

ORDER**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

The above two separate appeals by the Revenue are preferred against two separate orders of the Commissioner of Income Tax [Appeals] -3, New Delhi dated 25.04.2014 pertaining to assessment year 2005-06.

2. Since the underlying facts in one issue are common in both the appeals, both these appeals were heard together and are being disposed of by this common order for the sake of convenience and brevity.

3. The common grievance in both the appeals relate to the deletion of addition of Rs. 1,46,55,94,222/- made by the Assessing Officer on account of unaccounted sales on the basis of contents of the documents impounded during the course of survey.

4. Facts on record show that on 20,02,2007, a survey u/s 133A of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] was carried out in the premises of the assessee at 9, K.G. Marg, New Delhi and also at Kundli, Sonapat, Haryana. During the survey proceedings at Kundli premises, three loose papers were found from the accounts office, which were subsequently impounded. These loose papers revealed the broker-wise dues to be recovered by the assessee on 12.01.2005 totalling to Rs. 1,46,55,94,222/-. The three loose impounded papers are as under:

First page

a.k. khattar (huf)	29,571,56
alfa associates	154,135,0
alfa associates-2	80,945,10
aman mehra	14,301,24
amarieet singh qiani	27,682,35
amarieet singh qiani	27,682,35
arun khara	12,788,36
ascent properties	15,008,25
ascent properties-ii	7,218,375
ashwani iain & vikash jain	2,952,965
atul traders/covishvanath estates	18,709,29
bankey bihari estates	23,244,72
bhatia associates	37,648,41
bhatia associates	17,321,21
capital property	10,741,00
dnt	17,200,25
fair deal properties (r)	31,281,67
galaxy associates	69,543,93
gaurav buildwell	18,252,50
goel mintri & associates	10,382,91
heaven associates	18,890,30

individual	56,871,18
J.k. -iii	36,259,75
j.k. properties	23,975,25
imd	16,411,18
jyoti syndicate	45,774,14
kaleshwar builder & developers pvt. Ltd.	39,170,43
kamal properties & co.	25,007,37
kamal taneia	22,199,29
k.i.a.	14,037,12
krishan lal naqpal	10,540,26
laxmi assodates	10,030,50
m.s. dua	15,041,36
' praveen lain and company ltd.	13,074,91
praveen tain and company ltd.	13,074,91
JV. p.p. estates	11,230,99
praveen arora	22,516,97
raja sinqh	21,628,36
rajesh mittal	17,177,91
ref: ravinder taneia	57,716,16
selection properties	19,288,14
shrabak & assodates	13,554,47
shri aditya estate / rakesh bhardwai	39,564,68
shubam aqencies	10,991,37
surendra buildtech	68,249,94
surendra properties	14,992,60
swastik estate	17,797,65
taneja & co. p. ltd.	15,784,13
tirupati marketinq	13,087,60
uttam property dealer	13,295,25
vardhman assc.-2	27,623,65
vardhman associates pvt. ltd.	76,724,70
vijay kurdatt & co.	17,400,00
Total	1,465,594

Page 2	
a.k. khattar (huf)	29,571,567
alfa associates	154,135,033
alfa associates-2	80,945,103
aman mehra	14,301,245
amarjeet singh qiani	27,682,357
amaieet singh qiani	27,682,357
arnn khera	12,788,366
ascent properties	15,008,256
ascent properties-ii	7,218,375
ashwani tain & vlkash jain	2,952,965
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atul traders/covishvanath estates	18,709.29
bankey bihari estates	23,244,72
bhatia associates	37,648,41
bhatia assoa'ates	17,321.21
capital property	10,741,00
dnt	17,200,25
fair deal properties (r)	31,281,67
galaxy associates	69,543.93
qaurav buildwell	18,252.50
goel mlntri & assoa'ates	10,382,91
heaven associates	18,890.30
individual	56,871,18
i.k. -iii'	36,259.750
t.k. properties	23,975,250
imd	16,411.182
lvoti syndicate	45,774,144
kaleshwar builder & developers pvt.	39,170,437
kamal properties & co.	25,007,375
kamal taneia	22,199,296
k.i.a.	14,037.125
krishan lal nagpal	10,540,267
laxmi assoa'ates	10,030,500
m.s. dua	15,041,365
praveen tain and company ltd.	13,074,916
praveen jain and company ltd.	13,074,916
p.p. estates	11,230,994
praveen arora	22,516,972
raia singh	21,628,362
rajesh mittal	17,177,910
ref: ravinder	57,716,163
Staff selection properties	19,288,141
shrabak & associates	13,554,475
shri aditva estate / rakesh bhardwai	39,564,686
shubam agena'es	10,991,375
surendra buildtech	68,249,943
surendra	14,992,600
swastik estate	17,797,655
taneia & co. p. ltd.	15,784,131
tirupati marketing	13,087,600
uttam property	13,295,250
vardhman assc.-2	27,623,654

