

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER

ITA(SS) No.181, ITA 472/Ind/2017

Assessment Years 2012-13 & 2013-14

Shri Sumati Kumar Kasliwal, 17, Gulmohar Colony, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No.AABPK9520G		

ITA(SS) No.179/Ind/2017 & ITANo.465/Ind/2017
Assessment Years 2012-13 & 2013-14

Shri Parth Kasliwal, 17, Gulmohar Colony, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No.CAKPK0919E		

ITA(SS) No.174/Ind/2017 & ITANo.409/Ind/2017
Assessment Years 2012-13 & 2013-14

Smt. Sharda Kasliwal, 17, Gulmohar Colony, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No.AGPPK8587R		

**ITA(SS) No.180/Ind/2017 & ITANo.470/Ind/2017
Assessment Years 2012-13 & 2013-14**

M/s. Nishant Finance Pvt. Ltd, 5/5A, Navratan Bagh, Near Geeta Bhawan Square, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No.AAACN8300M		

**ITA No.466/Ind/2017
Assessment Year 2013-14**

Shri Manoj Kasliwal, 17, Gulmohar Colony, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No.AGPPK8145F		

**ITA(SS) No.178, ITA No. 468/Ind/2017 & C.O. No.31/Ind/2018
Assessment Years 2011-12 to 2013-14**

M/s. Pumarth Infrastructure Pvt. Ltd, 5/5A, Navratan Bagh, Near Geeta Bhawan Square, Indore	Vs.	ACIT (Central)-1, Indore
(Appellant)		(Respondent)
PAN No. AACCM0901H		

**ITA No.452/Ind/2017
Assessment Year 2013-14**

ACIT (Central)-1, Indore	Vs.	M/s. Pumarth Infrastructure Pvt. Ltd, 5/5A, Navratan Bagh, Near Geeta Bhawan Square, Indore
(Revenue)		(Respondent)
PAN No. AACCM0901H		

Revenue by	Smt. Ashima Gupta, CIT
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Assessee by	S/Shri Sumit Neema, Sr. Adv & Gagan Tiwary, Adv
Date of Hearing	12.03.2019
Date of Pronouncement	30.04.2019

ORDER

PER MANISH BORAD, AM.

The above captioned bunch of appeals and Cross Objection filed at the instances of the assessee's pertaining to Assessment Year 2012-13 & 2013-14 and revenue's appeal pertaining to Assessment Year 2013-14 in the case of Pumarth Infrastructure Pvt. Ltd are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-III (in short 'Ld.CIT(A)'], Indore detailed as under;

Name of assessee	Assessment Year	Date of CIT order	Date of A.O order	Order passed u/s
Shri Sumati Kumar Kasliwal	2012-13	29.03.2017	29.01.2016	153A r.w.s. 143(3)
	2013-14	28.03.2017	29.01.2016	143(3)
M/s Pumarth Infrastructure Pvt. Ltd	2012-13	31.03.2017	29.01.2016	153A r.w.s. 143(3)
	2013-14	31.03.2017	29.01.2016	143(3)
Shri Parth Kasliwal	2012-13	28.03.2017	29.01.2016	153A r.w.s. 143(3)
	2013-14	28.03.2017	29.01.2016	143(3)
Smt. Sharda Kasliwal	2012-13	28.03.2017	29.01.2016	153A r.w.s. 143(3)
	2013-14	28.03.2017	29.01.2016	143(3)
M/s. Nishant Finance Pvt. Ltd	2012-13	28.03.2017	29.01.2016	153A r.w.s. 143(3)
	2013-14	28.03.2017	29.01.2016	143(3)
Shri Manoj Kasliwal	2013-14	28.03.2017	29.01.2016	143(3)

2. As the issues raised in these appeals are common, therefore these were heard together and are being disposed off by this common order for sake of convenience and brevity.

3. Brief facts of the case as culled out from the records are that the Search and Seizure operations u/s 132 were carried out on 21.9.2012 at the business as well as residential premises of the Apollo (Pumarth) Group of Indore. Since the search operations were carried out simultaneously and most of the concerns and individuals are interconnected and have business connections, they have been clubbed under the overall name Apollo (Pumarth) Group of Indore. Consequent to search notice u/s 153A of the Act was issued to the assessee's to file the return. Returns were filed. Notices u/s 143(2) and 142(1) of the Act duly served. Various information called. Necessary submissions made. Various additions were made. Part relief given by Ld. CIT(A) in the appeals filed by the assessee. Aggrieved both assessee and Revenue are in appeal before the Tribunal.

From perusal of the grounds in these bunch of appeals the issues raised therein are summarised in the following manner;

ISSUE	APPELLANT	ASST. YEAR	AMOUNT	GROUND NO.
1. Assessment order barred by limitation	Sumati Kumar Kasliwal	2012-13 & 2013-14	n/a (legal issue)	1 in both years
2.Loan received assessed as income u/s 68	a.Sumati Kumar Kasliwal b.Parth Kasliwal c. Sharda Kasliwal d.Nishant Finance Pvt. Ltd	2012-13	a.1,80,00,000 b. 90,00,000 c. 40,00,000 d.1,50,00,000	a. 2 to 10 b 1 to 9 c 1 to 9 d 1 to 9
3. Sale of shares assessed as	a.Sumati Kumar Kasliwal	2013-14	a. 3,61,22,825	a 6 to 10

income u/s 68	b.Parth Kasliwal c. Sharda Kasliwal d.Nishant Finance Pvt. Ltd e.Manoj Kasliwal f.Pumarth Infrastructure Pvt.Ltd		b.3,06,32,825 c.3,56,60,000 d.3,08,32,825 e.3,56,50,000 f.4,08,00,000	b. 1 to 6 c. 1 to 6 d. 1 to 6 e. 1 to 6 f. 4 to 8
4. Income received in cash by Sumati Kumar Kasliwal	Sumati Kumar Kasliwal	2013-14	Rs.13,61,94,600 Rs.58,40,000 Rs.26,77,469	2 to 4
5. Share Capital	Pumarth Infrastructure	2012-13 & 2013-14	Rs.13,60,00,000	A Y 2012-13 Ground. 1 to 4 and 2013-14 Departments Appeal Ground No.1 & CO filed by assessee
6 On money on sales of plots	Pumarth Infrastructure	2012-13 & 2013-14	Rs.1,41,70,300 Rs.1,31,36,750	5 & 6 And Ground. 1 to 3 departments appeal Ground No.1
7.Addition u/s 40A(3)	Pumarth Infrastructure	2012-13	Rs.7,50,000	Ground No.7
8.Telescoping of additions sustained vis-à-vis income surrendered	Sumati Kumar Kasliwal and Pumarth Infrastructure	2012-13 & 2013-14	(n/a) consequential issue	Ground No.11 Sumati Kumar Kasliwal and Ground No.8 in Pumarth Infrastructure

On various issues challenged by the assessee(s) and revenue in these bunch of appeals and cross objection, Ld. Senior Counsel for the assessee along with various judgments mentioned in the written submissions before us, has also relied on following judgments;

- (i) Hon'ble M.P. High Court in ITA No.219/18 order dated 20.02.2018 in the case of PCIT Vs Shri Kiran Mittal.

- (ii) Hon'ble M.P. High Court in ITA No.65/2010 order dated 25.10.2010 in the case of CIT Vs STL Extrusion (P) Ltd (2011) 11 taxmann.com 125 (MP).
- (iii) Hon'ble Delhi High Court in the case of CIT Vs Kamdhenu Steel & Alloys Ltd (2012) 19 taxmann.com 26 (Delhi).
- (iv) Hon'ble Punjab & Haryana High Court in ITA No.251/2008 order dated 15.7.2008 in the case of CIT Vs Laul Transport Corporation.
- (v) Hon'ble Supreme Court in the case of CIT Vs Orissa Corpn (P) Ltd (1986) 25 Taxmann 80F (S.C) (1986).
- (vi) Hon'ble M.P. High Court in MAIT No.27/2008 order dated 27.06.2013 in the case of CIT Vs Peoples General Hospital Ltd.
- (vii) Hon'ble Supreme Court in the case of CIT Vs Bhageeratha Engg. Ltd (1993) 199 ITR 12 (SC).
- (viii) Hon'ble High Court of Madhya Pradesh in the case of PCIT vs Chain House International (P) Ltd (2018) 98 taxmann.com 47 (MP).
- (ix) Hon'ble High Court of Allahabad in the case of CIT vs Fertilizer Traders (2014) 42 taxmann.com 476 (Allahabad)
- (x) Hon'ble High Court of Bombay in the case of CIT vs Orchid Industries (P) Ltd 88 taxmann.com 502 (Bombay).

Other cases relied:

- (i) Hon'ble I.T.A.T., 'E' New Delhi in the case of M/s. NKG Infrastructure Ltd vs. Pr. CIT ITANos.3825 to 3827/Del/2018 order dated 05.09.2018
- (ii) Hon'ble I.T.A.T., Indore Bench in the case of ACIT vs Pramod Kumar Sethi ITANo.382 & 383/Ind/2014 order dated 06.11.2018.
- (iii) Hon'ble High Court of Madhya Pradesh in the case of CIT V/s Balchand Ajit Kumar order dated 14.4.2003.
- (iv) Hon'ble High Court of Bombay in the case of CIT V/s Prime Developers ITANo.2452 of 2013 order dated 18.7.2016.

Per contra Learned Departmental Representative, along with various judgements mentioned in the written submissions before us, has also relied on following judgments;

- (i) Hon'ble High Court of Delhi in the case of Commission of Income Tax Vs M/s JRD Stock Brokers Pvt. Ltd ITA544/2005 order dated 12.09.2018.
- (ii) Hon'ble Supreme Court of India in the case of Principal Commissioner of Income Tax (Central)-1 Vs NRA Iron & Steel Pvt. Ltd SLP No. 29855 of 2018 dated 5.3.2019
- (iii) Hon'ble High Court of New Delhi in the case of Pr. Commissioner of Income Tax-6, New Delhi v/s NDR Promoters Pvt. Ltd ITA49/2018 order dated 17.01.2019
- (iv) Hon'ble High Court of New Delhi in the case of Surendra Kumar Jain & Others etc vs PCIT, Central-III, New Delhi W.P.(C) 4304/2018 & CM Appl. 16759/2018 order dated 01.10.2018
- (v) Hon'ble Supreme Court of India in the case of Ajoy Kumar Banerjee & Ors. Etc vs Union of India & ors. Etc 1984 AIR 1130, 1984 SCR (3) 252 dated 21.3.1984
- (vi) Hon'ble I.T.A.T. Kolkatta 'C' Bench in the case of Advance Power Infra Tech Ltd vs DCIT ITANo. 605/Kol/2015 order dated 23.8.2017.
- (vii) Hon'ble Supreme Court of India in the case of ITO vs Anand Builders SLP (C) No.14166 of 2003 order dated 1.8.2003
- (viii) Hon'ble High Court of Delhi in the case of CIT vs. Nipum Builders & Developers (P) Ltd ITANo.120 of 2012 dated 7.1.2013. (2013 30 taxmann.com 292 (Delhi)
- (ix) Hon'ble High Court of Delhi in the case of CIT vs Ultra Modern Exports (P) Ltd ITANo.262 of 2012 order dated 11.12.2012 (2013) 40 taxmann.com 458 (Delhi)

4. We shall proceed to first consider the appeals of Sumati Kumar Kasliwal as the said case contains facts which are mostly common in respect of all other

connected cases and the findings arrived at in the case of Sumati Kumar Kasliwal would then govern the other connected cases. The Ld. Counsel for the assessee and the Ld. DR agreed to this fact and therefore mostly addressed the facts as contained in the case of Sumati Kumar Kasliwal.

IT(SS)A No.181/IND/2017,Assessment Year 2012-13

SUMATI KUMAR KASLIWAL

5. The grounds of appeal raised in this appeal for AY 2012-13 of Sumati Kumar Kasliwal are as under:

1. *That the entire assessment order is illegal, void and without jurisdiction as the same has been passed beyond the period of limitation u/s 153B. The settlement order rejecting the application was passed on 8/5/2015 which was received by PCIT on 18/5/2015 and the asstt. order has been passed on 29/1/2016 which is beyond the period of limitation.*

2. *That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice .*

3. *That the Ld. CIT(A) failed to appreciate that the entire factual narration made by the Ld. AO in the body of assessment is not found in the notice/questionnaire issued prior to assessment nor was the assessee at any point confronted with any such evidence as discussed in the assessment order. It appears that the Ld. AO has cut-paste the contents of the assessment done in case of Pumarth Infrastructure Pvt. Ltd without any relation of such evidence with the assessee's facts. The entire assessment is perverse and devoid of merit and deserves to be quashed.*

4. *That there is no justification either in law or on facts for the addition of Rs. 1,80,00,000 by treating the same as unexplained cash credits u/s 68 which received by the assessee as temporary loans which were duly repaid after 2 months and in respect of which the assessee had filed confirmation, bank statement, ITR, Balance Sheet, Affidavit.*

5. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 1,80,00,000/- in respect of short term loans received by the appellant for a period of 2 months which were duly repaid with interest within a short span of 2 months.

6. That the Ld. CIT(A) failed to appreciate that in the entire assessment order the basis of making the addition is the alleged share capital received in the case of Pumarth Infrastructure Pvt. Ltd. and the AO has only narrated the evidences relating to that company without considering the evidences filed by the assessee in the form of confirmation, bank statement, ITR, Balance Sheet, Affidavit and without considering that the loans received by the present appellant were not share capital and were duly repaid in a short span of 2 months.

7. That the Ld. CIT(A) failed to appreciate that the discussion about statements of certain persons in the body of assessment order do not pertain to loans received and repaid by the present assessee and the AO has treated the facts of another case of Pumarth Infrastructure as applicable to the present assessee which is grossly perverse and shows complete non-application of mind of the AO to the facts of the assessee's case and shows that the addition has been made in haste without considering the submissions and documents filed by the assessee.

8. That the Ld. CIT(A) failed to appreciate that the Settlement Commission has recorded a categorical finding in its order dated 24.11.2015 that the statements of five persons recorded during search have neither been given to the applicants nor opportunity of cross examination has been given and that it would not be fair and proper to place reliance on such statements.

9. That the Learned CIT(A) has erred in relying upon the finding of Income Tax Settlement Commission (ITSC) without appreciating the fact that the issue of unsecured loan has not been dealt with by the ITSC in its order.

10. That without prejudice to the aforesaid grounds of appeal, if the addition of Rs. 1,80,00,000 is sustained then firstly benefit of income offered for tax before the settlement Commission should be given and secondly credit for repayment of the unsecured loan should be allowed.

11. That without prejudice to the aforesaid grounds, cumulative effect of Income

offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

6. The first two grounds (ground no.1& 2) of appeal are challenging the assessment order being barred by limitation and hence being illegal, void and without jurisdiction. In support of these ground it was submitted by the Learned Senior Counsel for the appellant that notices u/s 153A for assessment year 2012-13 and u/s 143(2) for assessment year 2013-14 were issued to the assessee however, for these assessment years, the assessee has filed application before the Hon'ble Settlement Commission, Mumbai on 09/03/2015 hence the assessment proceedings were kept pending. Order u/s 245D(1) of the Act was passed on 20/03/2015 allowing the settlement application to be proceeded with. However vide order dated 08/05/2015, application was rejected. As per the assessment order itself the said 245D(2C) order passed on 08/05/2015 was received in the office of Pr. CIT (Central), Bhopal on 18/05/2015. Thus the period of limitation u/s 153B read with Explanation thereto would be 60 days from the end of the month in which the said order was received and thus the period of limitation for passing the assessment order would expire on 31/7/2015. Since the order in this case was passed on 29.1.2016

therefore the same is apparently beyond the period of limitation and on this legal ground alone the assessment orders for AY 2012-13 and AY 2013-14 deserve to be quashed.

6.1 Continuing the aforesaid argument Learned Senior Counsel for the appellant submits that the period of limitation prescribed in case of a search assessment on account of rejection of settlement application is governed by clause (v) of Explanation to sub-section (3) of section 153B which provides that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or reassessment, as the case may be, is less than sixty days such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

6.2 The counsel for the appellant further submitted that admittedly the assessment involved in this matter is under section 153A of the Act and the provision governing the period of limitation would be section 153B and a plain reading of the said section would clearly demonstrate that the assessment order is barred by limitation.

6.3 Rebutting the aforesaid submission of the appellant the Learned DR submitted that the provision governing the period of limitation in this case would be section 153 and not section 153B. It was submitted by the Learned

DR that the proviso to section 153 provides that in case of abatement of proceedings of Settlement Commission the period of limitation would be 1 year and not 60 days as contained in the proviso to section 153. It was further submitted by the Learned DR that this issue of limitation has not been raised at any point of time before the Assessing Officer or the Ld. CIT(A) and has been raised for the first time before this Hon'ble Tribunal which should not be permitted since the issue of limitation should be raised at the first available opportunity and the appellant cannot be permitted to pick a forum of second appeal to raise this issue without raising it either during assessment or during the first appellate proceedings. The Ld. DR further pointed out that during the course of assessment proceedings itself the appellant had filed an affidavit before the Assessing Officer wherein it was categorically stated by the appellant that the plea of limitation will not be raised by the appellant before the first appellate authority. The said affidavit was placed on record by the Ld. DR before us along with the report of the Assessing Officer.

6.4 In rejoinder the learned counsel for the appellant placed reliance on the decision of **M/s NKG Infrastructure ltd v. Principal CIT [ITA No. 3825 to 3827 /Del/ 2018] decided by a coordinate bench of the** Income Tax Appellate Tribunal Bench at Delhi. It was further submitted by the Learned Counsel for the appellant that the amendment to section 153B vide Finance Act, 2017 also suggests that prior to 1.4.2017 the limitation period was 60 days which has been enhanced to 1 year only w.e.f. 1.4.2017. It was submitted by the Learned Counsel for the appellant that if the interpretation placed by the

Department that proviso to section 153 will override section 153B is accepted then what was the need to amend section 153B w.e.f. 1.4.2017 wherein the period of limitation has been extended to 1 year in cases where settlement application is rejected. Thus the very fact that this amendment was needed shows that prior to 1.4.2017 the period of limitation was only 60 days and not 1 year.

6.5 Continuing his rejoinder it was further submitted by the Learned Senior Counsel for the appellant that the non obstante clause in section 153B will override the provisions of section 153 and thus the limitation provided in section 153B of 60 days has to be taken while calculating the period of limitation. In support of the proposition that the non obstante clause in section 153B will override the general provision of section 153 the learned Counsel for the appellant placed reliance on the following decisions :

i) Union of India and ors v. G.M. Kokil and ors 1984 (Supp) SCC 196.

ii) Chandavarkar Sita Ratna Rao v. Ashalata S. Guram [(1986) 4 SCC 447]

6.6 Continuing his rejoinder regarding the issue of affidavit filed before the Assessing Officer and not raising this ground before the CIT(A) it was submitted by the learned counsel for the appellant that there is no estoppel against raising the issue of limitation for the first time in appellate proceedings. For this proposition the learned counsel for the appellant placed reliance on the case of **Dilip S. Dahanukar v. Assistant Commissioner Income Tax [2004] 90 ITD 525 (Mumbai)**. It was further submitted by the learned counsel for the appellant that when the affidavit was filed before the Assessing Officer

in June 2015 the period of limitation was very much available till 31st July 2015 and the Learned AO could not consciously choose to let the period of limitation expire even when he had more than a month left till 31st July 2015 to pass the assessment order. According to the learned Counsel for the appellant the period of limitation provided under the Act is sacrosanct and cannot be extended by consent of the parties more-so that when the consent was given the limitation was yet to expire and it was not as if the consent was given after the limitation had expired. According to the learned counsel for the appellant the assessing officer was very much conscious of the period of limitation of 60 days and thus when in June 2015 he took an affidavit from the appellant he was aware that the limitation would expire on 31st July 2015 and the Ld. AO consciously chose to let the limitation expire and thus now the department cannot chose to rely on the provisions of section 153 or the consent given by the appellant to brush aside the issue of limitation. Thus, according to the counsel for the appellant in case of Sumati Kumar Kasliwal the assessment order is barred by limitation as it has been passed beyond the period of 60 days from the date on which the order of settlement commission was received in the office of the Principal Commissioner.

6.7 We have considered the rival submissions and gone through the documents placed on record and have also considered relevant judgments referred to and relied by both the parties before us. The first issue that requires our consideration is whether the impugned assessment order is legal,

void and without jurisdiction as the same has been passed beyond the period of limitation u/s 153B of the Act.

The department has placed reliance on the second proviso to Sub Section 4 of Section 153 as amended by the Finance Act, 2008 w.e.f. 01/06/2007 which reads as under:-

“Provided further that was a proceeding before the Settlement Commission abates under Section 245HA, the period of limitation available under this section to the Assessing Officer for making for order of reassessment or re-computation, as the case may be, shall, after the exclusion of the period under sub-Section (4) of section 245HA, be not less than one year, and where such period of limitation is less than one year, it shall be deemed to have been extended to one year, and for the purposes of determining the period of limitation under section 149, 153B, 154, 155, 158BE and 231 and for the purposes of limitation under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.

