit the matter back to the office of the Assessing Officer to recalculate the addition, if any, after taking into account the total amount of surrender in various years with respect to the total investments in various properties, irrespective of the year of investment. Though the Revenue has not challenged the action of learned CIT(A) in rejecting the valuation done by valuer where the difference was less than 15% but in this case, we deem it appropriate that Assessing Officer should consider Valuation Officer's valuation of various properties irrespective of year of investment. While doing so, the Assessing Officer should compare the total investment during search period as valued by registered valuer towards various properties. For the purpose of comparison, the construction done before and after the search period has to be ignored. If the difference between such valuation of property in the search period exceeds the surrender amount for that property, the difference has to be assessed as income of the assessee. In view of the above, ground No. 4 in all the appeals relating to assessment year 2003-04 to 2008-09 is allowed for statistical purposes.

27. Now coming to ground No. 5 in assessment year 2004-05, we find that Assessing Officer had made addition of Rs.8,06,600/- which the learned CIT(A) has reduced to Rs.1,66,600/-. The learned CIT(A) has allowed part relief by holding that the assessee had made withdrawals of Rs.5,12,000/- and Rs.1,08,000/- for purchase of land vide two different cheques. The balance of Rs.1,66,600/- has been upheld and

learned CIT(A) held that no evidence was filed to explain the source of expenditure. Learned A. R., before us, has argued that the balance amount of Rs.1,66,600/- should have been considered as part of surrender made by Shri K. N. Singh. We find that the addition of Rs.8,06,600/- was made by the Assessing Officer on account of acquisition of various properties as mentioned by him in his order at page No. 20 and the undisclosed investment, sustained by learned CIT(A), cannot be set off by the surrender of Shri K. N. Singh as the surrender was made for construction only. The learned CIT(A) has already allowed appropriate relief therefore, we do not intend to interfere in his findings and in view of the above, ground No. 5 in assessment year 2004-05 is dismissed.

28. Now coming to ground No. 5 in assessment year 2005-06, we find that learned CIT(A) has confirmed the addition on account of property purchased on 17/02/2005. The learned CIT(A) has noted in his order that the Assessing Officer had rejected the explanation by saying that name of the bank was not mentioned. The learned CIT(A) has held that no further evidence was filed before him also and before us also no further evidence has been filed therefore, ground No. 5 in assessment year 2005-06 is dismissed.

29. Now coming to only ground of appeal in assessment year 2009-10, we find that the Assessing Officer had made addition of Rs.2,50,000/- on account of low house hold expenses. The learned CIT(A) has held that benefit of surrender made by Shri K. N. Singh cannot be allowed as no evidence of source of acquisition of various house hold goods, present in the house, was furnished. We further find that Assessing Officer had made a total addition of Rs.10,00,000/- on account of various house hold goods available in the house at the time of search for which no evidence was filed and the total of such assets

was taken at Rs.10,00,000/-. As the amount of Rs.10,00,000/- was distributed among four members of the family and the share of assessee, out of such sum, was Rs.2,50,000/-. We find that learned CIT(A) has rightly upheld the addition by rejecting the contention of the assessee that this amount was to be adjusted against the surrender of Shri K. N. Singh. Therefore, the only ground taken in assessment year 2009-10 is dismissed.

30. In the result, the appeals for assessment year 2003-04 to 2008-09 are partly allowed for statistical purposes and partly dismissed whereas the appeal in assessment year 2009-10 is dismissed.

Order pronounced in the open Court on 08/02/2019.

Sd/.

Sd/.

[A. D. JAIN]
VICE PRESIDENT

[T.S. KAPOOR]
ACCOUNTANT MEMBER

DATED:08/03/2019

JJ/Singh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar

1. Date of dictation	
2. Date on which the typed draft is placed before the Dictating Member	
Other Member	
3. Date on which the approved draft comes to the Sr. P.S./P.S.	
4. Date on which the fair order is placed before the Dictating Member for pronouncement	
5. Date on which the fair order comes back to the Sr. P.S./P.S	
6.Date of uploading, if not, reason for not uploading	
7. Date on which the file goes to the Bench Clerk	
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9. Date on which the file goes to the O.S	
10. The date on which the file goes to the Assistant Registrar for signature on the order	
11.Date on which files goes to Despatch section for Despatch	
12. Date of Dispatch of the Order	