vardhman associates pvt.	76,724,703
vijay kumar & co.	17,400,000
Total	1,465,594,222

vardhman assc.-2	27,623,654
vardhman associates pvt.	76,724,703
vijay kumar & co.	17,400,000
Total	1,465,594,222

5. The assessee was asked to explain the entries in the loose sheets with its books of account.

6. In its reply, the assessee admitted that the loose papers contained details of tentative dues on 12.01.2005 of the amounts recovered from the allottees/proposed allottees and were sorted out broker wise through whom the allotment of plots/flats were being made.

7. However, the assessee pointed out that the loose sheets were impounded from the site office of M/s TDI Infrastructure Pvt Ltd [earlier known as Intime Promoters Pvt Ltd.], which is the respondent in ITA No. 3157/DEL/2014. It was explained that the transactions relate to TDI Infrastructure Pvt Ltd. In support of this contention, an

affidavit of Shri Devkinandan Taneja was filed, who, in his affidavit, confirmed that the documents impounded were from the premises of M/s TDI Infrastructure Pvt Ltd. in Kundli Office.

8. However, the Assessing Officer proceeded by examining the entries found in the loose papers with the books of account of the assessee and on finding the same being not recorded in the book, made addition of Rs. 1,46,55,94,222/- on substantive basis in the hands of M/s Taneja Developers and Infrastructure Ltd., the respondent in ITA No. 3952/DEL/2014 and made protective addition in the hands of M/s Intime Promoters Pvt Ltd. the respondent in ITA No. 3157/DEL/2014.

9. The assessment was assailed before the CIT(A) and once again it was brought to the notice of the CIT(A) that the impounded sheets pertained to TDI Infrastructure Pvt Ltd. It was further explained that the entries made on the seized documents have been duly accounted for in the books of account of M/s Intime Promoters Pvt. Ltd.

10. The documents filed during the appellate proceedings were forwarded by the Assessing Officer for his comments. The Assessing Officer, vide his letter dated 26.08.2018, submitted the report which reads as under:

“1. Yes. The addition of Rs.1,46,55,94,922 has been made in M/s Intime Promoters Pvt. Ltd. (now known as M/s TDI Infrastructure Pvt. Ltd.) on protective basis as well as in M/s Taneja Developers & Infrastructure Ltd. as substantive basis.

2. Yes, the Kundli premises belonged to M/s Intime Promoters Pvt. Ltd. (now known as M/s TDI Infrastructure Pvt. Ltd. where the survey was conducted on 20.02.2007.

3. Yes the three loose papers found at Kundli premises also belonged to M/s Intime Promoters Pvt. Ltd. (now known as M/s TDI Infrastructure Pvt. Ltd.) and M/s TDI Infrastructure Pvt. Ltd. has also owned the papers.

4. Yes, the date is 12.01.2005 on the impounded documents and there is no evidence to prove that this is inadvertently printed as 12.01.2005 on our record even though the assessee submits that these are recorded in the books of M/s Intime Promoters Pvt. Ltd. (now known as M/s TDI Infrastructure

Pvt. Ltd.) in the Assessment Year 2006-07. This issue would be looked into separately at the time of submitting the report for M/s Intime Promoters Pvt. Ltd. (now known as M/s. TDI Infrastructure pvt. Ltd.) in the assessment year 2006-07. This issue would be looked into separately at the time of submitting the report for M./s. Intime Promoters Pvt. Ltd. (now known as M/s. TDI Infrastructure Pvt. Ltd.) for A.Y. 2005-06."