6.8 The appellant has placed reliance on the proviso to section 153B which reads as under :

(v) in a case where an application made before the Income-tax Settlement Commission is rejected by it or is not allowed to be proceeded with by it the period commencing from the date on which an application is made before the Settlement Commission under section 245C and ending with the date on which the order under sub-section (1) of section 245D is received by the Principal Commissioner or Commissioner under sub-section (2) of that section; or shall be excluded.

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in clause (a) or clause (b) of this sub-section available to the Assessing Officer for making an order of assessment or

reassessment, as the case may be, is less than sixty days such remaining period shall be extended to sixty days and the aforesaid period of limitation shall be deemed to be extended accordingly.

6.9 The counsel for the appellant has placed strong reliance on the decision of co-ordinate Delhi Bench of this Tribunal in the case of **M/s NKG Infrastructure ltd v. Principal CIT [ITA No. 3825 to 3827 /Del/ 2018]**.

Before proceeding to examine the said decision it would be appropriate to extract the relevant paras of the said decision hereunder :

11. A reading of section 153 makes it clear that, no order of assessment shall be made under section 143 or section 144 at the time after the expiry of two years from the end of the assessment year in which the income was first assessable, and many provisos are provided to the section; whereas section 153-B starts with the expression that "notwithstanding anything contained in section 153", and states that the Assessing Officer shall make an order of assessment or reassessment in respect of each assessment year falling within six assessment years and for the relevant assessment year or years referred to in class (b) of subsection (1) of section 153-A etc.

12. Admittedly the assessment involved in this matter is under section 153A of the Act. While section 153-B specifically refers to the order of assessment under section 153-A of the Act, there is no such reference to section 153-A in section 153 of the Act. On a careful reading of these two provisions of law under section 153 and section 153-B of the Act, it occurs to our mind that the provisions under section 153-B of the Act are applicable to the facts of the case and section 153 has no relevance at all, lest we are afraid that it would attribute redundancy to the wisdom of legislature in enacting the non-obstante clause in Section 153-B of the Act.

13. It is further clear from the above that the Learned Assessing Officer shall make the order of assessment within a period of two years from the end of the

financial year in which the last of the authorizations for search under section 132 was executed and this period of two years shall be reckoned after excluding the period between the date on which application made before the Income Tax Settlement Commission and the date on which the order under sub section (1) of section 245-D was received by the Principal Commissioner or Commissioner under sub section two of that section. This is subject to the further rider that if after exclusion of this particular period, the period of limitation available to the Assessing Officer for making an order of assessment is less than 60 days, such remaining period shall be extended to 60 days and the aforesaid period of limitation shall be deemed to be extended accordingly

14. Admittedly, in this case the search was conducted on 23/08/2012, assessee filed the return of income on 17/11/2014, application before the Income Tax Settlement Commission was filed on 18/02/2015, and order under section 245-D (2C) of the Act was passed on 09/04/2015. It is, therefore, clear that under the provisions of section 153-B of the Act, learned Assessing Officer had to pass the order of assessment within two years, after excluding the period spent before the Income Tax Settlement Commission. It means the limitation period for conclusion of the impugned assessment proceedings expires by 31/03/2015. Even if we allow the period of 60 days from the date of the order of the learned settlement commission on 09/04/2015, the order should have been passed by 07/06/2015. It is, therefore, clear that the orders passed on 31/03/2006 is not clearly within the period of limitation prescribed under section 153-B of the Act.”

6.10 From a perusal of the facts of the aforesaid decision it transpires that the issue in question before the co-ordinate bench was the legality or otherwise of the order passed under section 263 and while examining that issue an additional issue that arose for consideration of the Delhi Tribunal was that of the validity of the assessment order. The issue was not in respect of direct challenge to assessment order. In the present case the appellant had given an affidavit before the Assessing Officer stating that the issue of limitation will not

be raised before the CIT(A). The learned counsel for the appellant on the issue of estoppel has relied on the decision of coordinate Bench of Mumbai Tribunal in the case of **Dilip S. Dahanukar v. Assistant Commissioner Income Tax [2004] 90 ITD 525 (Mumbai)** and thus it would be appropriate to extract the relevant paras of the said decision hereunder :

“37.We do not find any merit in the argument of the learned CIT/DR that the assessee is estopped from the raising the plea of limitation. In our view, the issue of limitation goes to the very root and strikes at the very basis of Assessing Officer's jurisdiction to complete the assessment and therefore such a legal plea can be raised any time. In fact, in some of have already been referred (supra), it has been held that even if no plea of limitation is taken, the courts are bound to consider it and even if a written undertaking is given by the assessee stating that he will not raise the plea of limitation, merely on that basis, the limitation does not get extended Therefore, in our view, there is no question that the assessee is estopped from raising this plea before the CIT(A) and then before the Tribunal.

38. Following from the discussion given above, we hold that the impugned re-assessment has been made by the Assessing Officer after the expiry of the limitation period which renders the assessment null and void. Accordingly, we reverse the finding of the learned CIT(A) on this issue and the assessment order is quashed.

39. In view of our quashing the assessment order, the various other grounds of appeal are only of academic interest and are, therefore, not required to be dealt with.

6.11 The learned counsel for the appellant had placed strong reliance on the non obstante clause of section 153B and in that context had placed reliance on two decisions of the Hon'ble Supreme Court.

6.12 On the other hand the Ld. DR had filed a detailed written note on the overriding effect of a later provision over an earlier provision which reads as follows:-

The assessee has raised the first ground of appeal that the assessment order is passed beyond the period of limitation u/s 153B. The Settlement Commission order rejecting the application was passed on 08/05/2015 which was received by PCIT on 18/05/2015 and the assessment order has been passed on 29/01/2016 which is beyond the period of limitation.

2. In the last hearing held on 07/03/2019 it was argued that the provisions of section 153B are applicable in this case and the same prevail over the general provision of section 153.

3. Section 153 is in respect of time limit for completion of assessments and reassessments. The second proviso to sub section 4 of Section 153 as amended by the Finance Act, 2008 w.e.f. 01/10/2007 is as under.-

Provided further that where a proceeding before the Settlement Commission abates under section 245HA, the period of limitation available under this section to the Assessing Officer for making an order of assessment, reassessment or re-computation, as the case may be, shall, after the exclusion of the period under subsection (4) of section 245HA, be not less than one year; and where such period of limitation is less than one year, it shall be deemed to have been extended, to one year; and for the purposes of determining the period of limitation under sections 149, 153B, 154, 155, 158BE and 231 and for the purposes of payment of interest under section 243 or section 244 or, as the case may be, section 244A, this proviso shall also apply accordingly.

4. On the issue of the applicability of special provision vs general

provision, the principle is - *Generalia Specialibus non derogant*:-

Generalia specialibus non derogant, or, in other words "where there are general words in a later Act capable of reasonable and sensible application without extending to subjects specially dealt with by the earlier legislation, you are not to hold that earlier or special legislation indirectly repealed, altered or derogated from merely by force of such general words, without any indication of particular intention to do so" (Maharaja Pratap Singh Bahadur v. Man Mohan Dev AIR 1966 SC 1931). The literal meaning of this expression is that general words or things do not derogate from special. This expression was explained to mean that when there is conflict between a general and special provision, the latter shall prevail (CIT v. Shahzada Nand & Sons[1966] 60 ITR 392 (Se) and Union of India v. India Fisheries (P.) Ltd. AIR 1966 SC 35.), or the general provisions must yield to the special provisions. (State of Gujarat v. Patel Ramjibhai AIR 1979 SC 1098.) The maxim is regarded as a 'cardinal principle of interpretation' (State of Gujarat v. Patel Ramjibhai AIR 1979 SC 1098), and is characterised as a well recognised principle. (Secy. of State v. Hindustan Cooperative Society AIR 1931 PC 149 and Patna Improvement Trust v. Shrimati Lakshmi Devi AIR 1963 SC 1077.)The general provision, however, controls cases where the special provision does not apply as the special provision is given effect to the extent of its scope. (South India Corpn. (P.) Ltd. v. Secretary Board of Revenue AIR 1964 SC 207.) Thus a particular or a special provision controls or cuts down the general rule. (Bengal Immunity Co. v. State of Bihar AIR 1955 SC 661). In Paradip Port Trust v. Their Workmen (AIR 1977 SC 36.), the Supreme Court was called upon to decide whether representation by a legal practitioner was permissible in an industrial dispute before adjudicatory authorities contemplated by the Industrial Disputes Act. By applying this maxim, the Supreme Court held that the special provision in the Industrial Disputes Act would prevail in that regard over the Advocates Act which was held to

be a general piece of legislation relating to subject-matter of appearance of lawyers before all courts, tribunals and other authorities, whereas Industrial Disputes Act was concerned with the representation by legal practitioners. This maxim was applied when the questions relating to assessments of a firm and its partners arose under the Income-tax Act, 1961 where the dissolution of the firm and its succession are held to be governed by the Special Act viz., the Income-tax Act and not the Partnership Act. The technical view of the nature of a partnership cannot be taken in applying the law of income-tax. Where a special provision is made in derogation of the provisions of the Indian Partnership Act, the effect is given to it. Where the provisions of the Indian Income-tax Act are clear, resort cannot be had to the provisions of another statute. (Dharam Pal Sat Dev v. CIT [1974] 97 ITR 302 (P&H) and Nandlal Sohanlal v. CIT [1977] 110 ITR 170 (P&H) (FB).) When the Legislature has deliberately made a specific provision to cover a particular situation, for the purpose of making an assessment of a firm under the Income-tax Act, there is no scope for importing the concept and the provisions of the Partnership Act. (CIT v. Shambulal Nathalal & Co.[1984] 145 ITR 329 (Kar.). The legal position of a firm under the income-tax law is different from that under the general law of partnership in several respects;."In case of conflict between the two statutes, the general rule to be followed is that the later abrogates the earlier one. In other words, a prior special law would yield to a later general law, if either of the two following conditions is satisfied: (i) The two are inconsistent with each other; (ii) There is some express reference in the later to the earlier enactment" (Ajay Kumar Banerjee v. Union of India AIR 1981 SC 1130)

5. In view of the above, a prior special law yields to a letter general law if either the two are inconsistent with each other or there is some express reference in the later to the earlier enactment. Both the conditions are satisfied in this case. The inconsistency has been

addressed by a later amendment in section 153B by insertion of third proviso to the Explanation to section 153 extending the period of limitation to one year. Further, the second proviso to section 153(4) specifically includes section 153B. Thus, it is submitted that the period of limitation in this case is as provided by second proviso to section 153(4) and the assessment orders passed in the case of the assessee are not time barred.

6.13 On going through the aforesaid provisions and the relevant judicial analysis in our opinion this ground of appeal deserves to be remanded to the file of the Learned CIT(A) in light of the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Tolaram Hassomal (2008) 298 ITR 22 wherein it was held by the Hon'ble High Court :

“8. In view of the foregoing discussion, we do not consider it necessary to examine any other issues, i.e., the questions already framed and decided by the Tribunal though urged by learned counsel for the Revenue on various legal grounds with reference to decided cases of the Supreme Court and the High Courts by contending that none of them are legally sustainable and hence, we answer only additional question of law framed in favour of the Revenue and against the assessee (respondent). As a result, the appeal succeeds and is hereby allowed. The impugned orders of the Tribunal is set aside, so also that of the Commissioner of Income tax (Appeals) which was the subject matter of appeal before the Tribunal in an appeal filed by the assessee. Indeed, this being a consequence of the indulgence granted by the Tribunal to the assessee in permitting them to raise four additional grounds to urge the same has to be given effect to. As a consequence, the Commissioner of Income-tax (Appeals) is now

directed to decide the appeal filed by the respondent (assessee) afresh on the merits including on the four additional grounds raised by the assessee. We, however, make it very clear that the Commissioner of Income- tax (Appeals) would not take into consideration any of the findings and the observations made by the Tribunal on any of the issues raised by the assessee, nor the Commissioner of Income-tax (Appeals) will be influenced by any of them. In other words, the Commissioner of Income-tax (Appeals) will decide the appeal strictly in accordance with law on the merits as if there is no finding on any of the issues ever recorded by the Tribunal because once we set aside the order of the Tribunal, then such order is regarded as being not in existence and cannot be looked into for any purpose, nor can be relied on or referred to by any authority much less an authority subordinate to the Tribunal. Needless to observe, the four additional issues urged by the assessee will have to be decided by the Commissioner of Income-tax (Appeals) keeping in view the law laid down by the Supreme Court and the High Courts in several cases holding the field in their right perspective. Let this be done within six months by the Commissioner of Income-tax (Appeals) from the date of appearance. Parties to appear before the Commissioner of Income-tax (Appeals) on April 3, 2006.”

6.14 In these given facts and circumstances of the case we find that issues raised in Ground No. 1 & 2 is a legal issue and has been raised for the first time before the Tribunal. There was no occasion with the Ld. CIT(A) to adjudicate this issue. Therefore in light of judgment of Hon'ble High Court in the case of CIT V/s Tolaram Hossomal 2008 (supra) we set aside legal issue

raised by the assessee for Assessment Year 2012-13 relating to the validity of the impugned assessment order whether being valid or invalid considering the limitation period provided under provisions of law for the completion of assessment proceedings. Ld. CIT(A) should accordingly decide the issue in light of the principle laid down by the Hon'ble Court. Accordingly Ground No. 1 & 2 of assessee's appeal for 2012-13 and 2013-14 are allowed for statistical purposes.

7. The next issue arising in Ground No. 3 to 10 for AY 2012-13 relate to the addition of Rs. 1,80,00,000 in respect of loans taken by the appellant which have been added u/s 68 by the Ld. Assessing Officer and in appeal the said addition has been confirmed by the Ld. CIT(A). The Assessing Officer on perusal of the balance sheet of the assessee, found that the appellant had taken unsecured loans and the relevant details of the companies from whom the loans were taken as stated in the assessment order were :

S.No.	Name, Address & PAN	Loan Amount	Date of Loan taken
1	Colour Union International Pvt. Ltd.	5000000	24.03.2012
2	Gambhari Trading Pvt. Ltd.	5000000	26.03.2012
3	Shreesanth Infrastructure Pvt. Ltd.	8000000	26.03.2012
	Total	18000000	

7.1 The Assessing Officer vide questionnaire u/s 142(1) dated 04/08/2014, point no. B-5, had given show cause as to why an addition of Rs. 1,80,00,000/- be not made in the hands of the assessee or the A.Y. 2012-13 u/s 68 of the I.T. Act, 1961. The assessee had claimed that the confirmation

letters, copies of PAN Cards, bank statements, Balance Sheet, P&L Accounts. ITR are sufficient enough to prove identity, creditworthiness and genuineness of the loan transaction carried out these parties. According to the Assessing Officer an enquiry of these companies was made by the Investigation Wing wherein it has been found that the addresses of the directors of such briefcase companies are lying in slum area of Indore while, the registered office of the company has been mentioned in Registrar of Companies at Mumbai. According to the Assessing Officer it was noticed from return of income of such companies that it had no business activities, but it has provide so called huge amounts in the shape of accommodation entries of 'Pumarth Group of Companies' on very large scale. As stated in the Assessment order during the course of post search enquiries, it has been found that Pumarth Group of Companies has accepted huge amounts of "Unsecured loans" & "Share Premium" by way of accommodation entries from the companies in which Shri Ashish GendalalVerma is a director. The name of those companies in which Shri Ashish GendalalVerma is/was a director, has been enquired from R.O.C. database, are as under :-

- (i) M/s Idani Trading Pvt. Ltd.
- (ii) Ms JasolMaa Share Trading Pvt. Ltd.
- (iii) M/s Arawali Stock Broking Pvt. Ltd.
- (iv) M/s Gupteshwar Securities Pvt. Ltd.
- (v) M/s Arrow Exim Pvt. Ltd.
- (vi) M/s Printage Offset Pvt. Ltd.
- (vii) M/s Evershine Building Projects Pvt. Ltd.

7.2 Accordingly, It has been observed by the assessing officer that Pumarth Group has taken accommodation entries from these companies. It was stated by the assessing Officer that during the course of post search proceedings, the Investigation Wing were issued summon u/s 131 to Shri Ashish GendalalVerma and Shri DayaramMansore. It was stated in the assessment order that Shri Ashish GendalalVerma has admitted in reply to Question no. 7, 8, 9 & 10 of recorded statement that he is a salary employee of Shri Jai Prakash Jagetia and so called proprietor of "M/s Ekta Share & Securities" & "Welkin Intermediatories" and he has stated that he is not actual proprietor of these firms and he only handed over his KYC & other documents to one his familiar Shri Jai Prakash Jagetia, Ro, 60-B. Rajat Jayanti Complex, Vijay Nagar, Indore and further, he added that Shri Jai Prakash Jagetia used to receive blank signed cheque book from him. He was paid additional amount of Rs. 5000-6000 from time to time for these documents and blank signed cheque book. On the same line of statement, Shri DayaramMansore has stated that he is a proprietor of following five concerns and its business address is "201, Raghunandan Bagh Colony, Indore':

- i. Kaycee Share & Stock Brokers (K.C.).
- ii. Earth Investinent & Share Broking.
- iii. Pooja Sales.
- iv. Matrabhumi Financial Services.
- v. Hema Trading Co.

7.3 As per the assessment order Shri Dayaram Mansore has also stated that he is not actual proprietor of these firms. He only handed over his KYC &

other documents to Shri Jai Prakash Jagetia, Ro, 60-B, Rajat Jayanti Complex, Vijay Nagar, Indore. Further, he added that Shri Jai Prakash Jagetia used to receive blank signed cheque book from him. He was paid additional amount of Rs. 5,000 - 6,000 from time to time for these documents and blank signed cheque book.

7.4 As per the assessment order a summon u/s 131 was issued to Shri Jai Prakash Jagetia and his statement was recorded on oath. He admitted that he provided accommodation entries to various entities after depositing cash in different bank accounts with various banks. He also furnished an Affidavit in this regard . It has been stated in the assessment order that that when the same affidavit filed by Shri Jaiprakash Jakheta has been confronted before the assessee, he did not wish to clarify and substantiate his claim. Therefore according to the assessing officer it was clear that the assessee has failed to counter the very finding of post search enquiry in this regard.

7.5 It has been further stated in the assessment order that on perusal of the earlier enquiries of the Investigation Wing, the other companies have also been noticed which have provided accommodation entries to 'Pumarth Group of Companies in the shape of "Unsecured Loans" and "Share Premium" by colorable device and its directors address on R.O.C. database are at the Indore.

7.6 According to the assessing officer it was noticed from the ROC details of 'M/s Idani Trading Pvt. Ltd.' that Shri Ashish GendalVerma and Shri Manoj Chaturvedi was the initial directors of the company. After cessation of Shri Ashish GendalVerma, Shri Kamlesh Shah was appointed as director in the

company. Looking to the inter connection of above directors, the complete details of the director and its companies who have provided accommodation entries to 'Pumarth Group of Companies'. According to the assessing officer during the post search proceedings, the Investigation Wing were issued Summon u/s 131 upon above directors of the companies who are residing at Indore and make field enquiry about them and it has been found that the addresses of the directors of such companies are lying in slum area of Indore while, the registered office of the company has been mentioned in the database of R.O.C. at Mumbai. During the course of enquiry, none of the directors could be found in place on the given addresses mentioned in R.O.C. database. Thus according to the AO it was concluded that none of the director could be traced out on current address as filed with ROC database which clearly indicate that these companies are only paper companies. The AO concluded that it is clear that none of the directors of many of above companies could be traced out. Further, it has also been accepted by the directors that they were used to provide accommodation entries by accepting cash and issuing cheques. Seized documents also show that there is huge difference in rates mentioned in the application documents and rates of face value and premium, shown by the assessee company.

According to the AO it has been proved beyond doubt that the above fund providing companies are only paper companies and entry providing companies. The AO noticed that the assessee had claimed that identity of the creditors has been established as their income tax returns were filed and are

having PANs/bank accounts. However, the AO concluded that the word "identity" was meant to be the condition or fact of a person or thing being that specified unique person or thing and the identification of the person would include the place of work, the fact that it was actually carrying on business and recognition of the said company in the eyes of public. As per the AO merely, producing PAN number or assessment particulars did not establish the identity of the person since the actual and true identity of the person or a company was the business undertaken by them. The AO stated that the PAN numbers are allotted on the basis of applications without actual defacto verification of the identity or ascertaining active nature of business activity and PAN is a number which is allotted and helps the Revenue to keep track of the transactions and thus PAN number is relevant but cannot be blindly and without considering surrounding circumstances be treated as sufficient to discharge the onus, even when payment is through bank account. As per the AO there is no actual business activity undertaken by these creditors and it is also not established as to why these companies have provided loans to the applicant. The AO mentioned that mere filing of confirmation of the creditors is not sufficient until and unless the creditors are produced for cross examination and verification on the basis of supporting evidence on record. As per the assessment order the assessee has been asked to produce the director of ASBN MultitradePvt. Ltd, Gambhari Trading Pvt. Ltd, Color union International Pvt. Ltd., Magma Dealers Pvt. Ltd., MartinmasVyapak Trading Pvt. Ltd., Mohin Infrastructure Pvt. Ltd., Venkateshwara Bunglows Pvt. Ltd. for

Statement u/s 131 from whom the assessee has taken Unsecured Loan and sold shares. But till the date of passing the order the assessee failed to produce all the directors for giving statement on oath to substantiate identity, creditworthiness and genuineness of the transaction. The AO concluded that the fund providing companies are actually entry providing companies and according to the AO on surfing on the internet and after enquiring from the ROC Website, it was seen that the above companies are paper companies and they are not engaged in doing any real work. The AO thus concluded that it is clear that the applicant has failed to establish the identity and creditworthiness of the creditors and genuineness of the transactions and the amount of Rs.1,80,00,000/- was added to the total income of the assessee as unexplained cash credit of the assessee u/s 68 for the A.Y. 2012-2013.

7.7 The learned CIT(A) dismissed the appeal filed by the assessee. It was concluded by the Ld. CIT(A) that during the course of search and seizure operations on 16/11/2012 various documents were found and seized. According to the Ld. CIT(A) the seized Page no. 62 of B-1/5 was a chart showing the fund flow statement from 16/05/2012 to 03/07/2012. The Ld. CIT(A) concluded that the chart shows the amounts against various entities/individuals of the Pumarth Group. As concluded by the Ld. CIT(A) in the 6h column under 'SSK' is written 36122825. 'SSK' stands for Sumati Kumar Kasliwal, who is the appellant. According to the CIT(A) the Assessing Officer had examined the Tally Account of the appellant which shows receipt of similar amount in the books of accounts as shown in the seized page no. 62 of

LPS-B1/5. The CIT(A) noticed that the Assessing Officer has stated that there are various other deposits in the bank account of the appellant during the same period as mentioned in the seized document but when inter-group transfers are excluded and only the amounts of entry provider companies are added, the amount totals upto Rs. 3,61,22,825/- as mentioned in page no. 62 under 'SSK'. The CIT(A) noticed that the Assessing Officer has placed reliance on the observations of the Hon'ble Settlement Commission in its order u/s 245D(2C) dated 24/11/2015 about the non-genuineness of the companies through which the PIPL has received share application money and the rejection of the applicant's Settlement Application. The CIT(A) noticed that the Assessing Officer has stated in Para 13.12 that the enquiries conducted by the Investigation Wing shows that the following companies had provided accommodation entries to Pumarth Group of Companies in the form of unsecured loans and share premium and the addresses of the Directors of these companies is at Indore. The CIT(A) noticed that during the course of post search proceedings by the Investigation wing summons u/s 131 were issued to the Directors of the companies who are residing at Indore but during the course of field inquiry none of the Directors could be found in place at the addresses mentioned in the ROC database. Further', during the search loose papers, bank statements, Memorandum of Association and Article of Association, certificate of incorporation of Company, copy of return of income, blank share transfer form were found in respect of M/s Kothistar Developer Pvt. Ltd., M/s. Printage Offset Pvt. Ltd., M/s Evershine Building Pvt. Ltd. and

M/s. Color union International Pvt. Ltd, the 4 investor companies in Pumarth Infrastructure Pvt. Ltd. (PIPL) which have not been found genuine by the Hon'ble Settlement Commission. The CIT(A) noticed that there is inter connection between the Directors of the Companies mentioned in the above table and the aforementioned companies which have provided accommodation entries to the Pumarth Group and there is cross share holding between the various companies. The CIT(A) observed that during the assessment proceedings the appellant was asked to produce the Directors of Martinnas Vyapak Pvt. Ltd., Mohin Infrastructure Pvt. Ltd. and Venkateshwara Bunglows Pvt. Ltd. to whom the appellant has sold shares to substantiate the identity, creditworthiness and genuineness of the transaction but the appellant failed to Produce the said Directors. On these reasons it was concluded by the Ld. CIT(A) that the addition was rightly made by the AO and thus the appeal filed by the assessee was dismissed.

7.8 At the time of hearing, detailed arguments were made by the counsel for the appellant and written submissions in support thereof have also been filed. It was submitted by the Learned Senior Counsel for the appellant that there is absolutely no enquiry made by the Assessing Officer in respect of loan of Rs. 1,80,00,000. This fact of lack of inquiry on the part of AO is evident from the reliance placed by AO on statements which were recorded in Feb 2012 while the search took place in Sep 2012 and the loan was received in March 2012. It was vehemently argued by the Ld. Senior Counsel that no enquiry was made by the investigation wing in respect of these loans since no such enquiry report

was brought on record by the Ld. AO and even before this Hon'ble Tribunal. It is a complete breach of principles of natural justice for the AO to reply on any adverse material without confronting the assessee with such material. Moreover, this report has not been brought on record till date. Thus a bald Cloth of "so called investigation" has been given to assumptions, suspicious and summarizes. The Ld. Counsel has stated that the AO has falsely stated that during post search proceedings investigation wing issued summons u/s 131 to Ashish Gendalal Verma and Shri Dayaram Mansore. The falsity of this fact is evident from the statements extracted by the Ld. AO which are of Feb 2012 while the search took place in September 2012. The Ld. Counsel for the appellant argued that how can a statement recorded in Feb 2012 be called a post search statement when the search itself took place in Sep 2012. Moreover the loans from these companies were taken in March 2012 and repaid back with interest in May 2012 while the alleged statement is of Feb 2012 i.e. even prior to taking of the loan. According to the Ld. Counsel for the appellant this very fact shows the complete eye wash attempted by the Ld. AO without actually making any enquiry. According to the Ld. Counsel for the appellant the dates tell the correct facts. Search in the assessee premises was on 21/09/2012 while Statement of Ashish Verma recorded on 07/02/2012 i.e. prior to search. This statement cannot be termed as post search proceedings. Also on 07/02/2012 no transaction was made by any company with the assessee. The assessee received unsecured loan in March 2012 while the alleged statement was recorded in Feb 2012. The statement of Jai Prakash

Jagetia is also dated 13/2/2012. The assessee received loan in March 2012. How can such a statement be relied upon. Moreover even in this statement no mention of assessee's company has been made. Affidavit of Jai Prakash Jagatia is also on 15/02/2012. On 15/02/2012 no transaction was made by any company as loan with the assessee. The assessee received unsecured loan on 26/03/2012.No statement of Dayaram Mansore on record. No copy was ever provided in spite of repeated request by the Appellant. Even before this Hon'ble Tribunal no such statement is placed on record. Settlement Commission in its order dated 24/11/2015 has categorically observed that such statements cannot be used against the assessee since no copies thereof have been ever provided to the assessee. Inspectors report is dated 29/12/2012 wherein, Inspectors states that he has been directed to issue summons by the AO.The AO assumed jurisdiction over the assessee on 30/04/2013 by virtue of order u/s 127. How the Inspector got director to serve summon u/s 131 on 29/12/2012when AO himself got jurisdiction on 30/04/2013. Thus the very foundation of Inspectors Report is without jurisdiction and is clearly a made up one. Moreover it is wrong to say that the director could not be traced in view of the affidavits of these directors filed before the settlement commission and also placed before the AO. The Settlement Commission has made a negative finding in respect of share capital but there is no adverse finding in respect of loans which were received and repaid in a short duration of 2 months.

7.9 The Learned Counsel for the appellant submitted that unsecured loans were fully explained. These loans were taken in March 2012 and were repaid in

May 2012 within a duration of 2 months. Interest was paid on such loans and also TDS was deducted. It was submitted that in respect of the creditors the assessee has submitted following details to prove the identity, genuineness and creditworthiness of the lender.

- Copy of PAN of all applicants,
- Certificate of Incorporation of lender companies,
- Copy of Confirmation letter for unsecured loan,
- Affidavit from Director of lender companies
- Bank Statement of lender companies
- Financial Statement of lender companies for the year ended 31.03.2012 and 31.03.2013,
- Copy of Acknowledgement of filing Income Tax Return for the Assessment Year 2012-2013 and 2013-2014;

7.10 It was argued by the Ld. Counsel that the Learned Assessing Officer ignored all these details and made the addition u/s.68 of the Income Tax Act, 1961 by treating the amount received on account of unsecured loans as alleged unexplained Cash Credit. The ld. Counsel submitted that the AO concluded that the assessee company has not proven the identity and creditworthiness of the lenders and genuineness of the transaction, therefore he treated the loan as alleged unexplained cash credit u/s.68 of the Income Tax Act, 1961 but this finding is not based on any inquiry or investigation as is evident from the dates on record. The counsel for the appellant submits that the Ld. AO failed to appreciate the fact that the assessee company filed the affidavit of the directors of the company wherein they confirmed for the lending the unsecured loan and also the source of source. The ld. Counsel submitted that the factum of Repayment of Loan

in short period and that too much before search has also to be considered. It was submitted that the credentials and genuineness gets established by the fact that the unsecured loans were returned within two months of time. Loan was taken on 26th March 2012 and returned on 23rd May 2012. Even Interest at the rate of 12% has been paid to the above companies against the borrowings. Tax at source has also been deducted on interest payment to the above companies. As per the section 68 when the assessee has not offered any explanation regarding the nature and source of credit found in the books, then only addition can be made under section 68. But if the assessee provides satisfactory explanation then addition cannot be made under section 68. The lender company has also confirmed that it had made the loan in the appellant company.

7.11 The Ld. Counsel for the appellant placed reliance on the following decisions:

- i) CIT v. Sahibganj Electric Cables (P.) Ltd. [1978] 115 ITR 408 (Cal.)
- ii) Principal Commissioner of Income Tax-II Indore Vs Karan Mittal Hon'ble High Court of Madhya Pradesh.
- iii) Commissioner of Income Tax-II, Indore V STL Extrusion P Ltd [(2011) 11 Taxman 125](MP)
- iv) Commissioner of Income Tax- II V Kamdhenu Steel & Alloys Ltd [2012 19 Taxman 26 (Delhi)]
- v) Commissioner of Income Tax- Faridabad v Laul Transport Corporation [(2009) 180 Taxman 185 (Punjab and Haryana)
- vi) Commissioner of Income Tax V Orissa Corpn (P) Ltd [(1986) 25 Taxman 80F (SC)]

7.12 The learned Senior Counsel for the appellant also submitted that the recent decision of Hon'ble Supreme court in the case of PCIT vs. NRA IRON & STEEL PVT. LTD. Is not applicable to the facts of the present case. The

Principles laid down in para 11 of the said judgment of the Hon'ble Supreme Court are not applicable to the facts of the case at hand. The ratio laid down was for sums of money credited as Share Capital/Share Premium while the issue in the present case is of business loans which were duly repaid in 2 months with interest and tds was deducted therefrom. This is not a case of investment received. As held in the decision of Supreme Court the assessee is under an obligation to prove genuineness, creditworthiness and the identity of the investors and the investment in question while in the present case according to the Ld. Counsel this was not an investment but a loan and the identity, creditworthiness and genuineness was duly proved and also the creditors were duly repaid in 2 months. It was submitted by the Ld. Senior Counsel that the Supreme Court has stated that AO is duty bound to investigate while in the present case no investigation has been made by the AO as is evident from the dates enumerated during the course of arguments. According to the Ld. Counsel for the appellant the Hon'ble Supreme Court has observed that High Share premium is a capital building exercise while the appellants case is not of share capital or share premium and there is no capital building exercise since all amounts were duly repaid in 2 months with interest. This was a case of genuine business loans. The Ld. Counsel for appellant thus submitted that the ratio of the Hon'ble Supreme Court's decision in PCIT v. NRA Iron and Steel Pvt. Ltd. is not applicable to the facts of the present case. The Ld. Counsel for the appellant submitted that since the lender companies are existing companies and duly assessed to income tax, no addition can be

made in the hands of appellant company for the loans received from these companies during the year.

7.13 On the other hand, the Learned CIT DR has supported the addition made by the assessing officer and has also drawn support from the observations and findings of CIT(A) by placing following written submissions:-

7.14 We have heard rival contentions and perused the records placed before us and gone through the judgements carefully. Before proceeding further it would be appropriate to discuss the judgements cited by the Ld. Senior Counsel for the appellant during the course of arguments. These judgements are extracted hereunder :

In the Case of Principal Commissioner of Income Tax-II Indore Vs Karan Mittal Hon'ble High Court of Madhya Pradesh has held that:

Para 5. This question has been considered by the Apex Court in the case of Commissioner of Income Tax v. Orissa Corporation (Private) Limited reported in 1986 AIR 1849 = [1986] 25 Taxman 80F (SC) = 1986 SCR (1) 979; relevant paragraph No.13 reads, as under: - "13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the Revenue that the said creditors were income-tax assesseees. Their index number was in the file of the Revenue. The Revenue, apart from issuing notices under Section 131 at the instance of the assessee, did not pursue the matter further. The Revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee had discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises."

Para 6. Similar is the issue which was considered by a Division Bench of this Court in the case of Commissioner of Income Tax-II, Indore v. STL Extrusion (Private) Limited reported in [2011] 11 Taxmann.com 125 (Madhya Pradesh) = [2011] ITR 269 (Madhya Pradesh) and in paragraph No.9 of the aforesaid judgment, Division Bench has distinguished the judgment in the case of Commissioner of Income Tax v. Rathi Finlease Limited (supra)

Para 7 Shri Sumit Neema, learned Senior Counsel for the respondent has submitted that the issue involved in this appeal has been considered by the Delhi High Court in detail in the case of Commissioner of Income Tax-II v. Kamdhenu Steel & Alloys Limited reported in [2012] 19 taxmann.com 26 (Delhi) = [2012] 206 Taxman 254 (Delhi) = [2014] 361 ITR 220 (Delhi) and Special Leave to Appeal (Civil) No.15640/2012 filed by the Department has been dismissed on 17.09.2012 by the Hon'ble Apex Court. He has further submitted that all the requirement under Section 68 of the Income Tax Act, 1961 has been duly proved by the assessee by giving all the details and the findings recorded by the learned Appellate Tribunal, they are the findings of fact based on proper appreciation of documents on record. No substantial question of law is arising in this appeal.

Para 8 On due consideration of the arguments of the learned 9 counsel for the parties, so also the reasoning assigned by the learned Appellate Tribunal, we are of the view that the income tax appeal filed by the department has no merit nor any substantial question of law is arising in the matter.

In the case of Commissioner of Income Tax-II, Indore V STL Extrusion P Ltd [(2011) 11 Taxman 125] Hon'ble High Court Madhya Pradesh has held that

Para 5. Shri R.L. Jain, learned Senior counsel for the appellant argued that the Tribunal has committed error in not considering the law laid down by this Court in the case of CIT v. RathiFinlease Ltd. [IT Appeal No. 63 of 2004, dated 11-10-2007] in which it has been laid down that onus is on the assessee to establish the genuineness of the credits. He also argued that no opportunity was available to the appellant to controvert the affidavits.

Para 6. Having considered the contention of the appellant we find that the Tribunal has taken note of judgment of this Court in the case of Rathi Finlease Ltd.(supra) as also the various judgments of the Supreme Court as well as Delhi

High Court and has held that though it is the duty of the assessee to establish the genuineness of the credits but in the present case the assessee has duly established the identity and source of credits. The Tribunal has also held that once the identity and source of the subscribers of the share is established no addition can be made under section 68 of the Income-tax Act. The assessee having duly furnished the names, age, address, date of filing the application of share, number of shares of each subscriber there was no justification for the Assessing Officer for making the impugned addition because once the existence of the investors/share subscribers is proved, onus shift on the revenue to establish that either the share applicants are bogus or the impugned money belongs to the assessee itself. We also find that after filing of the affidavits of the said subscriber the appellant at no stage of the proceedings sought any opportunity to rebut the said affidavits.

In the case of Commissioner of Income Tax- II V Kamdhenu Steel & Alloys Ltd [2012 19 Taxman 26 (Delhi)] Hon'ble High Court Of Delhi held that

Para 16. We are conscious of the malice of such kind of pernicious practice which is prevalent. In Divine Leasing & Finance Ltd. (supra), this Court had eloquently highlighted the same in the following manner:

"There cannot be two opinions on the aspect that the pernicious practice of conversion of unaccounted money through the masquerade or channel of investment in the share capital of a company must be firmly excoriated by the Revenue. Equally, where the preponderance of evidence indicates absence of culpability and complexity of the assessee it should not be harassed by the Revenue's insistence that it should prove the negative. In the case of a public issue, the company concerned cannot be expected to know every detail pertaining to the identity as well as financial worth of each of its subscribers. The company must, however, maintain and made available to the Assessing Officer for his perusal, all the information contained in the statutory share application documents. In the case of private placement the legal regime would not be the same. A delicate balance must be maintained while walking the tightrope of Sections 68 and 69 of the Income Tax Act. The burden of proof can seldom be discharged to the hilt by the assessee; if the Assessing Officer harbours doubts of the legitimacy of any subscription he is

empowered, nay duty bound. But if the Assessing Officer fails to unearth any wrong or illegal dealings, he cannot obdurately adhere to his suspicions and treat the subscribed capital as the undisclosed income of the company." (Emphasis supplied)

Para 19. In conclusion, we are of the opinion that once adequate evidence/material is given, as stated by us above, which would prima facie discharge the burden of the assessee in proving the identity of shareholders, genuineness of the transaction and creditworthiness of the shareholders, thereafter in case such evidence is to be discarded or it is proved that it has "created" evidence, the Revenue is supposed to make thorough probe of the nature indicated above before it could nail the assessee and fasten the assessee with such a liability under Section 68 and 69 of the Act.

Para 21. However, in the facts and circumstances of these cases, it would be difficult to give such an opportunity to the Revenue. There are number of reasons for denying this course of action which are mentioned below:

(i) It is not a case where some procedural defect or irregularity had crept in the order of the AO. Had that been the situation, and the additions made by the AO were deleted because of such infirmity, viz., violation of principle of natural justice, the Court could have given a chance to the AO to proceed afresh curing such procedural irregularity. One example of such a case would be when statement of a witness is relied upon, but opportunity to cross-examine is not afforded to the assessee.

(ii) On the contrary, it is a case where the AO(s) did not collect the required evidence which they were supposed to do. To put it otherwise, once the assessee had discharged their onus and the burden shifted on the AO(s), they could not come out with any cogent evidence to make the additions. No doubt, as indicate by us above, the AO(s) could have embark upon further inquiry. If that is not done and the AO(s) did not care to discharge the onus which was laid down, for this "negligence" on the part of the AO(s), he cannot be provided with "fresh innings".

(iii) The order of the AO(s) had merged in the order of the CIT(A) and in some of the cases before us and before the CIT(A), the assessee had succeeded.

(iv) This Court is acting as appellate Court and has to act within the limitations provided under Section 26A of the Act. The appeals can be entertained only on substantial questions of law. In the process, this Court is to examine as to whether the order of the Tribunal is correct and any substantial question of law arises therefrom. The Tribunal has passed the impugned orders, sitting as appellate authority, on the basis of available record. When the matter is to be examined from this angle, there is no reason or scope to remit the case back to the AO(s) once it is found that on the basis of material on record, the order of the Tribunal is justified. Even the Tribunal acts purely as an appellate authority. In that capacity, the Tribunal has to see whether the assessment framed by the AO, all for that matter, orders of the CIT(A) were according to law and purportedly framed on facts and whether there was sufficient material to support it. It is not for the Tribunal to start investigation. The Tribunal is only to see as to whether the additions are sustainable and there is adequate material to support the same if not the addition has to be deleted. At that stage, the tribunal would not order further inquiry. It is to be kept in mind that the AO is prosecutor as well as adjudicator and it is for the AO to collect sufficient material to make addition. There may be exceptional circumstances in which such an inquiry can be ordered, but normally this course is not resorted to

In the case of Commissioner of Income Tax- Faridabad v Laul Transport Corporation [(2009) 180 Taxman 185 (Punjab and Haryana) Hon'ble High Court of Punjab and Haryana held that

Para 6. In the present case, a perusal of the impugned order passed by the Tribunal reveals that in the instant case the assessee has discharged its onus to prove the genuineness of the cash credit by placing on record before the Assessing Officer sufficient material/evidence. Not only the identity of the creditor has been established by producing the record of the assessee in which those transactions have been duly accounted for,

but the assessee has also discharged its onus in explaining the nature of source and the cash credit. It is also well settled that the assessee can be made to explain the source of the credits in the books of account, but not the source of the source, i.e., source of the creditors.