11. After considering the report of the Assessing Officer, the CIT(A) was convinced that the seized documents, on the basis of which the addition has been made, belong to the sister concern of the assessee i.e. M/s Intime Promoters Pvt Ltd. and, accordingly, deleted the addition in the hands of M/s Taneja Developers and Infrastructure Ltd.

12. Since the substantive addition was deleted, the protective addition made in the hands of the M/s Intime Promoters Pvt Ltd became substantive.

13. In the appellate proceedings of M/s Intime Promoters Pvt Ltd, once again the CIT(A) called for remand report from the Assessing Officer. The Assessing Officer submitted his remand report and the same is as under:

"So far as report in this case i.e. M/s Intime Promoters pvt. Ltd. for A.Y 2005-06 (now known as M/s TDI Infrastructure Ltd.) is concerned, on perusal of the document impounded during the survey operation u/s 133A. In the case of M/s Taneja Developers & Infrastructure Ltd. on 20.2.2007 showing an amount of Rs. 146.55 cr., it is seen that the date mentioned on the document is 12.1.2005. The main contention of the assessee is that the booking amount receivable from all the parties mentioned in the paper books no. I to V are recorded in the books of accounts for A.Y. 2006-07 onwards. While assessing officer added these amounts totaling Rs. 146.55 cr. in A.Y 2005-06 on the basis of the seized document. The seized document clearly indicates that these amounts are recoverable as on 12.1.2005. The AO has rightly added in A. Y. 2005-06.

Nevertheless, as directed the assessee's contentions was examined and the assessee company made the following purchase of land at Kundli, Sonipat, Haryana in the month of December, 2004:-

<i>S. No.</i>	<i>Land-</i>	<i>Date of</i>	<i>Village name</i>
1	3.769 Acres	15.12.20	-Do-
2	1.598 Acres	16.12.20	-Do-
3	3.18 Acres	16.12.20	Rasoi
4	2.913 Acres	16.12.20	-Do-
5	1.15 Acres	16.12.20	-Do-
6	3.218 Acres	16.12.20	Rasoi
7	4.312 Acres	16.12.20	Rasoi
8	6.25 Acres	16.12.20	Rasoi
9	1.55 Acres	16.12.20	Rasoi
10	0.125 Acres	16.12.20	Rasoi
11	0.125 Acres	16.12.20	Rasoi
12	.50 Acres	16.12.20	Rasoi
13	1.044 acres	16.12.2004	Rasoi
14	2.518 Acres	16.12.2004	Rasoi
15	0.262 Acres	16.12.2004	Rasoi
16	5.148 Acres	16.12.2004	Nangal Kalan

While going through the information received u/s 133(6) of the I.T. Act, 1961 during the proceedings of remand report for A.Y 2005-06 in the case of m/s Taneja developers & Infrastructure Ltd., it is seen that the assessee company (Intime Promoters Pvt. Ltd.) received an amount of Rs. 17,99,90,999/- during F.Y 2004-05 i.e. up to 31.3.2005. This clearly proves that the paper pertained to 12.1.2005 i.e. for A. Y 2005-06.

During remand report proceedings the assessee submitted that the actual amount is Rs. 142,48,36,949/- and not Rs. 146.55.94.222/-. On perusal of the impounded documents, it is clearly seen that the following entries have been made twice.