Para 7. In our view, the Commissioner of Income-tax (Appeals) as well as the Tribunal while taking into consideration the material and documents and appreciating the evidence available on the record, have recorded a pure finding of fact which cannot be interfered by this court in appeal filed by the revenue. It has been held in Raichand Kothari (HUF) v. CIT [1997] 223 ITR 250 (Gau.) that in cash credit cases the Tribunal is the final fact-finding body. Further, it has been held in CIT v. Shree Gopal & Co. [1993] 204 ITR 285 (Gau.) that the High Court cannot, in a reference/appeal, embark upon a reappraisal of the evidence. The question of the genuineness of a credit or the correctness of the assessee's explanation is a question of fact which cannot be interfered in appeal by this Court under section 260A of the Act.

Para 8. Thus, in view of a pure finding of fact recorded by the Tribunal with regard to the identity and creditworthiness and the capacity of the creditors to advance money, we do not find any ground to interfere in the impugned order as the counsel for the appellant could not point out any illegality or perversity in the said finding of fact.

In the case of Commissioner of Income Tax V Orissa Corpn (P) Ltd [(1986) 25 Taxman 80F (SC)] Hon'ble Supreme Court of India held that

Para 10. The question was again considered by this Court in HomiJehangirGheesta v. CIT [1981] 41 ITR 135, when this Court reiterated that it was not in all cases that by mere rejection of the explanation of the assessee, the character of a particular receipt as income could be said to have been established ; but where the circumstances of the rejection were such that the only proper inference was that the receipt must be treated as income in the hands of the assessee, there was no reason why the assessing authority should not draw such an inference. Such an inference was an inference of fact and

not of law. It was further observed that in determining whether an order of the Tribunal would give rise to a question of law the Court must read the order of the Tribunal as a whole to determine whether every material fact, for and against the assessee, had been considered fairly and with due care; whether the evidence pro and con had been considered in reaching the final conclusion ; and whether the conclusion reached by the Tribunal had been coloured by irrelevant considerations or matters of prejudice. It was further reiterated that the previous decisions of this Court did not require that the order of the Tribunal must be examined sentence by sentence through a microscope as it were, so as to discover a minor lapse here or an incautious opinion there to be used as a peg on which to hang an issue of law. In considering probabilities properly arising from the facts alleged or proved, the Tribunal did not indulge in conjectures, surmises or suspicions

Para 13. In this case the assessee had given the names and addresses of the alleged creditors. It was in the knowledge of the revenue that the said creditors were the income-tax assesseees. Their index number was in the file of the revenue. The revenue, apart from issuing notices under section 131 at the instance of the assessee, did not pursue the matter further. The revenue did not examine the source of income of the said alleged creditors to find out whether they were credit-worthy or were such who could advance the alleged loans. There was no effort made to pursue the so-called alleged creditors. In those circumstances, the assessee could not do any further. In the premises, if the Tribunal came to the conclusion that the assessee has discharged the burden that lay on him then it could not be said that such a conclusion was unreasonable or perverse or based on no evidence. If the conclusion is based on some evidence on which a conclusion could be arrived at, no question of law as such arises.

7.15 As regards the applicability of recent judgement of Hon'ble Supreme Court in the case of PCIT vs. NRA IRON & STEEL PVT. LTD. (*supra*) heavily relied by Learned Departmental Representative , we observe the Principles laid

down in para 11 of the said judgment are not applicable to the facts of the case at hand as would be evident from the following analysis :

Principles laid down by the Hon'ble Supreme Court	Facts of the present case
1. Principles are for sums of money credited as Share Capital/Share Premium	1. The issue is of business loans which were duly repaid in 2 months with interest and tds was deducted therefrom. This is not a case of investment received.
2. Assessee is under an obligation to prove genuineness, creditworthiness and the identity of the investors and the investment in question.	2. This was not an investment but a loan. Nevertheless the identity, creditworthiness and genuineness was duly proved and also the creditors were duly repaid in 2 months.
3. AO is duty bound to investigate	3. No investigation has been made by the AO as has been demonstrated in the preceding paras.
4. High Share premium is a capital building exercise	4. Not a case of share capital or share premium. No capital building since all amounts were duly repaid in 2 months with interest. This was a case of genuine business loans.

Thus the ratio of the Hon'ble Supreme Court's decision in PCIT v. NRA Iron and Steel Pvt. Ltd. is not applicable to the facts of the present case.

7.16 In the light of above judgments and given facts and circumstances of the case are of the considered view that the appellant i.e. the assessee has been successful to prove the genuineness, creditworthiness and identity of the alleged cash creditors on account of the fact that all the relevant details and supporting documents are placed on record. Further no incriminating material was found during the course of search which could clearly prove that the alleged transaction of receiving loan was an accommodation entry. The assessee's case further finds support the fact that the alleged loans were taken

for a period of two months and have been repaid back with interest. Tax has also been deducted at source on the interest paid. The alleged transaction of receiving loan and being repaid back has been duly acknowledged by the cash creditors in the affidavit. These transaction of receiving loan cannot be equated to a capital formation exercise. Alleged transaction purely looks to be a normal business transaction in which short term loan has been taken for business purposes and have been repaid back after having sufficient funds. The documents filed in support of identity, creditworthiness and genuineness i.e. Profit & loss accounts, income tax returns, audit reports, affidavit of the cash creditors and identity proof have not been disputed by the revenue authorities at any stage. Ld. A.O seems to have made the addition without making any investigation after the loan was taken. The finding given in the impugned assessment order about the investment is during the period prior to taking the loan. We therefore in the given facts and circumstances of the case and respectfully following the judgments in the preceding paragraphs are of the considered view that the addition for unexplained cash credit of Rs.1,80,00,000/- needs to be deleted. We therefore set aside the finding of both the lower authorities and allow this issue of unexplained cash credit raised by the assessee in Ground No. 3 to 9.

8. Ground No. 10& 11 in AY 2012-13 is an alternative ground raised by the appellant. However in view of the fact that the main grounds are allowed therefore there remains no occasion for deciding ground No. 10& 11 and the same is treated as infructuous.

9. In the result Appeal for Assessment Year 2012-13 in the case of Shri Sumati Kumar Kasliwal is partly allowed for statistical purposes.

ITA NO.472/IND/2017 for Assessment Year 2013-14

SUMATI KUMAR KASLIWAL

10. The grounds of appeal raised in the memo of appeal for AY 2013-14 read as under :

1. That the entire assessment order is illegal, void and without jurisdiction as the same has been passed beyond the period of limitation u/s 153B. The settlement order rejecting the application was passed on 8/5/2015 which was received by PCIT on 18/5/2015 and the asstt. order has been passed on 29/1/2016 which is beyond the period of limitation.

2. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice .

3. That there is no justification either in law or on facts for the addition of Rs. 13,61,94,600 by treating the entires pertaining to cash received in the loose paper no. 62 of LPS B-1/5 as being income of the assessee.

4. That there is no justification either in law or on facts for the addition of Rs. 68,40,000 by treating the entries pertaining to "Others" column in the loose paper no. 62 of LPS B-1/5 as being income of the assessee.

5. That there is no justification either in law or on facts for the addition of Rs. 26,77,469 by treating the entry pertaining to "Diff" mentioned in the loose paper no. 62 of LPS B-1/5 as being unexplained expenditure of the assessee.

6. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 3,61,22,825/- made by the Ld. AO u/s 68 by treating entire share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit.

7. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of

Rs. 3,61,22,825 as unexplained cash credit without appreciating that the same was on account of sale of sales and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. Balchand Ajit Kumar .

8. That while sustaining the addition of Rs. 3,61,22,825 the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have been made.

9. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale of shares is the purchase of shares and thus no addition could be made.

10. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciation the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

11. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

11. In Ground No. 1 & 2 the assessee has again raised the legal ground challenging that the impugned assessment order for A.Y. 2013-14 is time bared by limitation. Both the assessee and revenue have made the same submissions as were made for the similar issue raised for Assessment Year 2012-13. The Senior Counsel for the assessee referring to the submissions made for Assessment Year 2012-13 requested for setting aside this legal issue

to the file of Ld. CIT(A). We find that the assessments for Assessment Years 2007-08 to 2012-13 were framed by the Ld. A.O u/s 153A r.w.s. 143(3) of the Act whereas the assessment for Assessment Year 2013-14 has been framed u/s 143(3) of the Act. The legal issue raised for Assessment Year 2012-13 by the assessee challenging the validity of the assessment being barred by limitation has been have discussed by us in the preceding paras and the provisions referred to Section 153 and Section 153B of the Act were being discussed to compute the period of limitation in the case where search has been conducted and assessment have been framed by issuance of notice u/s 153A of the Act.

The instant appeal relates to Assessment Year 2013-14. The assessment framed u/s 143(3) of the Act is a regular assessment and the time limitation for completion of such assessment u/s 143(3) of the Act is governed by the provisions of section 153(1) of the Act which before being amended by the Finance Act, 2016 provides that no order of assessment shall be made u/s 143 or 144 at any time after expiry of (a) two years from the end of the assessment year in which the income was first assessable or (b) one year from the end of the financial year in which return or the revised return relating to the assessment year commencing the first day of April, 1988 or in earlier assessment year, is filed under Section 4 or Sub Section 5 or Section 139 whichever is later. Now section 153(1)(a) of the Act contemplates that the Ld.A.O had to complete the assessments u/s 143(3) of the Act in the instant case within two years from the end of the assessment year i.e. 2013-14. The

last date to frame the assessment in this case is 31.03.2016 which is two years from the end of the Assessment Year 2013-14. The impugned assessment order for Assessment Year 2013-14 was passed on 29.01.2016. The contention of the assessee is that he moved an application before the Income Tax Settlement Commission and the same was rejected which needs to be considered while applying the period of limitation. We therefore are of the considered view that as the legal issue challenging the validity of impugned assessment being barred by limitation which has been challenged for the first time before the Tribunal and Learned CIT (A) had no occasion to deal with the same, we respectfully following the judgement of Hon'ble Jurisdictional High Court in the case of CIT V/s Tolaram Hosamal (supra), as referred by us while adjudication the similar legal issue in the case of assessee for AY 2012-13 and therefore taking a consistent view, set aside this legal issue raised for adjudication to the file of Learned CIT(A). Therefore Ground No. 1 & 2 of the assessee's appeal in the case of Shri Sumati Kumar Kasliwal for Assessment Year 2013-14 is allowed for statistical purposes.

12. Ground no. 3, 4 & 5 in AY 2013-14 is regarding the addition in respect of undisclosed income received in cash by Sumati Kumar Kasliwal at Rs.14,57,12,069/-(13,61,94,600/-,Rs.68,40,000/-and Rs.26,77,469/-)

12.1 At the outset, the learned Senior counsel for the appellant referring to this addition of Rs.14,57,12,069/- made in the hands of Mr. Sumati Kumar Kasliwal submitted that since Shri Kasliwal had himself offered the said amount before the Settlement Commission along with claiming the expenditure

there from and since the entire amount of alleged unexplained cash has been held by Ld. A.O to be belonging to Shri Sumati Kumar Kasliwal and if the nexus of the alleged addition of Rs. 14,57,12,069/- is made to the addition for unexplained cash credit of Rs. 13,60,00,000/- made in another group case of Pumarth Infrastructure Pvt. Ltd during Assessment Year 2012-13 then the assessee i.e. Shri Sumati Kumar Kasliwal is not pressing the grounds challenging the addition of Rs.14,57,12,069/-. It was further submitted that Shri Sumati Kumar Kasliwal earned undisclosed income during the Assessment Year 2012-13 from certain land transactions and same was routed through Pumarth Infrastructure Pvt. Ltd of which he is the Director and in the subsequent assessment year i.e. 2013-14 cash was received as the accommodation share capital entries were reversed back as the investors wanted their amount back.

12.2 An alternative submission has been made by the Ld. Counsel for the appellant that credit of this addition should be given in the hands of connected case of Pumarth Infrastructure Pvt. Ltd wherein the Assessing Officer has made an addition of Rs. 13,60,00,000 in respect of unexplained share capital. The Ld. counsel for the appellant prays that the source of the said amount of share capital can be attributable to the income offered and taxed in the hands of Sumati Kumar Kasliwal and therefore no further addition in respect of the said amount of Rs.13,60,00,000 is required to be made in Pumarth Infrastructure Pvt. Ltd. It is submitted that the appellant Sumati Kumar Kasliwal has already offered the said amounts in his settlement application as

his income. Although he has claimed expenditure on the said amounts and has offered the balance Rs. 30 lacs as income but the PCIT in his report under Rule 9 has categorically held that the entire amount belongs to Sumati Kumar Kasliwal. It is submitted that the Ld. AO has added this amount in entirety in the hands of Sumati Kumar Kasliwal. The Ld. counsel for the appellant submitted that an identical addition of the same amount (Rs. 13,60,00000) has been made in the hands of PIPL wherein this amount was received as share capital. The source of the said share capital is this income received by Sumati Kumar Kasliwal and the only prayer is that the benefit of this addition be given in the hands of PIPL. It was submitted that the amount already taxed in one hand can be a source of payment for unsecured loan if the allegation of the AO that the group has paid cash to get the loan. The AO himself states in the assessment order of the appellant that group has paid cash to get credit entry in the assessment order. It was argued that even in the case of SS Kasliwal the basis of addition is the same page 62 which is alleged to be the unexplained cash credit. The very same page has in column "cash" the same total as is equivalent to the capital raised. It was argued that if one portion of "page 62" is being relied upon to make addition in the hands of SS Kasliwal and the same page which has the name of PIPL and shows a credit entry, then the theory of peak credit would very much be available as held by Allahabad High Court in [2014] 42 taxmann.com 476 (Allahabad)/[2014] **Commissioner of Income-tax (Central), Kanpur v. Fertilizer Traders.**

12.3 It was argued that alternative claim can be put up before the Tribunal for the first time by placing reliance on the decision of Madras High Court in case of *Indian Express (Madurai) (P.) Ltd.* (1983) 140 ITR 705 (Mad). It was submitted by the Ld. Senior Counsel that the taxability of SHARE CAPITAL OF RS. 13,60,00,000 in the hands of Pumarth Infrastructure Pvt. Ltd. basically becomes an academic issue in view of the fact that corresponding addition has already been made in the hands of the director. The source of unsecured loan even if treated to be out of undisclosed income would be the addition already made in the hands of SS Kasliwal of a corresponding same figure derived from the same seized paper and thus there remains no further requirement of any addition of share Capital in the hands of the company.

12.4 On the other hand, the learned CIT DR has submitted that the assessee has not been able to prove the genuineness of share capital in the case of Pumarth Infrastructure Pvt. Ltd. and therefore that addition is required to be confirmed in the case of Pumarth Infrastructure Pvt. Ltd. on the basis of detailed finding given by the AO in the assessment order of Pumarth Infrastructure Pvt. Ltd.

12.5 We have heard rival contention and perused the records placed before us. In Ground No.3, 4 & 5 relates to the addition of Rs.13,61,94,600/-, Rs.68,40,000/- and Rs.26,77,469/- made by the Ld. A.O on the basis of seized loose paper No.62 of LPS-B-1/5 for the unexplained cash received by the assessee. Ld. Senior Counsel for the assessee while submitting that these Ground No. 3,4 & 5 are not pressed because Shri Sumit Kumar Kasliwal has

himself offered this amount before Income Tax Settlement Commission although after claiming expenditure there from if any along with by making an alternate submission that the nexus of the amount mentioned in Ground No. 3,4 & 5 is with the addition for unexplained share capital in the case of M/s. Pumarth Infrastructure Pvt. Ltd made by the revenue authorities in the Assessment Year 2012-13. Ld. Senior Counsel for the assessee pleaded that the alleged share capital of Rs.13.60 crores was introduced in the books of M/s. Pumarth Infrastructure Pvt. Ltd at the instance of Shri Sumati Kumar Kasliwal who is the Director in this company and is the founder of Pumarth Group of Companies and also head of Kasliwal family. Entire funds are managed by him and the entire money or money worth remains in his control. Referring to the disclosures made by the assessee Shri Sumati Kumar Kasliwal before the Income Tax Settlement Commission it was further submitted before us that in continuation of the aforesaid disclosure made before the Income Tax Settlement Commission the appellant i.e. Shri Sumati Kumar Kasliwal now offers the entire amount of alleged share capital of Rs.13.60 lakhs received in M/s. Pumarth Infrastructure Pvt. Ltd during Assessment Year 2012-13 as an undisclosed income. The source of income is from the land transaction settlement amount and the income of Rs.13.60 crores accrued to Shri Sumati Kumar Kasliwal in March, 2012 which the assessee got in the form of share capital from certain investors appearing in the books of M/s. Pumarth Infrastructure Pvt. Ltd which are termed as accommodation entry provider by the Ld. A.O. The Ld. Senior Counsel for the assessee further submitted that

later on as the deal of share investment got cancelled and the investors wanted their investment back the shares allotted to the investors were re purchased back at an equal or higher amount and on cancellation of the deal the assessee received cash in June, July 2012 which appeared in the seized loose paper document i.e. LPS-B-1/5 . Therefore the additions challenged by the assessee in Ground No. 3,4&5 totaling to Rs.14,57,12,069/- inter alia includes the undisclosed income of Rs.13.60 crores of Shri Sumati Kumar Kasliwal which was routed through the books of M/s. Pumarth Infrastructure Pvt. Ltd in the form of share capital and premium during Assessment Year 2012-13. Therefore we confirm the addition of Rs.14,57,12,069/-. We however on perusal of the assessment order for Assessment Year 2012-13 passed in the case of Shri Sumati Kumar Kasliwal find that the total addition made for the unexplained cash is Rs. 13,67,12,069/-. From perusal of the seized document LPS 1/5 of Page 62 we find that there is a totaling error in the sheet. Total of entries relating to cash received is Rs.13,61,94,600/- but it is wrongly mentioned as 12,61,94,600. Assessee on knowing the mistake has rightly challenged the correct amount of Rs.13,61,94,600/-. Therefore the addition of Rs.14,57,12,069/- (Rs. 13,61,94,600/- + Rs. 68,40,000/- + Rs. 26,77,469/-) stands confirmed in the hands of the assessee for Assessment Year 2013-14. Our this finding of confirming the addition in the hands of Shri Sumati Kumar Kasliwal for Assessment Year 2013-14 will be for consideration while deciding the issue of unexplained share capital in the case of M/s. Pumarth Infrastructure Pvt. Ltd for Assessment Year 2012-13 in the subsequent

adjudication of the remaining issues. Accordingly Ground No. 3, 4 & 5 of the assessee's appeal for Assessment Year 2013-14 are dismissed as not pressed subject to are findings mentioned herein above of providing telescoping benefit of the addition not pressed to Rs.14,57,12,069/- as against the addition for unexplained cash credit of Rs.13.60 crores made in the hands of group concern Pumarth Infrastructure Pvt.Ltd.

13. Ground no. 6 to 10 in AY 2013-14 in ITA No.472/IND/2017 relates to the sale of shares of Rs. 3,61,22,825 assessed as income u/s 68. According to the Assessing Officer, during the course of post search operation, several documents seized at the premises located at the address of the assessee at 5/5, Navratan Bagh, Indore on 16/11/2012 and among these B-1/5/page-62 is a chart showing the amount along with the name of the directors and the companies for the period from 16/05/2012 to 03/07/2012. According to the assessing Officer i seized document 'B-1/5/Page-62', details of amounts in the name of 'Pumarth Group of Companies' and its directors have been mentioned. The assessing Officer was of the opinion that the data in seized paper 62 represents the following assessees and the following amounts:

MK	35650000	MK stands for Manoj Kaslimali
NFPL	30832825	NFPL stands for Nishant Finance Pvt. Ltd.
PIPL	84300000	PIPL stands for Pumarth Infrastructure Pvt. Ltd.
MK HUF	30632825	MK stands for Manoj Kasliwal HUF :
SSK	36122825	SSK stands for Sumati s Kasliwal

SSK HUF	36482825	SSK stands for Sumati s Kasliwal HUF
PCSL	35802825	PCSL stands for Premier Capital and Services Ltd.
PK	30632825	PK stands for Parth Kasliwal
SMK	35660000	SMK stands for Sharda Manoj Kasliwal
PCPL	17077904	PCPL stands for Pumarth Commodities Pvt. Ltd.
CASH	126194600	Amount of cash received on various dates from
OTHER	6840000	
TOTAL RECD	516029454	Amount received by group
PAID	518706923.1	Amount paid by group for accommodation entries
DIFF	-2877469.06	Remaining amount to be received.

13.1 The assessing officer noted that the page no. 63 of same LPS i.e. B-1/5, is a page containing information of some bank account in the names of various persons of Pumarth Group. It was found that the exact amount mentioned in the chart was deposited in the bank accounts of companies and its directors. It was also noted that the Tally accounts of Shri Sumati Kasliwal was examined which shows that the receipt of similar amounts in his books of account as found in the seized page 62 of LPS-B1/5. The Assessing Officer noted that there are various other deposits in these bank accounts in the same period but when inter-group transfer are excluded and only amounts of these entry provider companies are added, the amount mentioned in the page 62 exactly matches. The AO was of the opinion that this clearly shows that this sheet was

prepared to check the position of accommodation entry taken by the group and the seized document is authentic as the entries are exactly tallying with the books of accounts. It was concluded by the assessing officer that the respective assessees have paid in cash to receive accommodation entries and since the figures appearing in seized documents 'B-1/5/Page-62' matches with data in Tally maintained by the assessee i.e. an amount of Rs. 3,61,22,825/- is appearing in column of "SSK" on page 62 of LPS under discussion which is shown as "Current Total "as Rs. 3,61.22.825/- in tally data of Shri Sumati Kasliwal. The AO was of the opinion that in the order passed by Hon'ble Income Tax Commission u/s 245D(2C) dated 24/11/2015, the Hon'ble Settlement Commission has given categorically finding about the non-genuineness of the companies through which the Pumarth group of Companies has received share application money. The AO stated in his order that the assessee has been asked to produce the director of ASBN MultitradePvt. Ltd, Ganbhari Trading Pvt. Ltd, Colorunion International Pvt. Ltd., Magma Dealers Pvt. ltd., Martinmas Vyapak Trading Pvt. Lid. Mohin Infrastructure Pvt. Ltd., Venkateshwara Bunglows Pvt. Ltd. for Statement u's 131 from whom the assessee has taken Unsecured Loan and sold shares but till the date of passing the order the assessee failed to produce all the directors for giving statement on oath to substantiate identity, creditworthiness and genuineness of the transaction accordingly, the AO was of the opinion that the identity, creditworthiness and genuineness of the transaction does not stand established and therefore the cash credit of Rs. 3,61,22,825/- was added to the

total income for A.Y. 2013-14 as unexplained cash credit u/s 68 of the Act, 1961.

13.2 In appeal the learned CIT(A) has dismissed this ground of appeal. According to the Ld. CIT(A) the AO was justified in coming to the said conclusion in view of the seized paper no. 62.

13.3 During the course of arguments it was submitted by the Ld. Senior Counsel for the appellant that addition u/s 68 could not be made in respect of the amount which was a sale receipt particularly when purchases were not doubted. Since the purchases of these shares have been held to be genuine, the corresponding sales cannot, by any stretch of imagination be termed as unexplained. It was submitted by the Ld. Senior Counsel for appellant that both the lower authorities failed to appreciate the case of the assessee that these were sale of shares duly reflected in the books and not cash credits/loans and the assessee has supplied the full details of both the purchases and the sales In view of the above, there is no justification for the revenue authorities to treat these sale of shares as unexplained cash credit u/s 68 particularly when the purchase of these shares has been accepted. It was submitted by the Ld. Counsel for the appellant that in the assessment order it has been alleged, based on the Inspector report that none of the directors of the companies through whom appellant has taken loan/ sold shares of group companies, were not available at the given address. It was submitted that there was no such inspectors report on record of the AO and moreover the said inspector report has never been confronted to the appellant. The alleged inspectors report is

much prior to the assumption of jurisdiction by the Ld. AO. Moreover the AO has not given any finding on the evidences filed to prove the address of these companies and its directors in the form of Copy of PAN Card, Copy of Residential Proof of directors. It was submitted that from the documents filed it is clear that at one side department is assessing these persons regularly at the given addresses on the other hand they are alleging that parties were not available at the given addresses, which shows that no effective enquiries has been made in this case.

13.4 It was submitted that during the course of search and seizure operations on 16/11/2012 various documents were found and seized. Page no. 62 of B-1/5 was a chart showing the fund flow statement. It was submitted that the Assessing Officer has himself admitted that the Tally Account of le appellant was examined and it shows receipt of similar amount in the books of accounts as shown in the seized page no. 62 of LPS-BI/5. The appellant has submitted all along before the AO and during the appeal proceedings that chic seized document B-1/5 page 62 is nothing but jotting of recorded transactions prepared by the employees to work out the available cash position with the group. The amount of Rs. 3,06,32,825/- outof Rs. 3.51.22.825,-as written under SSK is on account of the sale of share of two group companies. The difference of Rs. 54,90,000/- (3,61,22,825 - 3,06,32,825) was also received from Venkateshwara Bunglow's Pvt. Ltd. against sale of share but the same was returned back as the transaction could not be finalized. It is argued by the Ld. Counsel for the appellant that the sale consideration of shares is duly

supported with valuation of the equity shares of these companies and the source of the purchase of the shares and the value of shares has not been doubted by the Assessing Officer. Further, even the capital gains offered to tax has been duly accepted. It was argued that that when the original purchase and capital gains has not been doubted and the shares have been sold at around the same rates, the question of doubting the genuineness of the sale transaction does not arise. The appellant has submitted various documents in support of the transaction such as Debit note for sale of shares, Bank Statement reflecting the payment. Board Resolution, Acknowledgement of Return of income, Balance sheet, copy of share certificate, affidavit of directors of the company etc. in order to prove the identity', creditworthiness and genuineness of the parties & transaction. It was further argued that that the alleged report of the investigation Wing that the Directors were not found at the addresses mentioned in the ROC site as not confronted to the appellant since it never existed. Further Vijay Nagar area which is shown as the address of the Directors of several companies is not a slum area. The appellant during the appeal proceedings also furnished the PAN card and residential proof of the Directors of the companies to whom appellant has sold shares of group companies to show that the Inspectors report which has been relied upon by the AO cannot be used against the appellant. It is submitted that merely because Directors were not produced before AO no addition can be made because the appellant had discharged its onus by producing various documents such as loan confirmation, PAN, ITR. Balance Sheet, Affidavit etc. It

was argued that the genuineness of the transaction of sale of shares cannot be doubted as the purchase and valuation of the shares has not been doubted, the transaction is recorded in the books of accounts, the capital gain offered to tax has been accepted and various documents placed on record prove the identity creditworthiness and genuineness of the parties which have bought the shares from the appellant.

13.5 It was argued that the Ld. AO has based his addition solely on the basis of Seized Paper No. 62 wherein in various columns amounts have been mentioned. The Ld. AO did not realize that this amount is in fact recorded in the regular books of accounts of the assessee and is not unexplained entirely. Sale of shares purchased in preceding A.Y. 2012-13 were duly reflected in balance sheet. These shares were sold in AY 2013-14 and gain was duly offered for tax. Since purchase has not been doubted hence sale cannot be treated as unexplained. In any event purchase by Cheque would be the source of sale and no addition in any case is warranted. Also when the purchase and profit on sale of such shares is accepted only sale cannot be disregarded and hence addition is uncalled for. It was argued that these shares are of two group companies of the appellant and the shares were sold by the appellant and the sale consideration of the shares is duly shown in the returns. The source of these purchases and the value of shares have not been doubted by the AO. Further, even the capital gains offered by the assessee to tax have been duly accepted by the AO. Thus, when the original purchases and capital gains have not been doubted by the AO and the shares have been sold at around the same

rates, the question of doubting the genuineness of the sale transaction does not arise. The shares were purchased by the assessee out of either its own funds or borrowed funds and these shares have been sold by it to third parties at similar valuations. It is a well decided judicial principle that when purchases have not been doubted, the AO cannot merely doubt the sales of the assessee. It was argued that the appellant submitted various documents of the company who purchased the shares such as Debit note for sale of shares, Bank Statement reflecting the payment, Board Resolution, Acknowledgement of Return of income, Balance sheet, Copy of Share certificate, affidavit of directors of the company etc. in order to prove the identity, creditworthiness and genuineness of the parties & transaction and the Ld. AO has simply brushed aside the clinching evidences submitted by the appellant and made the addition merely on the basis of seized document. The appellant submits that during the course of assessment proceedings it has explained the entries made in the loose sheet with documentary evidences and If the assessee has satisfactorily explained the entries made in loose paper with supportive evidence, than no addition can be made in the hands of the appellant. But the Learned Assessing Officer has not considered the same. The Assessing Officer not provided any adverse comment or findings on the explanation provided by the assessee. He has not mentioned anything in the order that why the explanation provided by the appellant is not to be accepted. The appellant has discharged its onus as required u/s 292C of the Act. Now the onus is on the person who claims that the apparent is not real. Since the AO has not given

any finding to overcome the explanation of the assessee, he is duty bound to accept it. He simply made the addition on the basis of the loose sheet found during the course of search and assumed that the assessee has taken an accommodation entries and the made the addition of Rs. 3,06,32,825/- u/s.68 of the Income Tax Act by considered the same as alleged Unexplained Cash Credit. Here it is also pertinent to note that even during the course of search action, statement of director was recorded, but no questions was asked by the search team regarding this page.

13.6 It was argued that the addition has been made merely on the basis of page 62 seized during the course of search, wherein against the name of appellant this amount is mentioned. The applicant has explained that the said amount mentioned against the name of appellant is duly recorded in the books of the appellant. Therefore no further addition is required. Similar addition made in the hands of M/s Pumarth Commodities Pvt. Ltd. on the basis of page 62, wherein the amount mentioned against its name represents maturity proceeds of FDR, which is duly reflected in the books of the company, however Ld AO made addition of the said amount based on page 62 as seized during search. However on appeal Ld CIT(A) has deleted the said addition and on further appeal by the Revenue, Hon'ble ITAT vide order ITA No. 455/Ind/2017 dated 11/01/2019 the Hon'ble ITAT has dismissed the said appeal of revenue. It was submitted that the facts of the case are identical to the above matter with only difference that the in the case of Pumarth Commodities Pvt Ltd the amount mentioned on page 62 represents maturity proceeds of FDR, whereas

in the case of appellant the amount represents cheques received on sale of shares. In both the cases the amount is duly recorded in the books of the assessee. Thus, there is no element of undisclosed income in the hands of assessee company in the noting of page 62 in the hands of company. Reliance was placed by the Ld. Counsel for the appellant on the case of Twobro Investment & Finance Ltd., vs Department Of Income Tax DELHI ITAT (ITA No.4486 /DEL/ 2011). The counsel for the appellant submitted that no addition can be made on the basis of the loose sheet without providing any incriminating documents in support of its contention. There was a legal obligation on the Assessing Officer to make it a fully speaking document since he wanted to make addition on the basis of the document. There were no indications or observations in the assessment order showing whether the Assessing Officer made any efforts to rebut the findings given by the assessee. Nothing emerged from the perusal of the document, and, therefore, no addition could have been made simply relying on the document that too without bringing any material on record to explain and substantiate the document.

13.7 It was further argued that even otherwise sale proceeds received on sale of shares, which is duly supported with documentary evidences cannot be treated as unexplained credit U/s 68 of the Act without any doubt in respect of purchase thereof.

13.8 On the other hand the learned CIT DR has relied on the order of the CIT(A) appeal and the assessment order in support of her arguments.

13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No. 6 to 10 revolves round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who purchased

the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the given facts and circumstances of the case are of the considered opinion that the assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being the amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount of capital gain from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,9 & 10 for Assessment Year 2013-14. Ground No.11 is general in nature which needs no adjudication.

14. Ground no. 11 in AY 2013-14 relates to consequential relief claimed on the basis of income already surrendered for tax during search and duly offered for tax in the returns and also the credit of income on which tax has been paid during settlement proceedings.

14.1 It is submitted by the Ld. Counsel for the appellant that credit should be given in the case of Sumati Kumar Kasliwal in respect of income already surrendered for tax wherein credit has not been given in the respective hands of the assesseees and credit can be given to Sumati Kumar Kasliwal as this surrendered income has not found any corroborative evidence in the hands of other directors and the only income of Rs. 13,61,00,000 has already been offered by Sumati kumar Kasliwal in his hands.

14.2 It was argued that assesseees of the group have offered income of Rs. 10 crore as income surrendered during search and have offered the same for tax in their returns. Credit for the said surrender has not been given to any of the assesseees mentioned in the surrender letter. It was submitted that copy of the surrender letter has been placed on record of this Hon'ble Tribunal.

14.3 It was further submitted by the Ld. Counsel for appellant that apart from the aforesaid surrender income was also offered in settlement application credit of which has not been given to any assessee, details of this income are :
Pumarth Infrastructure Ltd. Rs. 46,50,000 (page 172 of paper book of SS kasliwal) ,Nishant Finance Pvt Ltd Rs. 38,50,000 (page 173 of paper book of

SS Kasliwal) ,Sumati Kasliwal Rs. 30,00,000 (pg. 175) Parth Kasliwal Rs. 30,00,000 (pg. 176)

14.4 It is prayed that the Ld. AO may be directed to verify whether credit of the aforesaid surrender and income offered before settlement commission has been taken by the respective assessee or not. In case no credit has been taken by the respective assessee and there is no addition to relate to the amount surrendered then the Ld. AO may kindly be directed to give credit of the said amount in the hands of Sumati Kumar Kasliwal.

14.5 We have considered the aforesaid ground and we find that there is no discussion either by the AO or the CIT appeal regarding the income surrendered by the various assessee of the Apollo and taxation thereof and the consequential credit available. We find that this alternative claim is made on the basis of the decision of the Allahabad high court 42 taxmann.com 476 (Allahabad)/[2014] Commissioner of Income-tax (Central), Kanpur *v.* Fertilizer Traders wherein it has been held as under :

"14. Regarding the peak theory, it may be mentioned that the peak theory was defined in the SampathIyengar's Law of Income-tax, Vol. 3, 9th edition, page 3547. Accordingly, "Peak credit" theory - One of the commonest defects of an assessee, where a single credit or number of credits appear in the books in the account of any particular person side by side with a number of debits is that they should all be arranged in serial order, that a credit following a debit entry should be treated as referable to the latter to the extent possible and that, not the aggregate but only the "peak" of the credit should be treated as own explained. To give a simple example, suppose there are credits in the assessee's book in the account. As or Rs.5,000 each on 1st October, 1990 and again on 5th November, 1990 but there is a debit by way of repayment shown on 27th October, 1990, the

explanation will be that the credit appearing on 5th November, 1981 has or could have come out of the withdrawal/repayment on 27th October, 1981. This plea is generally accepted as it is logical and acceptable (whether the creditor is a genuine party or not), provided there is nothing in the material on record to show that a particular withdrawal/repayment could not have been available on the date of the subsequent credit.

15. A refinement or extension of the plea occurs where the credits appear not in the same account but in the accounts of different persons. Even then, if the genuineness of all the person is disbelieved and all the credits appearing in the different account are held to be the assessee's own moneys, the assessee will be entitled to set off and a determination of the peak credit after arranging all the credits in the chronological order."

14.6 Respectfully following the aforesaid decision, we set aside this issue to the file of the AO with a direction to verify the income surrendered by the various assesses as stated in the declaration dated 18.03.13 filed at the time of search and also the income tax returns of the various assesses mentioned there in settlement commission. The AO will verify whether credit of such income surrendered has been taken by the respective assessee or not and in case no credit has been taken then set-off of such income will be given in the hands of Sumati Kumar Kasliwal. With the aforesaid direction this ground of appeal is allowed for statistical purposes.

15. In the result appeal filed by Sumati Kumar Kasliwal for AY 2013-14 is partly allowed for statistical purposes.

ITA SS 179/IND/2017

Assessment Year 2012-13

PARTH KASLIWAL

16. The grounds of appeal raised in this appeal read as under:

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice .
2. That the Ld. CIT(A) failed to appreciate that the entire factual narration made by the Ld. AO in the body of assessment is not found in the notice/questionnaire issued prior to assessment nor was the assessee at any point confronted with any such evidence as discussed in the assessment order. It appears that the Ld. AO has cut-paste the contents of the assessment done in case of Pumarth Infrastructure Pvt. Ltd without any relation of such evidence with the assessee's facts. The entire assessment is perverse and devoid of merit and deserves to be quashed.
3. That there is no justification either in law or on facts for the addition of Rs. 90,00,000 by treating the same as unexplained cash credits u/s 68 which were received by the assessee as temporary loans which were duly repaid after 2 months and in respect of which the assessee had filed confirmation, bank statement, ITR, Balance Sheet, Affidavit.
4. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 90,00,000 in respect of short term loans received by the appellant for a period of 2 months which were duly repaid with interest within a short span of 2 months.
5. That the Ld. CIT(A) failed to appreciate that in the entire assessment order the basis of making the addition is the alleged share capital received in the case of Pumarth Infrastructure Pvt. Ltd. and the AO has only narrated the evidences relating to that company without considering the evidences filed by the assessee in the form of confirmation, bank statement, ITR, Balance Sheet, Affidavit and without considering that the loans received by the present appellant were not share capital and were duly repaid in a short span of 2 months.
6. That the Ld. CIT(A) failed to appreciate that the discussion about statements of certain persons in the body of assessment order do not pertain to loans received and repaid by the present assessee and the AO has treated the facts of another case of Pumarth Infrastructure as applicable to the present assessee which is grossly perverse and shows complete non-application of mind of the AO to the facts of the assessee's case and shows that the addition has been made in haste

without considering the submissions and documents filed by the assessee.

7. That the Ld. CIT(A) failed to appreciate that the Settlement Commission has recorded a categorical finding in its order dated 24.11.2015 that the statements of five persons recorded during search have neither been given to the applicants nor opportunity of cross examination has been given and that it would not be fair and proper to place reliance on such statements.

8. That the Learned CIT(A) has erred in relying upon the finding of Income Tax Settlement Commission (ITSC) without appreciating the fact that the issue of unsecured loan has not been dealt with by the ITSC in its order.

9. That without prejudice to the aforesaid grounds of appeal, if the addition of Rs. 90,00,000 is sustained then firstly benefit of income offered for tax before the settlement Commission should be given and secondly credit for repayment of the unsecured loan should be allowed.

10. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

17. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.90,00,000 towards loans treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2012-13. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

18. The issue of loan received and paid back within 2 months alongwith interest has already been adjudicated in the case of Sumati Kumar Kasliwal in

ITASS 181/IND/2017 for AY 2012-13. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

7.16 In the light of above judgments and given facts and circumstances of the case are of the considered view that the appellant i.e. the assessee has been successful to prove the genuineness, creditworthiness and identity of the alleged cash creditors on account of the fact that all the relevant details and supporting documents are placed on record. Further no incriminating material was found during the course of search which could clearly prove that the alleged transaction of receiving loan was an accommodation entry. The assessee's case further finds support from the fact that the alleged loans were taken for a period of two months and have been repaid back with interest. Tax has also been deducted at source on the interest paid. The alleged transaction of receiving loan and being repaid back has been duly acknowledged by the cash creditors in the affidavit. These transaction of receiving loan can be equated to a capital formation exercise or of converting capital building exercise of alleged transaction purely looks to be a normal business transaction in which short term loan has been taken for business purposes and have been repaid back after having sufficient funds. The documents filed in support of identity, creditworthiness and genuineness i.e. Profit & loss accounts, income tax returns, audit reports, affidavit of the cash creditors and identity proof have not been disputed by the revenue authorities at any stage. Ld. A.O seems to have been made the addition without making any investigation after the loan was taken. The finding given in the impugned assessment order about the investment is during the period prior to taking the loan. We therefore in the given facts and circumstances of the case and respectfully following the judgments in the preceding paragraphs are of the considered view that the addition for unexplained cash credit of Rs.1,80,00,000/- needs to be deleted. We therefore set aside the finding of both the lower authorities and allow this issue of unexplained cash credit raised by the assessee in Ground No. 3 to 9.

18.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.90,00,000 in respect of loans treated

as unexplained is deleted. The grounds of appeal No.1 to 9. in the case of Parth Kasliwal are allowed.

19. Ground No. 10 in Parth Kasliwal's case is an alternative ground which does not survive since the other grounds are already allowed. This ground No. 10 has thus become infructuous.

20. Consequently the appeal of Parth Kasliwal for AY 2012-13 is allowed.

ITA NO.465/IND/2017 (Assessment Year 2013-14)

PARTH KASLIWAL

21. The grounds of appeal raised in the memo of appeal for AY 2013-14 read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice.

2. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,06,32,825 made by the Ld. AO u/s 68 by treating entire share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit. Trading receipt of shares is a business income and cannot be treated as cash credit u/s 68.

3. That without prejudice to grounds no. 1& 2, the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,06,32,825 as unexplained cash credit without appreciating that the same was on account of sale of sales and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. Balchand Ajit Kumar .

4. That while sustaining the addition of Rs.3,06,32,825 the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have been made.

5. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale of shares is the purchase of shares and thus no addition could be made.

6. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciating the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

7. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

22. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.3,06,32,825 towards shares sold but treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2013-14. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

23. The issue of shares sold has already been adjudicated in the case of Sumati Kumar Kasliwal in ITA No.472/IND/2017 for AY 2013-14. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

“13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No. 6 to 10 revolves round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who were purchased the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely

for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the given facts and circumstances of the case are of the considered opinion that the assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being the amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,8 & 10 for Assessment Year 2013-14."

23.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.3,06,32,825 in respect of shares sold but treated as unexplained is deleted. The grounds of appeal no.1 to 6 in the case of Parth Kasliwal are allowed.