S.	Name of the brokers	Amount
1.	Amarjeet Singh Giani	27682357/-
2.	Praveen Jain & Co. Ltd.	13074916/-
		40757273/-

(Rs. 146,55,94,222/- - 4,07,57,273/- = Rs. 142,48,36,949/-)

While going through books of accounts produced by the assessee, it is also seen that the assessee company has received the amount in the following financial years:-

Amount recovered	Amount received
31.3.2006	629867909/-
31.3.2007	649922177/-
31.3.2008	26054544/-
31.3.2009	19429004
31.3.2010	7146596/-
31.3.2011	7483517/-
31.3.2012	1345581/-
31.3.2013	4641485/-

<i>Current Year</i>	95632/-
<i>Total</i>	1345986447/-
<i>Pending</i>	78850502/-
<i>Gross Total</i>	142,48,36,949/-

Yours faithfully,

Sd

(Mahender Singh Badgular)
Asstt. Commissioner of Income Tax,
Central Circle-18, New Delhi"

14. After considering the remand report, the CIT(A) was convinced that the seized papers belong to M/s Intime Promoters Pvt Ltd and the same pertain to A.Y 2005-06.

15. Coming to the entries totalling to Rs. 1,46,55,94,222/-, as per the remand report, the CIT(A) found that entries amounting to Rs. 4,07,57,273/- were double entries and, therefore, correct amount is Rs. 1,42,48,36,949/-. The CIT(A) further found that the entries relating to this amount were found to be duly recorded in the books of account and the assessee has received Rs. 1,34,59,86,447/- and the balance sum of Rs. 7,88,50,502/- was outstanding. In view of

the verification made by the Assessing Officer, the CIT(A) deleted the addition.

16. Before us, the ld. DR could not point out any factual error neither in the order of the first appellate authority nor in the remand report of the Assessing Officer.

17. In our considered opinion, since the premises where the loose sheets were impounded belong to M/s Intime Promoters Pvt Ltd, the CIT(A) has rightly considered the same in the hands of the right person. Therefore, there is no occasion to make addition in the hands of M/s Taneja Developers & Infrastructure Ltd.

18. In the hands of M/s Intime Promoters Pvt Ltd., the Assessing Officer himself has verified the entries in the books of account and since the entries were found recorded in the regular books of account there is no reason why the addition could be made. The addition has been rightly deleted by the CIT(A) and, therefore, no interference is called for.

Accordingly, the common grievance raised in both the appeals is dismissed.

19. Coming to the second grievance in ITA No. 3952/DEL/2014 which pertains to the deletion of addition of Rs. 20 crores made by the Assessing Officer on account of unexplained credits u/s 68 of the Act, the facts on record reveal that on the basis of some investigation made in respect of accommodation entry provider, the Assessing Officer asked the assessee to explain the credit entries in the names of M/s Rangoli Buildtech Pvt. Ltd and M/s Epic Developers Pvt Ltd, totalling to Rs. 20 crores.

20. On receiving no plausible reply and after discussing several judicial decisions of section 68 of the Act, added with the applicability of the provisions contained u/s 110 of the Indian Evidence Act, the Assessing Officer added Rs. 20 crores as unexplained credit u/s 68 of the Act.

21. Before the CIT(A), it was strongly contended that during the year under consideration, the assessee has not received any amount from M/s Rangoli Buildtech Pvt. Ltd. On the contrary, the said company is debtor of the assessee. In respect of M/s Epic Developers Pvt Ltd, the assessee brought to the notice of the CIT(A) that it has filed bank statement etc, during the assessment proceedings itself to explain the genuineness of the transaction, identity and credit worthiness of the lender. But the same has not been considered by the Assessing Officer.

22. In this respect, the CIT(A) called for remand report. The office letter of the CIT(A) reads as under:

"The Assistant Commissioner of Income-tax,
Central Circle -18,
Jhandewalan Ext.,
New Delhi.

Sub:- Appeal Nos. 573/2009-10 in the case of
Taneja Developers and Infrastructure Ltd. for the
Assessment year 2005-06- Reg.-

The appeal proceedings in this case are in progress and it is seen that one of the addition relates to the amount received from Rangoli Buildtech P. Ltd. and Epic Developers P. Ltd. of Rs.20 crore under section 68. During the course of appellate

proceedings the appellant has stated that from Rangoli Buildtech P. Ltd no amount is received rather Rangoli Buildtech P. Ltd. appears as the debtors. You are requested to please confirm this fact from your records.