24. Ground no. 7 in Parth Kasliwal's case is an alternative ground which does not survive since the other grounds are already allowed. This ground no.7 has thus become infructuous.

25. Consequently the appeal of Parth Kasliwal for AY 2013-14 is allowed.

ITA(SS) 174/IND/2017

Assessment Year 2012-13

SHARDA KASLIWAL

26. The grounds of appeal raised in this appeal read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not

considering that the same is in complete breach of principles of natural justice .

2. That the Ld. CIT(A) failed to appreciate that the entire factual narration made by the Ld. AO in the body of assessment is not found in the notice/questionnaire issued prior to assessment nor was the assessee at any point confronted with any such evidence as discussed in the assessment order. It appears that the Ld. AO has cut-paste the contents of the assessment done in case of Pumarth Infrastructure Pvt. Ltd without any relation of such evidence with the assessee's facts. The entire assessment is perverse and devoid of merit and deserves to be quashed.

3. That there is no justification either in law or on facts for the addition of Rs. 40,00,000 by treating the same as unexplained cash credits u/s 68 which were received by the assessee as temporary loans which were duly repaid after 2 months and in respect of which the assessee had filed confirmation, bank statement, ITR, Balance Sheet, Affidavit.

4. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 40,00,000 in respect of short term loans received by the appellant for a period of 2 months which were duly repaid with interest within a short span of 2 months.

5. That the Ld. CIT(A) failed to appreciate that in the entire assessment order the basis of making the addition is the alleged share capital received in the case of Pumarth Infrastructure Pvt. Ltd. and the AO has only narrated the evidences relating to that company without considering the evidences filed by the assessee in the form of confirmation, bank statement, ITR, Balance Sheet, Affidavit and without considering that the loans received by the present appellant were not share capital and were duly repaid in a short span of 2 months.

6. That the Ld. CIT(A) failed to appreciate that the discussion about statements of certain persons in the body of assessment order do not pertain to loans received and repaid by the present assessee and the AO has treated the facts of another case of Pumarth Infrastructure Pvt Ltd as applicable to the present assessee which is grossly perverse and shows complete non-application of mind of the AO to the facts of the assessee's case and shows that the addition has been made in haste without considering the submissions and documents filed by the assessee.

7. That the Ld. CIT(A) failed to appreciate that the Settlement Commission has

recorded a categorical finding in its order dated 24.11.2015 that the statements of five persons recorded during search have neither been given to the applicants nor opportunity of cross examination has been given and that it would not be fair and proper to place reliance on such statements.

8. That the Learned CIT(A) has erred in relying upon the finding of Income Tax Settlement Commission (ITSC) without appreciating the fact that the issue of unsecured loan has not been dealt with by the ITSC in its order.

9. That without prejudice to the aforesaid grounds of appeal, if the addition of Rs. 40,00,000 is sustained then firstly benefit of income offered for tax before the settlement Commission should be given and secondly credit for repayment of the unsecured loan should be allowed.

10. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

27. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.40,00,000 towards loans treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2012-13. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

28. The issue of loan received and paid back within 2 months alongwith interest has already been adjudicated in the case of Sumati Kumar Kasliwal in ITASS 181/IND/2017 for AY 2012-13. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

7.16 In the light of above judgments and given facts and circumstances of the case are of the considered view that the appellant i.e. the assessee has been successful to prove the genuineness, creditworthiness and identity of the alleged cash creditors on account of the fact that all the relevant details and supporting documents are placed on record. Further no incriminating material was found during the course of search which could clearly prove that the alleged transaction of receiving loan was an accommodation entry. The assessee's case further finds support the fact that the alleged loans were taken for a period of two months and have been repaid back with interest. Tax has also been deducted at source on the interest paid. The alleged transaction of receiving loan and being repaid back has been duly acknowledged by the cash creditors in the affidavit. These transaction of receiving loan can be equated to a capital formation exercise or of converting capital building exercise of alleged transaction purely looks to be a normal business transaction in which short term loan has been taken for business purposes and have been repaid back after having sufficient funds. The documents filed in support of identity, creditworthiness and genuineness i.e. Profit & loss accounts, income tax returns, audit reports, affidavit of the cash creditors and identity proof have not been disputed by the revenue authorities at any stage. Ld. A.O seems to have been made the addition without making any investigation after the loan was taken. The finding given in the impugned assessment order about the investment is during the period prior to taking the loan. We therefore in the given facts and circumstances of the case and respectfully following the judgments in the preceding paragraphs are of the considered view that the addition for unexplained cash credit of Rs.1,80,00,000/- needs to be deleted. We therefore set aside the finding of both the lower authorities and allow this issue of unexplained cash credit raised by the assessee in Ground No. 3 to 9.

28.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.40,00,000 in respect of loans treated as unexplained is deleted. The grounds of appeal no.1 to 9 in the case of Sharda Kasliwal are allowed.

29. Ground No.10 in Sharda Kasliwal's case is an alternative ground which does not survive since the other grounds are already allowed. This ground No.10 has thus become infructuous.

30. Consequently the appeal of Sharda Kasliwal for AY 2012-13 is allowed.

ITA NO.469/IND/2017
Assessment Year 2013-14
SHARDA KASLIWAL

31. The grounds of appeal raised in the memo of appeal for AY 2013-14 read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice.

2. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,56,60,000 made by the Ld. AO u/s 68 by treating entire share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit. Trading receipt of shares is a business income and cannot be treated as cash credit u/s 68.

3. That without prejudice to grounds no. 1& 2, the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,56,60,000 as unexplained cash credit without appreciating that the same was on account of sale of sales and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. BalchandAjitKumar .

4. That while sustaining the addition of Rs.3,56,60,000 the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be

bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have been made.

5. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale of shares is the purchase of shares and thus no addition could be made.

6. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciating the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

7. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

32. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.3,56,60,000 towards shares sold but treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2013-14. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

33. The issue of shares sold has already been adjudicated in the case of Sumati Kumar Kasliwal in ITA No.472/IND/2017 for AY 2013-14. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No. 6 to 10 revolves

round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwhara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who were purchased the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the given facts and circumstances of the case are of the considered opinion that the

assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being the amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,8 & 10 for Assessment Year 2013-14.

33.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.3,56,60,000 in respect of shares sold but treated as unexplained is deleted. The grounds of appeal no.1 to 6 in the case of Sharda Kasliwal are allowed.

34. Ground no. 7 in Sharda Kasliwal's case is an alternative ground which does not survive since the other grounds are already allowed. This ground no.7 has thus become infructuous.

35. Consequently the appeal of Sharda Kasliwal for AY 2013-14 is allowed.

ITA(SS) 180/IND/2017

Assessment Year 2012-13

NISHANT FINANCE PVT. LTD.

36. The grounds of appeal raised in this appeal read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice .

2. That the Ld. CIT(A) failed to appreciate that the entire factual narration made by the Ld. AO in the body of assessment is not found in the notice/questionnaire issued prior to assessment nor was the assessee at any point confronted with any such evidence as discussed in the assessment order.

It appears that the Ld. AO has cut-paste the contents of the assessment done in

case of Pumarth Infrastructure Pvt. Ltd without any relation of such evidence with the assessee's facts. The entire assessment is perverse and devoid of merit and deserves to be quashed.

3. That there is no justification either in law or on facts for the addition of Rs. 1,50,00,000 by treating the same as unexplained cash credits u/s 68 which were received by the assessee as temporary loans which were duly repaid after 2 months and in respect of which the assessee had filed confirmation, bank statement, ITR, Balance Sheet, Affidavit.

4. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 1,50,00,000 in respect of short term loans received by the appellant for a period of 2 months which were duly repaid with interest within a short span of 2 months.

5. That the Ld. CIT(A) failed to appreciate that in the entire assessment order the basis of making the addition is the alleged share capital received in the case of Pumarth Infrastructure Pvt. Ltd. and the AO has only narrated the evidences relating to that company without considering the evidences filed by the assessee in the form of confirmation, bank statement, ITR, Balance Sheet, Affidavit and without considering that the loans received by the present appellant were not share capital and were duly repaid in a short span of 2 months.

6. That the Ld. CIT(A) failed to appreciate that the discussion about statements of certain persons in the body of assessment order do not pertain to loans received and repaid by the present assessee and the AO has treated the facts of another case of Pumarth Infrastructure Pvt Ltd as applicable to the present assessee which is grossly perverse and shows complete non-application of mind of the AO to the facts of the assessee's case and shows that the addition has been made in haste without considering the submissions and documents filed by the assessee.

7. That the Ld. CIT(A) failed to appreciate that the Settlement Commission has recorded a categorical finding in its order dated 24.11.2015 that the statements of five persons recorded during search have neither been given to the applicants nor opportunity of cross examination has been given and that it would not be fair and proper to place reliance on such statements.

8. That the Learned CIT(A) has erred in relying upon the finding of Income Tax Settlement Commission (ITSC) without appreciating the fact that the issue of unsecured loan has not been dealt with by the ITSC in its order.

9. That without prejudice to the aforesaid grounds of appeal, if the addition of Rs. 1,50,00,000 is sustained then firstly benefit of income offered for tax before the settlement Commission should be given and secondly credit for repayment of the unsecured loan should be allowed.

10. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

37. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs. 1,50,00,000 towards loans treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2012-13. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

38. The issue of loan received and paid back within 2 months alongwith interest has already been adjudicated in the case of Sumati Kumar Kasliwal in ITASS No.181/IND/2017 for AY 2012-13. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

7.16 In the light of above judgments and given facts and circumstances of the case are of the considered view that the appellant i.e. the assessee has been successful to prove the genuineness, creditworthiness and identity of the

alleged cash creditors on account of the fact that all the relevant details and supporting documents are placed on record. Further no incriminating material was found during the course of search which could clearly prove that the alleged transaction of receiving loan was an accommodation entry. The assessee's case further finds support the fact that the alleged loans were taken for a period of two months and have been repaid back with interest. Tax has also been deducted at source on the interest paid. The alleged transaction of receiving loan and being repaid back has been duly acknowledged by the cash creditors in the affidavit. These transaction of receiving loan can be equated to a capital formation exercise or of converting capital building exercise of alleged transaction purely looks to be a normal business transaction in which short term loan has been taken for business purposes and have been repaid back after having sufficient funds. The documents filed in support of identity, creditworthiness and genuineness i.e. Profit & loss accounts, income tax returns, audit reports, affidavit of the cash creditors and identity proof have not been disputed by the revenue authorities at any stage. Ld. A.O seems to have been made the addition without making any investigation after the loan was taken. The finding given in the impugned assessment order about the investment is during the period prior to taking the loan. We therefore in the given facts and circumstances of the case and respectfully following the judgments in the preceding paragraphs are of the considered view that the addition for unexplained cash credit of Rs.1,80,00,000/- needs to be deleted. We therefore set aside the finding of both the lower authorities and allow this issue of unexplained cash credit raised by the assessee in Ground No. 3 to 9.

38.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.1,50,00,000 in respect of loans treated as unexplained is deleted. The grounds of appeal No.1 to 9 in the case of Nishant Finance Pvt. Ltd. are allowed.

39. Ground No. 10 in Nishant Finance Pvt. Ltd. is an alternative ground which does not survive since the other grounds are already allowed. This

ground No.10 has thus become infructuous.

40. Consequently the appeal of Nishant Finance Pvt. Ltd. for AY 2012-13 is allowed.

ITA NO.470/IND/2017
Assessment Year 2013-14
NISHANT FINANCE PVT. LTD.

41. The grounds of appeal raised in the memo of appeal for AY 2013-14 read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice.

2. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,08,32,825 made by the Ld. AO u/s 68 by treating entire share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit. Trading receipt of shares is a business income and cannot be treated as cash credit u/s 68.

3. That without prejudice to grounds no. 1& 2, the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,08,32,825 as unexplained cash credit without appreciating that the same was on account of sale of sales and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. Balchand Ajit Kumar .

4. That while sustaining the addition of Rs Rs.3,08,32,825 the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have

been made.

5. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale of shares is the purchase of shares and thus no addition could be made.

6. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciating the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

7. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

42. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.3,08,32,825 towards shares sold but treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2013-14. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

43. The issue of shares sold has already been adjudicated in the case of Sumati Kumar Kasliwal in ITA No.472/IND/2017 for AY 2013-14. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No.

6 to 10 revolves round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who were purchased the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the

given facts and circumstances of the case are of the considered opinion that the assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being the amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,8 & 10 for Assessment Year 2013-14.

43.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.3,08,32,825 in respect of shares sold but treated as unexplained is deleted. The grounds of appeal no.1 to 6 in the case of Nishant finance Pvt. Ltd. are allowed.

44. Ground No. 7 in Nishant Finance Pvt. Ltd. is an alternative ground which does not survive since the other grounds are already allowed. This ground No.7 has thus become infructuous.

45. Consequently the appeal of Nishant Finance Pvt. Ltd. for AY 2013-14 is allowed.

ITA NO.466/IND/2017 (Assessment Year 2013-14)

MANOJ KASLIWAL

46. The grounds of appeal raised in the memo of appeal for AY 2013-14 read as under :

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice.

2. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,56,50,000 made by the Ld. AO u/s 68 by treating entire

share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit.

3. That without prejudice to grounds no. 1& 2, the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs.3,56,50,000 as unexplained cash credit without appreciating that the same was on account of sale of shares and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. BalchandAjitKumar .

4. That while sustaining the addition of Rs Rs.3,56,50,000 the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have been made.

5. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale of shares is the purchase of shares and thus no addition could be made.

6. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciating the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

7. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

47. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs.3,56,50,000 towards shares sold but treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2013-14. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

48. The issue of shares sold has already been adjudicated in the case of Sumati Kumar Kasliwal in ITA No.472/IND/2017 for AY 2013-14. The finding arrived at in the case of Sumati Kumar Kasliwal is as under :

“13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No. 6 to 10 revolves round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was

received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who were purchased the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the given facts and circumstances of the case are of the considered opinion that the assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being he amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,8 & 10 for Assessment Year 2013-14.

48.1 Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.3,56,50,000 in respect of shares sold but treated as unexplained is deleted. The

grounds of appeal No.1 to 6 in the case of Manoj Kasliwal are allowed.

49. Ground No. 7 in Manoj Kasliwal is an alternative ground which does not survive since the other grounds are already allowed. This ground No.7 has thus become infructuous.

50. Consequently the appeal of Manoj Kasliwal for AY 2013-14 is allowed.

ITA (SS) No.178/IND/2017

Assessment year 2012-13

PUMARTH INFRASTRUCTURE PVT. LTD.

51. The grounds of appeal raised by the appellant for AY 2012-13 read as under:

1. That the Ld. CIT (A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice.

2. That there is no justification either in law or on facts for the addition of Rs.13,60,00,000 by treating the same as unexplained cash credits u/s 68 and in respect of which the assessee had filed confirmation, bank statement, ITR, Balance sheet, Affidavit.

3. That the Ld. CIT(A) failed to appreciate that the Settlement Commission has recorded a categorical finding in its order dated 24.11.2015 that the statements of five persons recorded during search have neither been given to the applicants nor opportunity of cross examination has been given and that it would not be fair and proper to place reliance on such statements.

4. that without prejudice to the aforesaid grounds, the quantification of share capital received during A.Y. 2012-13 could not be 13,60,00,000 but could only be Rs. 7,65,00,000 which was the amount actually received during A.Y. 2012-13, since Rs. 1,60,00,000 was received in A.Y. 2010-11 and Rs. 4,35,00,000 was received in A.Y. 2013-14.

5. That there is no justification either in law or on facts for the Ld. CIT(A) in sustaining the entire addition of Rs. 1,41,70,300 as alleged on money received by the assessee. The determination of the said amount of Rs. 1,41,70,300 is arbitrary and presumptuous.

6. that in any event the Ld. CIT(A) was not justified in sustaining the entire addition of Rs. 1,41,70,300 without computing the element of actual profit and deduction of expenses therein and without considering the relevant judicial matrix cited before the CIT(A) in the matter of CIT v. Balchand Ajit Kumar 263 ITR 610 (MP).

7. That the Ld. CIT(A) was not justified either in law or on facts in sustaining the addition of Rs.7,50,000 made by the AO u/s 40A(3).

8. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

52. The grounds of appeal raised by the appellant for AY 2013-14 read as under:

1. That the Ld. CIT(A) has erred in law and on facts in not appreciating that the entire assessment is illegal, void and without jurisdiction and further in not considering that the same is in complete breach of principles of natural justice

2. That there is no justification either in law or on facts for the Ld. CIT(A) in sustaining the entire addition of Rs. 1,31,36,750/- as alleged on money received by the assessee. The determination of the said amount of Rs. 1,31,36,750/- is arbitrary and presumptuous.

3. That in any event the Ld. CIT(A) was not justified in sustaining the entire addition of Rs. 1,31,36,750/- without computing the element of actual profit

and deduction of expenses therein and without considering the relevant judicial matrix cited before the CIT(A) in the matter of CIT v. BalchandAjit Kumar 263 ITR 610 (MP).

4. That the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 4,08,00,000/- made by the Ld. AO u/s 68 by treating entire share trading receipt as unexplained cash credit since the assessee had given full details of the sale transaction and by no stretch of imagination the entire trading receipt could be treated as unexplained cash credit since at most only the profit thereof could be taxed which was already offered in the return as share trading profit. Trading receipt of shares is a business income and cannot be treated as cash credit u/s 68.

5. That without prejudice to grounds no. 1 &2 , the Ld. CIT(A) has erred in law and on facts in sustaining the addition of Rs. 4,08,00,000/- as unexplained cash credit without appreciating that the same was on account of sale of shares and since the purchase of these shares was not doubted by the AO therefore addition of the entire sale amount is arbitrary and illegal and contrary to the decision of the jurisdictional High Court in (2003) 263 ITR 610 (MP) CIT v. BalchandAjitKumar .

6. That while sustaining the addition of Rs. 4,08,00,000/- the CIT(A) failed to appreciate that the addition of sale amount without disturbing the purchase amount is not justified either in law or on facts since if the sale is held to be bogus then the purchase should also be held as bogus thereby neutralizing both the outflow and inflow and thereby no addition could have been made.

7. That the Ld. CIT(A) failed to appreciate that the receipt on trading of shares which were purchased in the course of business is not of the nature of unexplained cash credit u/s 68 since the source of such sale is the purchase of shares and thus no addition could be made.

8. The Learned CIT(A) has erred in relying upon the finding of the Income Tax Settlement Commission (ITSC) order without appreciating the fact that the issue of sale of shares has not been dealt with by the ITSC in its order.

9. That without prejudice to the aforesaid grounds, cumulative effect of Income offered in the return of income filed U/s 153A of the Act by the group plus the income offered for tax before the settlement commission by the group plus the income added in the hands of group entities and finally sustained should have been considered to arrive at a holistic picture of undisclosed income and if this is done then there would remain no amount which can be added.

53. Ground No. 1 to 4 in AY 2012-13 are in respect of Share Capital of Rs. 13,60,00,000 in AY 2012-13 which has been treated as unexplained by the Assessing Officer and appeal against the said addition has been confirmed by the CIT(A).

54 Brief facts relating to the above stated Ground No.1 to 4 for Assessment Year 2012-13 in respect of Pumarth Infrastructure Pvt. Ltd are that during the course of assessment proceedings subsequent to search while examining the books of accounts and financial statements, Ld. A.O observed that the assessee company has received share capital of Rs.27,20,000 with equity shares having face value of Rs.1,000 and the share premium of Rs. 13,32,80,000/- of premium of Rs.49,000/- per share thereby totaling to Rs.13,60,00,000/- from following 5 companies;

1. Ever Shine Building Projects Pvt. Ltd	Rs. 3 crores
2. Colour Union International Pvt. Ltd	Rs. 3 crores
3. Kothistar Developers Pvt. Ltd	Rs. 5 crores
4. Printage Offset Pvt.Ltd	Rs. 2 crores
5. Innova E Services Pvt.Ltd	Rs. 1.60 crores
Total	Rs.13.60 crores

To explain the identity, genuineness and creditworthiness of the share capital and share premium from the above stated five companies assessee provided various details in the form of identity proof, bank and audited financial statements, income tax returns. On the other hand Ld. A.O being not convinced with the submissions of the assessee took the basis of the investigation carried out in some other cases for the said cash creditors and also certain investigations carried out during the course of assessment proceedings come to a conclusion that the alleged share capital and share application money totaling to Rs.13.60 crores are unexplained and liable to be added to the income of the assessee u/s 68 of the Act. Assessee failed to get any relief from Ld. CIT(A) for the addition of Rs.13.60 crores made by the Ld. A.O u/s 68 of the Act. Now the assessee is in appeal before the Tribunal.