As regards, the amount received from Epic Developers the appellant stated that they have received 14.50 crore and to prove the genuineness and creditworthiness of the transaction, they filed the bank statement and confirmation during the assessment proceedings vide their letter dated 17.12.2007. The appellant has now again filed before me the confirmation, bank account details and filed additional evidence in the form of copy of IT Return and Balance Sheet and have further stated that this party is still is in existence and necessary enquiry can be made even now by issue of summons/notice under section 133(6). You are requested to please make necessary enquiries and give your comments on the identity, creditworthiness and genuineness of the transaction with Epic Developers P. Ltd.

The report may please be sent by **25.10.2013** positively."

23. In response to the above, the Assessing Officer replied as under:

"The Commissioner of Income-tax,
(Appeals) -III,
Aayakar Bhawan, Room No. 606, 6th Floor,
Distt. Centre, Lax mi Nagar,
Delhi.

(Through Add I. CIT, Central Range -5, New Delhi)

Sub:- Appeal Nos. 100/2013-14 in the case of Taneja Developers and Infrastructure Ltd. for the Assessment year 2005-06- Reg.-

Kindly refer to your letter F.No. CIT (A) -III/Misc./2013-14/278 dated 10.10.2013 on the above mentioned subject.

In this connection, following two issues have been directed: -

1. To find the creditworthiness and genuineness of transaction with M/s Epic Developers Pvt. Ltd.
2. Whether M/s Rangoli Buildtech Pvt. Ltd. was creditor or debtor during the year under consideration.

So far as transaction with M/s Epic Developers Pvt. Ltd. is concerned, it is seen from record that the assessee has received advance of Rs.14.50 cr. through account payee cheques on the following dates:

S. No.	Date	Amount
1.	22.01.2005	5,00,00,000
2.	10.02.2005	5,00,00,000
3.	24.03.2005	4,50,00,000

To verify the existence of the company and creditworthiness of that company i.e. M/s Epic Developers Pvt. Ltd., a letter under Section 133(6) of the Income Tax Act, 1961 was issued on 8.11.2013 for asking the necessary information. In response to that notice, the company has filed the information i.e. copy of bank statement, return of income, balance sheet and profit and loss account on 29.11.2013. The return of Income filed by the company is Rs. Nil. The company is also not showing any business. Therefore, source of investment by; M/s Epic Developers Pvt. Ltd. is not explained and hence the creditworthiness and genuineness of transaction is not proved.

So far as credit of Rs.10 cr. from M/s Rangoli Buildtech Pvt. Ltd. is concerned, it is seen from the bank statement filed by the assessee company during remand report proceedings that the following payments have been made and received in the financial year under consideration: -

.No	Date	Debit	credit
1.	13.01.2005		8,50,00,000
2.	28.01.2005	5,00,00,000	
3.	08.02.2005	5,00,00,000	
4.	11.03.2005		61,00,00
5.	19.03.2005		1,80,00,000
6.	23.03.2005		80,00,00
7.	24.03.2005		30,00,00
8.	28.03.2005		40,00,00
9.	29.03.2005		1,35,00,000
	<i>Total</i>	10,00,00,000	13,76,00,000

The account of M/s RangoliBuildtech Pvt. Ltd. has been duly verified with the bank account of the assessee company which reveals that the assessee company is creditors of Rs.3.76 cr. and there is debit account of M/s Rangoli Buildtech. A letter to M/s Rangoli Buildtech was issued on 8.11.2013 for verification which has been received on 6.12.2013. The information received from M/s Rangoli Buildtech Pvt. Ltd. reveal that an amount of Rs.3.76 cr. is debit account of M/s Rangoli Buildtech Pvt. Ltd. during the year under consideration."

23. On a perusal of the remand report, the CIT(A) was convinced that M/s Rangoli Buildtech Pvt Ltd was, in fact, a debtor of the assessee and, therefore, no addition could be made as unexplained cash credit u/s 68 of the Act. Accordingly, addition of Rs. 5.50 was deleted.

24. In so far as the loan from M/s Epic Developers Pvt Ltd amounting to Rs. 14.50 crores is concerned, the CIT(A) observed that the credit worthiness and genuineness of the transaction is not solely dependent on the return of income filed even if it is for Rs. NIL as profit making apparatus is not the only consideration. The CIT(A) found from the balance sheet of M/s Epic Developers Pvt Ltd that it has borrowed a sum of Rs. 17.35 crores being Rs. 11.85 crores from M/s Benda Amtek Ltd and Rs. 5.50 crores from Amtek Auto Ltd.

25. The CIT(A) was convinced that since M/s Epic Developers Pvt Ltd had sufficient source for lending money to the assessee, the sum of Rs. 14.50 crores received from M/s Epic Developers Pvt Ltd was deleted.

26. Before us, the ld. DR vehemently stated that the initial onus is upon the assessee to explain the identity, genuineness of the transaction and credit worthiness of the creditor. It is the say of the ld. DR that the assessee has grossly failed in discharging the initial onus cast upon it and mere filing of confirmation /PAN details would not suffice.

The ld. DR stated that the first appellate authority has admitted certain additional evidence and decided the appeal in favour of the assessee which is in violation of Rule 46A of the I.T. Rules. The ld. DR concluded by saying that since the burden has not been discharged by the assessee, addition made u/s 68 of the Act is quite justified.

27. Per contra, the ld. AR stated that it is not the ground of the revenue that the CIT(A) has admitted some additional evidences. The ld. AR stated that no additional evidence was filed by the assessee. Whatever evidences were furnished before the CIT(A) were very much available with the Assessing Officer and since the Assessing Officer had not considered those evidences, the CIT(A) had called for remand report and has decided the issue after considering the remand report of the Assessing Officer. The ld. AR supported the findings of the CIT(A).

28. We have given a thoughtful consideration to the orders of the authorities below as well as the rival contentions. No doubt, the initial onus is upon the assessee to explain the

credit transaction in its books of account in the light of provisions of section 68 of the Act. However, this burden of proof is not permanent but keeps oscillating, meaning thereby, that once the initial burden has been discharged by the assessee, the burden shifts upon the revenue to make further enquiry. The letter written by the CIT(A) to the Assessing Officer, which is exhibited elsewhere, clearly shows that the CIT(A) has directed the Assessing Officer to make necessary enquiry from the two creditors.

29. The remand report of the Assessing Officer clearly reveals that he did make enquiry from M/s Rangoli Buildtech Pvt Ltd and came to the conclusion that M/s Rangoli Buildtech vpt Ltd is, in fact, a debtor of the assessee and not a creditor. In so far as M/s Epic Developers Pvt Ltd is concerned, the bank statements clearly show that there was no cash found to be deposited before issuing cheque to the assessee company. Moreover, the balance sheet of M/s Epic Developers Pvt Ltd clearly shows that they have received Rs. 17.35 crores from Benda Amtek Ltd and Amtek Auto Ltd and

from this, Rs. 17.35 crores, have lended Rs. 14.50 crores to the assessee.

30. If the CIT(A) has exercised his power vested upon him by provisions of section 250(4) of the Act, the same cannot be faulted with. The CIT(A) has gone one step further in examining the availability of funds with M/s Epic Developers Pvt Ltd and subsequently found that M/s Epic Developers Pvt Ltd had sufficient available funds to lend money to the assessee. No adverse inference can be drawn from such findings of the CIT(A). The contention of the ld. DR that the first appellate authority has admitted some additional evidences is without any basis.

31. Considering the facts of the case in totality, we are of the view that the assessee has successfully explained the transaction with M/s Epic Developers Pvt Ltd and in so far as M/s Rangoli Buildtech Pvt. Ltd is concerned, it being a debtor of the assessee, section 68 of the Act is clearly not applicable. We, therefore, do not find any merit in the

grievance of the revenue. The findings of the CIT(A) are upheld. This ground of the revenue is dismissed.

32. In the result, both the appeals filed by revenue are dismissed.

The order is pronounced in the open court on 29 .03.2019.

Sd/-

**[K.N. CHARY]
JUDICIAL MEMBER**

Sd/-

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

Dated: 29th March, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	