At the outset Senior Counsel for the assessee referring to its submissions made in the case of Shri Sumati Kumar Kasliwal in Appeal vide ITA No.181 & 472/Ind/2017 filed by the assessee dealt by us in the preceding paragraphs submitted that Shri Sumati Kumar Kasliwal was at helm of affairs of Pumarth Group. Shri Sumati Kumar Kasliwal has admitted that the undisclosed income in the form of unexplained transaction of receiving cash as appearing in the seized loose paper No.LPS-62, P/5 totaling to Rs.14,57,12,069/- which inter alia includes the unexplained cash of Rs.13,61,94,600/-. Ld. Sr. Counsel for the assessee submitted that it has been admitted by Shri Sumati Kumar

Kasliwal that he earned undisclosed income from land deals during financial year 2011-12 pertaining to Assessment Year 2012-13 amounting to Rs.13.60 crores. This income accrued to Shri Sumati Kumar Kasliwal in March 2012, which he brought into the books of Pumarth Infrastructure Pvt. Ltd in the form of share capital and share premium from certain investors as enumerated above. Later on the shares held by the investors got cancelled and as the investors wanted their investment back through banking channel, shares allotted to the investors were repurchased back by other buyers on the issued/higher price and on cancellation of the deal Shri Sumati Kumar Kasliwal received cash in June and July, 2012 of Rs. 13,61,91,600/- and the same stands added by the Ld. A.O to the returned income of Shri Sumati Kumar Kasliwal while concluding the assessment for Assessment Year 2013-14. Thus as per the Sr. Counsel for the assessee the source of share capital of Rs. 13.60 crores in the books of M/s. Pumarth Infrastructure Pvt. Ltd stands explained and as the addition has already been made in the hands of Shri Sumati Kumar Kasliwal maintaining the addition in Pumarth Infrastructure Pvt. Ltd will amount to double addition and therefore prayed for deleting the same.

54.1. While arguing these grounds it has been submitted by the learned counsel for the appellant that since identical addition arising out of the same loose paper has already been made in the hands of the appellants' director Sumati Kumar Kasliwal and in the submission filed before this Hon'ble Tribunal the said addition has already been accepted and the ground raised have been not pressed in the case of Sumati Kumar Kasliwal

therefore the said addition in the hands of Sumati Kumar Kasliwal is sufficient to explain the source of the said share capital even if it is treated as unexplained and therefore there remains no scope of addition of Rs. 13,60,00,000 in respect of share capital in the hands of Pumarth Infrastructure Pvt Ltd.

54.2. On merits the Ld. Counsel for the appellant has placed reliance on the fact that no enquiry at all has been conducted in the case of Pumarth Infrastructure Pvt. Ltd. by the AO to arrive at the conclusion that the said share capital as bogus. The written submissions in respect of lack of enquiry of AO in respect of share capital and also the factum of genuineness thereof has been placed on record by way of written submissions filed by the counsel for appellant. It was submitted that there is an apparent lack of inquiry on the part of AO and wrong reliance placed by AO on statements which were recorded in Feb 2012 while the search took place in Sep 2012 and the share capital was received in March/April/June 2012. It was argued that so called enquiry report was never brought on record by the Ld. AO. It is a complete breach of principles of natural justice for the AO to rely on any adverse material without confronting the assessee with such material. Moreover, this report has not been brought on record till date even before this Hon'ble Tribunal. Thus a bald Cloth of "so called investigation" has been given to assumptions, suspicious and summarizes. It was submitted that Balance sheets of the investor companies show considerable investments and current assets. The AO has made a bald observation without actually looking into the

balance sheets and bank accounts of these companies. The so called post search enquiries are in fact prior to the search and even prior to the receipt of capital by the Appellant Pumarth Infrastructure. Dates tell the correct facts. It was submitted that search in the assessee premises on 21/09/2012 while the Statement of Ashish Verma was recorded on 07/02/2012 i.e. prior to search. This statement cannot be termed as part search proceedings. Also on 07/02/2012 no investment was made by any company with the assessee. The assessee received investments in March 2012, April 2012 and June 2012 while the alleged statement was recorded in Feb 2012. The statement of Jai Prakash jagetta is also dated 13/2/2012. The assessee received share capital in March 2012, April 2012 and June 2012. How can such a statement be relied upon. Moreover even in this statement no mention of assessee's company has been made. Affidavit of Jai Prakash jagatia is also on 15/02/2012 . On 15/02/2012 no investments were made by any company as share capital with the assessee. The assessee received share capital application money on 23/02/2012,27/03/2012, 03/04/2012,05/04/2012, 25/05/2012 & 28/05/2012.No statement of Dayaram Mansoreis on record. No copy was ever provided in spite of repeated request by the Appellant. Settlement Commission in its order dated 24/11/2015 has categorically observed that such statements cannot be used against the assessee since no copies thereof have been ever provided to the assessee. Inspectors report is dated 29/12/2012 wherein, Inspectors states that he has been directed to issue

summons. The AO assumed jurisdiction over the assessee on 23/12/2013 by virtue of order u/s 127. How the Inspector got director to serve summon u/s 131 on 29/12/2012 when AO himself got jurisdiction after one year on 23/12/2013. Thus the very foundation of Inspectors Report is without jurisdiction and is clearly a made up one. It is wrong to say that the director could not be traced in view of the affidavits of these directors filed before the settlement commission and also placed before the AO. As regards the allegation of the department that the blank share transfer form & board resolution was found on the computer of the assessee the appellant submits that these shares were allotted on private placement basis. Hence assessee company has to provide application form and draft Board resolutions to these companies. Some of these subscriber mailed these documents to the assessee company for approval which got stored in the computer system. Further transfer deed was taken from party on repurchase of share capital. But these transfer deed were dated 18/06/2012 whereas the shares were repurchased by group companies on 06/09/2012, hence these Transfer deeds were not valid at that point of time hence new transfer deeds were obtained.

54.3 Regarding the allegation that seizure of documents shows that the face value of shares of Rs.10/- issued at premium of Rs.990/- as against the actual allotment of face value of shares of Rs.1000/- at premium of Rs.

49000/- it is submitted that the assessee company was planning to convert its share face value from Rs. 1000 to Rs. 10, but due to some legal

issue the process of converting could not completed before allotment, hence new application of Rs. 1000 plus Rs. 49000/- was obtained from subscribers. Here it is pertinent to note that in next year the assessee company converted shares from Rs.1000 to Rs.10. Evidence showing share capital converted from Rs. 1000 to Rs. 10 in next year is enclosed in paper book. Both AO as well as CIT(A) has relied upon the order of settlement commission, in this regard the assessee submits that the settlement proceedings are different from the assessment proceedings. The settlement commission has rejected the application at the admission stage without going through the various documentary evidences submitted by the assessee. As regards the finding of the settlement order for the bank statement of the investor company the assessee submits that the assessee has proved the creditworthiness of the investor by filing its bank accounts and financial statement. From the banks accounts of the investor company it is apparent that the investors' company has not deposited any cash in the said bank account. Nowhere in the settlement order or in assessment order it was proved that the funds received in the investor companies belongs to the assessee company or that the assessee company was related to that company whose funds are received in the investor company. The assessee has proved the source of investment, under the act there is no need to prove the source of source.

54.4 It was further argued that one of the group Company M/s Premier Capital Services Pvt. Ltd. has repurchased these shares from the above

parties on 17/09/2012, before the date of search, at total consideration of Rs.13,87,20,000/- as against shares allotted to them at Rs.13,60,00,000/- as mutually agreed terms. The appellant once again reiterates the fact that all the investor companies are duly incorporated under the companies act with certificate of incorporation, have PAN number and are assessed to tax. The parties have invested the funds in share capital of assessee company through proper banking channels and the same has been authorized by the resolution of Board of Directors of respective companies. The amount of investment is also reflected in the Balance Sheet of the respective companies and all the companies have sufficient net-worth so as to justify the share capital contributed by them. Thus the assessee has proved the identity, genuineness and creditworthiness of transaction with documents before the Ld AO. Further the share premium was also justified by the assessee by filing the valuation report. It was submitted that in assessment proceedings the Learned Assessing Officer issued a show cause notice asking why the addition of Rs.13,60,00,000/- should not be made in the hands of the assessee company u/s.68 of the Income Tax Act, 1961. In response to the same the assessee has submitted Valuation report to justify allotment price, Copy of PAN of all applicants, Certificate of Incorporation of applicant companies, Memorandum and Article of association of applicant companies, Copy of Share application Form, Copy of Board Resolution of applicant companies authorizing the company to apply for share, Copy of Bank Statement from which funds have been

received, Copy of Confirmation letter for share application, Affidavit from all the applicants, Allotment letter of shares, Copy of share certificates issued, Copy of shareholders register, Copy of Form-2 filed with Registrar of Companies after allotment of shares, Financial Statement of shareholder companies for the year ended 31.03.2011 and 31.03.2012, Copy of Acknowledgement of filing Income Tax Return for the Assessment Year 2011-2012 and 2012-2013 which fully prove the identity, genuineness and creditworthiness of the investor. It was submitted that the Learned Assessing Officer ignored all these details and made the addition of Rs.13,60,00,000/- u/s.68 of the Income Tax Act, 1961 by treating the amount received on account of share capital and share premium as alleged Unexplained Cash Credit. The counsel for the appellant submits that the Ld. AO failed to appreciate the fact that assessee company has not raised capital from the parties mentioned in the recorded ex-parte statement of strangers. Even none of the statement relied upon by the AO has mentioned name of appellant company for any accommodation entry being provided. Further the statement of Dayaram Mansoore was not provided to the assessee and the same was not confronted to the assessee, hence the same can not be used against the assessee. The appellant has enclosed in the paper book the copy of letter filed before the AO asking the statement of the Shri DayaramMasooore, but the same has not been provided to the appellant. As regard the allegation of the Assessing Officer that the directors was not found at the address mentioned in the ROC side or the

assessee has not produced the director before the assessing Officer, the appellant submits that the Ld. AO failed to appreciate the fact that the assessee company filed the affidavit of the director of the company wherein they confirmed for the share allotment. Even assessee has asked to cross examine the parties, on whose statement he has relied upon. However AO has not considered the same.

54.5 As regards the allegation of the department that the blank share transfer form & board resolution was found on the computer of the assessee the appellant submits that these shares were allotted on private placement basis. Hence assessee company has to provide application form and draft Board resolutions to these companies. Some of these subscriber mailed these documents to the assessee company for approval which got stored in the computer system. Further transfer deed was taken from party on repurchase of share capital. But these transfer deed were dated 18/06/2012 whereas the shares were repurchased by group companies on 06/09/2012, hence these Transfer deeds were not valid at that point of time hence new transfer deeds were obtained.

54.6. Regarding the allegation that seizure of documents shows that the face value of shares of Rs.10/- issued at premium of Rs.990/- as against the actual allotment of face value of shares of Rs.1000/- at premium of Rs. 49000/- it is submitted that the assessee company was planning to convert its share face value from Rs. 1000 to Rs. 10, but due to some legal issue the process of converting could not completed before allotment,

hence new application of Rs. 1000 plus Rs. 49000/- was obtained from subscribers. Here it is pertinent to note that in next year the assessee company converted shares from Rs.1000 to Rs.10. Evidence showing share capital converted from Rs. 1000 to Rs. 10 in next year is enclosed in paper book.

54.7 Both AO as well as CIT(A) has relied upon the order of settlement commission, in this regard the counsel for the appellant has submitted that the settlement proceedings are different from the assessment proceedings. The settlement commission has rejected the application at the admission stage without going through the various documentary evidences submitted by the assessee. As regards the finding of the settlement order for the bank statement of the investor company the assessee submits that the assessee has proved the creditworthiness of the investor by filing its bank accounts and financial statement. From the banks accounts of the investor company it is apparent that the investors' company has not deposited any cash in the said bank account. Nowhere in the settlement order or in assessment order it was proved that the funds received in the investor companies belongs to the assessee company or that the assessee company was related to that company whose funds are received in the investor company. The assessee has proved the source of investment, under the act there is no need to prove the source of source.

54.8 It was reiterated that one of the group Company M/s Premier Capital Services Pvt. Ltd. has repurchased these shares from the above parties on

17/09/2012, before the date of search, at total consideration of Rs.13,87,20,000/- as against shares allotted to them at Rs.13,60,00,000/- as mutually agreed terms. The appellant once again reiterates the fact that all the investor companies are duly incorporated under the companies act with certificate of incorporation, have PAN number and are assessed to tax. The parties have invested the funds in share capital of assessee company through proper banking channels and the same has been authorized by the resolution of Board of Directors of respective companies. The amount of investment is also reflected in the Balance Sheet of the respective companies and all the companies have sufficient net-worth so as to justify the share capital contributed by them. Thus the assessee has proved the identity, genuineness and creditworthiness of transaction with documents before the Ld AO. Further the share premium was also justified by the assessee by filing the valuation report.

54.9 It was argued that the Learned Assessing Officer has not considered the same and made the addition without any basis and logic. All the documents filed before the Learned Assessing Officer proved the identity, genuineness and creditworthiness of transaction, but the Learned Assessing Officer ignored the same and without giving any cogent evidence made the addition u/s.68 of the Act.

54.10 It was argued that as per the section 68 when the assessee has not offered any explanation regarding the nature and source of credit found in

the books, then only addition can be made under section 68. But if the assessee provides satisfactory explanation then addition cannot be made under section 68.

54.11. The investor company has also confirmed that it had made the investment in the appellant company. But the Learned Assessing Officer had not accepted the same and without pointing out any defects in the documents, he simply mentioned that the assessee not proved the creditworthiness of the investor party.

54.12 The counsel for the appellant submitted that the initial onus is on the assessee to prove with the documents the identity, genuineness, and creditworthiness of the investor. If it proved with documents than onus shifts on the Assessing Officer to prove why the explanation of the assessee is not to be accepted. But the Learned Assessing Officer without providing any evidence in contrary simply mentioned that the assessee has failed to prove the creditworthiness and genuineness of investor. AO relied on certain material which was of February 2012 i.e. much before the search. He relied on an Inspectors Report which again was before the AO assumed jurisdiction. Thus in fact the entire addition is based on presumption. Affidavits of directors of these companies were also filed. The AO did not choose to issue summons u/s 131 after receiving these affidavits. The AO conveniently ignored the fact that these shares were subsequently repurchased at a higher value in September, 2012 i.e. before search and all the investors made short term gains which as per their

affidavit have been duly shown by the investors in their returns. Had the share capital been accommodating entries then repurchase at a higher value could not have been possible.

54.13 While arguing the alternative ground no. 8 regarding credit to be given for amounts already taxed in the hands of directors, the learned counsel for the appellant has submitted that since the exact amount arising out of the same seized paper is being owned up by Sumati Kumar Kasliwal, who is the director of Pumarth Infrastructure Pvt. Ltd. and in respect of whom the AO has given a finding that the amount received in cash has been routed through the group company, therefore, the counsel for the appellant has submitted that there is no adjudication required in respect of the share capital since the source thereof in any event can be traced to the income of Sumati Kumar Kasliwal.

55. The Ld. DR has opposed grounds raised by the appellant and has pointed out that the Settlement Commission has already decided the issue of share capital against the appellant and has categorically held that the share capital is unexplained. Thus the amount of share capital has been rightly added in the hands of the appellant. The Ld. CIT DR has also opposed the alternative plea raised by the counsel for the appellant.

56. We have heard rival contentions, perused the records available with us carefully gone through the findings of lower authorities and the written submissions placed before us along with judgments referred and relied by both the parties. Grievance raised by the assessee in Ground No. 1 to 4

for Assessment Year 2012-13 in the case of M/s. Pumarth Infrastructure Pvt. Ltd is in respect of treating share capital and share premium totaling to Rs. 13.60 crores as unexplained cash credit added by Ld. A.O u/s 68 of the Act and has been confirmed by Ld. CIT(A) also. Ld. A.O treated the following amount received from following companies towards share capital and share premium at Rs.49,000/- charged on the face value of Rs.1,000/- and Ld. A.O was not satisfied with the creditworthiness of the cash creditors.

1. Ever Shine Building Project Pvt. Ltd	Rs. 3 crores
2. Colour Union International Pvt. Ltd	Rs. 3 crores
3. Kothistar Developments Pvt. Ltd	Rs. 5 crores
4. Printage Offset Pvt.Ltd	Rs. 2 crores
5. Innova E Services Pvt.Ltd	<u>Rs. 1.60 crores</u>
Total	<u>Rs.13.60 crores</u>

Ld. Senior Counsel for the assessee before coming into the merits of the case referred to the grounds raised in the case of Shri Sumati Kumar Kasliwal in the appeal for Assessment Year 2013-14 appeal filed by the assessee in the preceding paragraphs while adjudicating appeal No. ITA No.181 & 472/Ind/2017 in which ground relating to unexplained cash of Rs.14,57,12,069/- were NOT PRESSED by Sumati Kumar Kasliwal. While going through the written submissions as well as during the course of hearing it has been an undisputed fact that during the course of search no un accounted income in physical form was unearthed. Certain documents

for unexplained investments and transactions were found which included loose paper No.62 of LPS/B-1/5 containing various transactions which is reproduced below and relates to sale of equity shares by various persons and companies part of the group and also cash amount received at Rs.13,61,94,600/- and Rs.68,48,000/-which were not explained before the revenue authorities. There was also difference of cash payment of cash received of Rs.26,77,469/- the total of these three figures comes to Rs.14,57,12,069/-.

From 16.05.2012 to 03.07.2012												
	MK	NFPL	PPL	MKHUF	SSK	SSKHUF	PCSL	PK	SMK	PCPL	Cash	Other
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
21.06.2012											300000	
Total												
22.06.2012											17499000	
Total												
23.06.2012											22000000	
Total												
25.06.2012											18965000	
Total												
26.06.2012											20000000	
Total												
27.06.2012											21500000	
Total												
28.06.2012											16730600	6840000
Total												
29.06.2012											5000000	
Total												
30.06.2012											1500000	
Total												
02.07.2012											6500000	
Total												
03.07.2012											3500000	
Total												
Total	356500000	30632825		84300000	30632825	36122825	35802825	30632825	356660000	17077904	126194600	6840000
	Total Recd	Paid	Diffdence									
	(13)	(14)	(15)									
21.06.2012		(Desai (Mum))										
Total	3000000											
22.06.2012		Rajesh (Mum)										
Total	17499000											
23.06.2012		Mmbai										
Total	22000000											
25.06.2012												
Total	18965000											
26.06.2012												
Total	20000000											
27.06.2012												
Total	21500000											
28.06.2012												
Total	23570600											
29.06.2012												
Total												
30.06.2012												

group members which have been further sold on higher price and capital gain have been offered to tax. So admittedly some transactions are tallying with the story/submission given by Shri Sumati Kumar Kasliwal and coincidentally the figures of Rs.13,61,94,600/- found in the seized document during the course of search is also almost same as the figure of Rs.13.60 crores of undisclosed income added in the case of M/s. Pumarth Infrastructure Pvt.Ltd. It is also an undisputed fact that no other documents were found during the course of search which could prove that the cash income of Rs.13,61,94,600/- from any other source has been earned by Shri Sumati Kumar Kasliwal or any other group concern or related persons. It is just a piece of paper having some transactions and figures noted therein. There being no other incriminating material which could be used to prove that the assessee Shri Sumati Kumar Kasliwal earned cash income of Rs.13,61,94,600/-.

56.1 In these given facts it will not be fair to make the addition of the same amount of Rs.13,60,00,000/- in the hands of two assessee's in the same group concern even when one of the assessee Shri Sumati Kumar Kasliwal has already accepted the addition of Rs.13,61,94,600/- being part of the total additions not pressed of Rs.14,57,12,069/- and therefore the revenue authorities are free to collect the tax on the addition confirmed by us in the case of Shri Sumati Kumar Kasliwal even though the year of taxability of Shri Sumati Kumar Kasliwal is Assessment Year 2013-14 whereas the addition made in the case of instant appeal of M/s. Pumarth

Infrastructure Pvt. Ltd is for Assessment Year 2012-13. We are conscious of the fact that the taxability of the year is different but looking to the connective transactions which very well speak by itself that the unaccounted income of Shri Sumati Kumar Kasliwal of Rs.13.60 crores took shape of share capital and share premium of Rs. 13.60 crores in the hands of M/s. Pumarth Infrastructure Ltd. Even the Ld. A.O assessing the case of Shri Sumati Kumar Kasliwal while examining the seized paper at Page 61 & 63 of LPS B-1/5 made following observations;

11.3 It is notable here that the page No.63 of same LPS i.e. B-1/5, is a page containing information of some bank account in the names of various persons of Pumarth Group. When Bank statement/ledger of such bank accounts were examined between the period from 16.05.2012 to 03.07.2012, it was found that the amounts mentioned above indicate the total of accommodation entries taken by group from the entry provider companies. It was found that the exact amount mentioned in the chart was deposited in the bank accounts of companies and its directors by the entry provider companies during the period from 16.05.2012 to 03.07.2012.

11.4 It was also noted that the tally account of M/s. Pumarth Infrastructure Pvt. Ltd was examined which shows that the receipt of similar amounts in its books of account was found in the seized page 62 of LPS-B1/5. It is also found that there are various other deposits in these bank accounts in the same period but when inter-group transfer are excluded and only amounts of these entry provider companies are added, the amount mentioned in the page 62 exactly matches. This clearly shows that this sheet was prepared to check the position of accommodation entry taken by the group. The document is authentic as the above discussed entries are exactly tallying.”

56.2 The above observation of Ld. A.O supports our view that an

unexplained income of Rs.14,57,12,069/- inter alia including the amount of Rs.13,61,94,600/- admitted as undisclosed income and offered to tax by Shri Sumati Kumar Kasliwal has its direct nexus with the addition of unexplained share capital of Rs.13.60 crores in the case of M/s. Pumarth Infrastructure Pvt. Ltd. As we have already confirmed the addition in the hands of Shri Sumati Kumar Kasliwal it will not be justified to sustain the addition of Rs.13.60 crores in the case of M/s. Pumarth Infrastructure Pvt. Ltd and the same deserves to be deleted. We accordingly orders and delete the addition of Rs.13.60 crores made by the Ld. A.O u/s 68 of the Act on the basis of our finding that the addition for similar amount has already been confirmed by us in the hands of Shri Sumati Kumar Kasliwal.

57. As regards the merits of the case relating to addition for unexplained cash credits u/s 68 of the Act for the alleged five cash creditors amounting to Rs.13.60 crores, it will be merely academic in nature to deal with this issue on merits and to express our opinion on the identity, genuineness and creditworthiness of the alleged cash creditors of Rs.13.60 crores since we have already confirmed the addition of Rs.14,57,12,069/- in the hands of Shri Sumati Kumar Kasliwal in view of our findings given herein above.

57.1 The aforesaid adjudication of the grounds raised by the assessee in the case of M/s. Pumarth Infrastructure Pvt. Ltd for Assessment Year 2012-13 wherein we have deleted the addition of Rs.13.60 crores, the same will take care in the case of Department Appeal No.462/Ind/2017 wherein revenue has challenged the deletion and addition of Rs.4,35,00,000/- made u/s 68 of the Act against the amount of Rs.41,45,275/- on account of unexplained cash credit received by M/s. Pumarth Infrastructure Pvt. Ltd for Assessment Year 2013-14 which was

part of the share capital and share premium issued during Assessment Year 2012-13. As this amount of Rs. 4,35,00,000/- is a part of addition of Rs.13.60 crores for Assessment Year 2012-13 which already stands deleted. This ground of revenue will also not stand for and the same deserves to be dismissed. Similarly Cross Objection No.31/Ind/2017 filed by the assessee is also stands dismissed as merely support the finding of Ld. CIT(A) relating to the addition of Rs.4,35,00,000/- deleted by Ld. CIT(A).

58. Grounds No. 5 & 6 for AY 2012-13 & ground No. 2 & 3 for AY 2013-14 relate to taxability of ON money on sale of plots. The following chart shows these issues and the quantum involved therein :

ISSUE	APPELANT	ASST. YEAR	AMOUNT
On money on sale of plots	Pumarth Infrastructure Pvt. Ltd.	AY 2012-13 & 2013-14	1,41,70,300 1,31,36,750

The aforesaid issue has already been decided by this tribunal by order dated 12.02.2019 in ITASS No.175 to 177/IND/2017 and for the sake of ready reference, the aforesaid finding in the said order has been extracted:

“We have heard rival contentions and perused the records placed before us. For all three assessment years i.e 2009-10 to 2011-12 common issue raised by the assessee, in Ground No. 2 & 3 is for the additions confirmed by Ld. CIT(A) of ‘On-Money’ of Rs. 96,76,800/-, Rs.3,09,80,760/- & Rs. 50,96,575/- received from buyers for plots/row houses in the project undertaken by the assessee in the name of ‘Pumarth Park’ & ‘Pumarth Meadows’. Both the lower authorities have confirmed addition for gross amount

of 'On-Money' received from the projects run by the assessee.

2. Ld. counsel for the assessee has filed extract of the statement given before Income Tax Settlement Commission (in short ITSC) for the other group concerns as well as the submissions made for the assessee company which was later on rejected by the Income Tax Settlement Commission. In this submission, the assessee has disclosed gross receipts and has also claimed the expenses incurred on the project which were connected to administrative, as well as construction activities. In the statement filed before the ITSC 75% of the gross receipts are shown as expenses. It seems that both the lower authorities have partly accepted the declaration given by the assessee before ITSC which normally should have been followed in complete sense. It is an undisputed fact that the average net profit before tax declared before the ITSC is 15.956%. In the case of Group concern M/s. Apollo Creation Pvt. Ltd. which was also searched along with the assessee, GP rate of 25% has been accepted by the assessing officer. The relevant extract of the order of the settlement commission passed in the case of M/s. Apollo Creation Pvt. Ltd. is mentioned below:

91.2 Finding: the above submissions of the applicant have been considered. It is an admitted fact that in the applicant's business receipt of on-money is a regular practice. It is also well evidenced by various documentary evidences found during the search which shows that applicant has been receiving on-money in its all of its projects whether they are on self owned land or on third parties land under joint-development agreement and accounting for it through the modus operandi of small denomination cheques. It is also seen that Garha group too has admitted that it has been receiving on-money in its various projects including the Golf-Green project. During the search of Garha group too incriminating material to this effect was found as a consequence of which the Garha Group made a substantial disclosure of income before the investigation wing. In view of these facts. It seems highly unrealistic that when a plot of land/flat is being sold

by one partner at a much higher amount than that mentioned in the conveyance deed, similar plot/flat in the same project would be sold by the other partner for a consideration equivalent only to the rate mentioned in the conveyance deed. The argument that the applicant did not have to carry out much of infrastructure development activity in the Golf Green Project as compared to Golf Link project cited in favour of not receiving on-money in Golf Green project, too does not carry much weight. There is no correlation between carrying on of infrastructure development and receipt of on-money as business would not forego such receipts merely because did not incur much expenditure on infrastructure development. These facts were pointed out to the AR of the applicant during the hearings before the Commission, during the hearing on 26.4.2016, the applicant after considering the above factors came forward in a spirit of settlement to offer the corresponding unaccounted portion of the receipts on its 540% share of sale to which it was entitled under the Agreement with Garha Group. The disclosure made by the applicant on account of unaccounted receipt from the Gold-Green project amounts to Rs.25,00,000/- on which taxable income has been worked out after applying a net profit rate of 25% which amounts to Rs.6,25,00,000/-. A letter dated 26.4.2016 to this effect filed by the applicant is placed on record. The year-wise working made by the applicant gives the details of additional income in the project Golf-Greens by estimating profit at the rate of 25% on estimated unaccounted (difference in deal rate of plots sold by Applicant and Garha Group)as under:

A.Y.	Area sold (Sq.feet	Difference in sales rate (per sq feet	Estimated unaccounted receipts (rounded off)	Estimated net profit
(1)	(2)	(3)	(4)=2*3	(5)=25% 4
2009-10	133117	514	68500000	17125000
2010-11	181098	533	96600000	24150000
2011-12	38715	465	18000000	4500000

2012-13	64323	423	27200000	6800000
2013-14	62155	384	24000000	6000000
2014-15	4800	550	15700000	3925000
	484208	Average:489	250000000	62500000

3. The above finding of Income Tax Settlement Commission in the Group concern of the Apollo Group shows that with regard to the 'On-Money' the addition has been made only @ 25% and net the gross unaccounted 'On-Money', thereby, allowing the claim of unaccounted expenditure. It has been consistently held that only the addition for the net profit should be made on the 'On-Money' received during the course of business.

3. Hon'ble MP High Court in the case of Commissioner of Income Tax vs. Balchand Ajit Kumar (2003)263 ITR 0610 has held that "we are in respectful agreement with the aforesaid opinion in as much as the total sale cannot be regarded as the profit of the assessee. The net profit rate has to be adapted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is tow or high, it would depend upon the facts of each case. In the present case net profit rate of five percent has been applied. We do not think it appreciable that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach.

4. Hon'ble Bombay High Court in the Commissioner of Income Tax vs. M/s. Prime Developers ITANo.2452 of2013-

(a) has held that the respondent-assessee is engaged in the business of construction. During the subject assessment year the respondent-assessee undertook construction of a project called Prime Mall. However in its return of income filed for the subject assessment year the respondent- assessee did not disclose any profit on its above project as it was following the Project Completion Method.

(b) On 20thApril, 2006 there was a search on the respondent

–assessee under section 132 of the Act. During the course of the search it was found that during the previous year relevant to assessment year under consideration it was found that the respondent-assessee had sold 14 units in its prime Mall project and received 65% of the total sale consideration as 'On-Money'. Consequent to the search, the respondent-assessee contended that in the subject assessment year no income is chargeable to tax as it is following the Project Completion Method of Accounting. Therefore the profit, if any, would be subject to tax on completion of the project which takes place only for the A. Y. 2006-07(90%) and A. Y. 2007-08. The Assessing Officer by an order dated 30 th December, 2008 did not accept the respondent's contention of Project Completion Method and brought to tax, the entire amount received as 'on money' consideration i. e. 65% of total sales value (35% recorded plus 65% 'on money) of the 14 unit sold.

(c) Being aggrieved, the respondent carried the issue in appeal to the Commissioner of Income Tax(A) (CIT(A)). In appeal, by an order dated 30th October, 2009 the CIT(A) modified the order of the Assessing Officer to the extent it held that the total consideration received in respect of sales of 14 unit during the subject assessment year would be taxed at 40% as net profit of the total consideration in place of 65% in respect of sales of 14 units. The CIT(A) did not accept the respondent-assessee's contention that only 8% should be taken as net profit of the unaccounted turnover.

This was in view of the fact that annexure-L found during the course of the search indicated the net profit at 28.18%.

(d) Being aggrieved, both the Revenue as well as the respondent assessee carried the issue in appeal to the Tribunal. The Tribunal by its impugned order after considering the facts i.e. the seized documents and the respondent-assessee's books of accounts came to the conclusion that the reasonable percentage of net profit to be

applied is 17.08%. The Tribunal rendered a finding that Annexure-L on which reliance was placed which indicate the net profit of 28.18% was merely an estimated working done by the respondent-assessee. In the above view, the issue was restored to the Assessing Officer to work out the taxable profit after adopting the reasonable net profit of 17.08% on its gross sales turnover of Rs.11.60 crores in the subject assessment year.

(e) The grievance of the Revenue before us is that the adoption of net profit of 17.08% as determined by the Tribunal is not correct. Although the questions as formulated does not state that the adoption of any particular rate of net profit, in submissions it is submitted that it has to be replaced/substituted by 65% as net profit as arrived at by the Assessing Officer.

(f) We find that the Revenue seeks to substitute the estimated net profit arrived at by the Tribunal with a new figure of net profit. This without in any manner showing that the estimate arrived at by the Tribunal in the impugned order is perverse. It is a settled position of law that in estimated net profit arrived at by the authorities is a question of fact and if the material on record does support the estimate arrived at by the Tribunal then it does not give rise to any substantial question of law (see CIT vis. Piramal Spinning and Weaving Mills Ltd. 124 ITR 408). In this case, we find that the net profit estimated at 17.08% is a very possible view on the facts found.

(c) Hon'ble Supreme Court in Income Tax Officer v. Annand Builders SLP (C) No. 14166 of 2003 – The Gujarat High Court dismissed the Department's appeal on the ground that no substantial question of law arose from the order of the Tribunal directing the AD to tax only 8 percent of the unaccounted 'on money' receipt instead of fully taxing it."

The Hon'ble' Gujarat High Court in the case of CIT v. President Industries [2002] 258 ITR 654 : 124 Taxman 654 held "dismissing the application for reference, that the amount of sales could not represent

the income of the assessee who had not disclosed the sales. The sales only represented the price received by the seller of the goods; only the realisation of the excess over the cost incurred could form part of the profit included in the consideration for the sales. Since there was no finding to the effect that investment by way of incurring the cost in acquiring the goods which were sold had been made by the assessee and that the investment was also not disclosed, only the excess over the cost incurred could be treated as profit.

Hon'ble'ble I.T.A.T., Ahmedabad Bench in ACIT vs. Shri Jigesh Vs Koralwala I(SS) A No.262,263 and 264/Ahd/2010 "Since Ld. CIT(A) has given relief to the assessee by following the Ahmedabad Tribunal decision in the case of Adinath construction decided vide order dated 20.10.2005 in Income-tax Act, 1961, No.1975 and 176/Ahd. 1999 wherein it was held that entire on- money did not represent the recipient's income but only to the extent of 15% thereof and the balance 65 % being expended on the project and no contrary decision was cited by the Revenue at the time of hearing, we find no reason to interfere in the finding given by him and the same is hereby upheld. In the result, Revenue's appeals are dismissed:

5. From perusal of the above judgments common view has been taken thereby confirming the addition only for the profit element in 'On-Money'. Respectfully following the above judgment and examining facts of the instances case we find that the 'On-Money' has been received by the assessee company from its business activity of developing various projects. Undoubtedly against unaccounted 'On- Money' there is also an element of unaccounted expenditure which cannot be brushed aside and further looking to the fact that in the very same Group concern addition confirmed by the ITSC is @ 25% of "On-Money". We are therefore inclined to hold that in the instant three appeals, addition should be sustained, only to the extent of 25% of the alleged 'On-Money' i.e Rs. 96,76,800/-, Rs.3,09,80,760/- & Rs. 50,96,575/- which comes to Rs.24,19,200/- Rs.77,45,190/- & Rs.12,74,144/- for A.Ys. 2009-10 to 2001-12,respectively.

59. In view of the aforesaid finding already given in ITA (SS)No.175 to 177/IND/2017 for the preceding years, we direct that the addition of ON-MONEY be restricted to 25% of the undisclosed receipts which would work out to Rs. 35,42,575 (being 25% of 1,41,70,300) for AY 2012-13 and Rs. 32,84,188 (being 25% of 1,31,36,750) for AY 2013-14.

60. Now we take up Ground No.7 for A.Y 2012-13 wherein assessee has challenged the addition sustained by Ld. CIT(A) relating to disallowance u/s 40A(3) of the Act Rs.7,50,000.

61. Brief facts relating to this issue is that there were various expenses in cash, above Rs.20,000/- under different heads as evident from the Tally account placed on record before the assessing officer. Assessee did not file any detail so as to prove that the alleged amount should not be disallowed u/s 40A(3) of the Act. Assessee could not succeed in appeal before the Ld.CIT(A).

62. Now the issues in before us.

63. At the outset Ld. counsel for the assessee requested for setting aside this issue of disallowance u/s 40A(3) of the Act for verification at the end assessing officer, as due to the paucity of time assessee could not explain all these expenses. Ld. Departmental Representative (DR) did not oppose this request.

64. We have heard rival contentions and perused the records placed before us. The assessing Officer alleged that the assessee

has incurred cash expenses over and above Rs.20,000/- and therefore is liable for disallowance u/s 40A(3) of the Act. Looking to the request of Ld. counsel for the assessee for setting aside the issue which goes opposed by the revenue authorities. We direct the Ld. AO to examine this issue of disallowance u/s 40A(3) of the Act for various expenses incurred in cash afresh after providing necessary opportunity to the assessee for filing documents and evidence in support of its claim that no disallowance is called for. Accordingly this issue for disallowance u/s 40A(3) of the Act is allowed for statistical purposes.

65. Ground 5 for A.Ys. 2013-14 is an alternative ground and in view of the fact as we have already adjudicated the main grounds dealing with these alternative grounds would be merely academic in nature and thus we find no reason to adjudicate the same and therefore these are dismissed as academic in nature.

66. Ground no. 4 to 8 in AY 2013-14 is in respect of amount of Rs. 4,08,00,000 added on unexplained cash credit u/s 68.

67. The facts arising from the order of Assessing Officer and the CIT(A) in respect of addition of Rs. 4,08,00,000 towards shares sold but treated as unexplained are identical to those contained in the order of Sumati Kumar Kasliwal for AY 2013-14. Both the Ld. Counsel for the appellant and the Ld. DR agreed at the time of arguments that arguments made in the case of Sumati Kumar Kasliwal are adopted for other cases also.

68. The issue of shares sold has already been adjudicated in the case of Sumati Kumar Kasliwal in ITA no.472/IND/2017 for AY 2013-14. The finding arrived at in the case of Sumati Kumar Kasliwal is as under:

“13.9 We have heard rival contentions and perused the records placed before us and gone through the judgments referred to and relied by the Ld. Counsel for the assessee. Grievance raised by the assessee in Ground No. 6 to 10 revolves round the addition of Rs.3,61,22,825/- being unexplained cash credit treated by the Ld. A.O u/s 68 of the Act on the basis of details available in the seized loose paper No.62 of LPS/B-115. On perusal of the orders of both the lower authorities and submissions made by the Ld. Counsel for the assessee and the paper book submitted before us there remains no dispute to the fact that the alleged amount of Rs.3,61,22,825/- is appearing in the regular books of accounts of the assessee. This amount comprises of two parts firstly Rs. 3,06,32,825/- is for the sale consideration of sale of shares held by the assessee since preceding financial year and some of the remaining amount of Rs. 54,09,000/- which was also received against the sale consideration for sale of shares from M/s. Venkateshwara Bunglows Pvt. Ltd but the same was returned back as the transaction could not materialized. This fact is verifiable from the bank statement. Therefore Rs.54,09,000/- is duly explained and no addition is called for this amount. As regards the sale consideration from sale of shares of Rs. 3,06,32,825/- we find that Rs. 1,03,00,000/- was received from sale of 1,00,000 shares of Pumarth Meadows Pvt. Ltd and remaining amount of Rs.2,03,32,825/- is from sale of 66,665 equity shares of Pumarth Holdings Pvt. Ltd. Ld. A.O has treated this sum of Rs.3,06,32,825/- i.e. the sale consideration from sale of shares as unexplained cash credit u/s 68 of the Act on the basis that the amount received from the companies who were purchased the shares from the assessee are not explained. However Ld. A.O has not doubted the genuineness of the purchase of the equity shares made by the assessee in the preceding financial year. It is established principle of law that if the purchases are genuine then only the difference between the sale and purchase amount can be subjected to tax. In the instant case the assessee has offered Short Term Capital Gain of Rs. 6,33,325/- for tax being the difference between the sale consideration of Rs.3,06,32,825/- and the purchase/cost price of the equity shares sale of Rs.2,99,99,500/-. Further all the necessary details about the identity and

genuineness of the concern purchasing the shares from the assessee have been placed on record. Merely for not producing the directors of the alleged companies buying the equity shares cannot make the transaction in genuine. We therefore in the given facts and circumstances of the case are of the considered opinion that the assessee has successfully explained the amount of Rs.3,61,22,825/- which includes Rs.54,90,000/- being the amount received against sale of equity shares but returned back to the purchaser as the transaction could not be finalized and remaining amount of Rs.3,06,32,825/- represents the sale consideration of sale of equity shares held by the assessee since last financial year and the amount from sale thereof is duly offered to tax. We accordingly set aside the findings of lower authorities and delete the addition of Rs.3,61,22,825/- and allow the assessee's Ground No. 6,7,8,8 & 10 for Assessment Year 2013-14.

69. Following the aforesaid finding arrived at on identical facts in the case of Sumati Kumar Kasliwal the addition of Rs.4,08,00,000 in respect of shares sold but treated as unexplained is deleted. The grounds of appeal No. 4 to 8 in respect of addition towards sale of share in the hands of Pumarth infrastructure Pvt Ltd are allowed.

70. In the result the appeals of different assessee's are disposed off as under;

S.No.	Name of Appellant	Appeal No	Assessment Year	Result
1	Sumati Kumar Kasliwal	ITA No.181&472/Ind/2017	2012-13 2013-14	Partly allowed for statistical purpose.
2	Shri Parth Kasliwal	ITA(SS)No.179/Ind/2017 & ITA No.465/Ind/2017	2012-13 & 2013-14	Allowed
3	Smt. Sharda Kasliwal	ITA(SS)No.174/Ind/2017 & ITA No.409/Ind/2017	2012-13 & 2013-14	Allowed

4	M/s. Nishant Finance Pvt. Ltd	ITA(SS)No.180/Ind/2017 & ITA No.470/Ind/2017	2012-13 & 2013-14	Allowed
5	Shri Manoj Kasliwal	ITANo.466/ind/2017	2012-13 & 2013-14	Allowed
6	M/s. Pumarth Infrastructure Pvt. Ltd	ITA(SS)No.178/Ind/2017 ITA No.468/Ind/2017 C.O.No.31/Ind/2018	2012-13 2013-14 2013-14	Partly allowed for statistical purpose. Partly allowed Dismissed
7	Revenue	ITANo.452/ind/2017	2013-14	Dismissed

The order pronounced in the open Court on 30.04.2019.

Sd/-

Sd/-

(KUL BHARAT)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 30 April, 2019

/Dev

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore