

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. 88/Ind/2013
Assessment Year 2009-2010
PAN : ANKPS8257Q

Asstt. Commissioner of V/s Shri Mukesh Sharma
Income Tax 1(1), B-99, Raj Ved Colony,
Bhopal Kolar Road, Bhopal
(Revenue) (Respondent)

C.O. No. 76/Ind/2014
Assessment Year 2009-2010
PAN : ANKPS8257Q

Shri Mukesh Sharma, V/s Asstt. Commissioner of
B-99, Raj Ved Colony, Income Tax 1(1),
Kolar Road, Bhopal Bhopal
(Appellant) (Respondent)

ITA. No 189/Ind/2013
Assessment Year 2009-10
PAN : AASPV7148P

Asstt. Commissioner of V/s Shri Vinod Vaish
Income Tax 1(1), E-3/303, Arera Colony,
Bhopal Bhopal
(Revenue) (Respondent)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

ITA. No 699/Ind/2016
Assessment Year 2009-10

PAN : BGYPK0135R

Shri Suresh Kumar Upadhyay V/s DCIT 1(1),
51, Gram Bhitwar, Gwalior Bhopal
(Appellant) (Respondent)

ITA. No 700/Ind/2016
Assessment Year 2009-10

PAN : CFJPS5303G

Shri Chandra Kumar Sharma V/s DCIT 1(1),
H.No. 136, GramChitouli, Bhopal
Gwalior
(Appellant) (Respondent)

ITA. No 701/Ind/2016
Assessment Year 2009-10

PAN : BVYPS5358D

Shri Sanjay Kumar Saha V/s DCIT 1(1),
Kankanae ki Gali, Bhopal
Krishnapura, Dabra,
Gwalior
(Appellant) (Respondent)

ITA. No 702/Ind/2016
Assessment Year 2009-10

PAN : CFJPS5303G

Shri Sukhdev Singh Dhariwal V/s DCIT 1(1),
Ward No.21, Thakurbaba Road, Bhopal
Dabra, Gwalior
(Appellant) (Respondent)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

ITA. No 703/Ind/2016
Assessment Year 2009-10
PAN : ALNCP2204L

Shri Khemraj Singh Chouhan V/s DCIT 1(1),
H.No. 7, Ward No.12, Bhopal
Custom Road, Jawaharganj,
Dabra, Gwalior
(Appellant) (Respondent)

ITA. No 704/Ind/2016
Assessment Year 2009-10
PAN : ALNPC1964F

Shri Kamlesh Kumar Choudhary V/s DCIT 1(1),
Village Sharan, Bhopal
Bhitarwar, Gwalior
(Appellant) (Respondent)

ITA. No 705/Ind/2016
Assessment Year 2009-10
PAN : ARQPS5278M

Shri Santosh Kumar Sharma V/s DCIT 1(1),
Deedar Colony, Bhopal
Dabra, Gwalior
(Appellant) (Respondent)

ITA. No 706/Ind/2016
Assessment Year 2009-10
PAN : AEQPL6628D

Shri Lata Prasad, V/s DCIT 1(1),
House No.199, Sharan, Bhopal
Dabra, Gwalior
(Appellant) (Respondent)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

ITA. No 707/Ind/2016
Assessment Year 2009-10

PAN : AXHPS0642L

Shri Pradeep Kumar Sharma, V/s
Krishnapra, Ward 5,
Subhashgaon, Gwalior
(Appellant)

DCIT 1(1),
Bhopal

(Respondent)

ITA. No 708/Ind/2016
Assessment Year 2009-10

PAN : AKBPC3223A

Shri Rameshchandra Parashar, V/s
House No.47,
Gohinda Bhitwar,
Dabra, Gwalior

DCIT 1(1),
Bhopal

(Appellant)

(Respondent)

ITA. No 709/Ind/2016
Assessment Year 2009-10

PAN : AXRPS6368R

Shri Vijay Kumar Shrivastava, V/s
Ward No.17,
Gurudwara Road,
Dabra, Gwalior

DCIT 1(1),
Bhopal

(Appellant)

(Respondent)

ITA. No 710/Ind/2016
Assessment Year 2009-10

PAN : BGXPK9343N

Shri Dharmendra Kumar Choudhary, V/s
House No.95,
Saharangaon, Adampur,
Bhitwar, Gwalior

DCIT 1(1),
Bhopal

(Appellant)

(Respondent)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

ITA. No 711/Ind/2016
Assessment Year 2009-10
PAN : CFJPS3963J

Shri Ram Kumar Swami,
House No.103, Mastura,
Dabra, Gwalior

V/s

DCIT 1(1),
Bhopal

(Appellant)

(Respondent)

ITA. No 542/Ind/2017
Assessment Year 2009-10
PAN : BHGPK0249B

Shri Birendra Kumar Sharma,
2, Tiwari Mohalla Bijakpur,
Dabra, Gwalior

V/s

DCIT 1(1),
Bhopal

(Appellant)

(Respondent)

Revenue by	Smt. Ashima Gupta, CIT
Assessee by	Shri Sumit Nema, Sr. Adv with Shri Gagan Tiwary, Advocate
Date of Hearing	14.03.2019
Date of Pronouncement	04.06.2019

ORDER

PER BENCH:

The above captioned appeals are filed against the following orders of the ld. CIT(A):

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

SN o	ITANo.	Name	CIT(A) order date	Appeal filed by the Revenues or assessee
1 & 2	ITA(SS) No.88/Ind/2013 & CO NO.76/Ind/2014	Mukesh Sharma	30.01.2013	Revenue & Assessee
3	ITANo.189/Ind/2013	Vinod Vaish	31.01.2013	Revenue
4	ITANo.699/Ind/2016	Suresh Kumar Upadhya	22.03.2016	Assessee
5	ITANo.700/Ind/2016	Chandra Kumar Sharma	22.03.2016	Assessee
6	ITANo.701/Ind/2016	Sanjay Kumar Sahu	22.03.2016	Assessee
7	ITANo.702/Ind/2016	Sukhdev Singh Dhariwal	22.03.2016	Assessee
8	ITANo.703/Ind/2016	Khemraj Singh Chauhan	22.03.2016	Assessee
9	ITANo.704/Ind/2016	Kamlesh Kumar Choudhary	22.03.2016	Assessee
10	ITANO.705/Ind/2016	Santosh Kumar Sharma	22.03.2016	Assessee
11	ITA No.706/Ind/2016	Lalta Prasad Choudhary	22.03.2016	Assessee
12	ITANo.707/Ind/2016	Pradeep Kumar Sharma	22.03.2016	Assessee
13	ITANo.708/Ind/2016	Ramesh Chandra Parashar	22.03.2016	Assessee
14	ITANo.709/Ind/2016	Vijay Kumar Shrivastava	22.03.2016	Assessee
15	ITANo.710/Ind/2016	Dharmendra K. Choudhary	22.03.2016	Assessee
16	ITANo.711/Ind/2016	Ram Kumar Swami	22.03.2016	Assessee
17	ITANo.542/Ind/2017	Virendra Kumar Sharma	22.03.2016	Assessee

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

3. We will first take up the Revenue's appeal and assessee's cross

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

objection in the case of Shri Mukesh Sharma pertaining to A.Y.2009-10

4 Briefly stated facts as culled out from the records are that the assessee is an individual deriving income from business and profession and agriculture. Search and seizure action u/s 132 of the Act was conducted at residential premises of the assessee on 21.07.2008. During the course of search various incriminating material were found and seized. During the course of search proceeding assessee surrendered income on various counts. Consequently, notice u/s 153A of the Act dated 10.07.2009 served upon the assessee for making necessary compliances. The assessee filed return of income on 11.02.2010 in response to notice u/s 153A of the Act for A.Y.2009-10 declaring total income of Rs.4,55,29,800/- and agricultural income of Rs.12,13,089/-. Questionnaire was issued calling various informations. Details filed by the assessee were examined along with seized documents. Income assessed at total income of Rs.7,79,03,480/- after making following additions to the income shown by the assessee:-

	A.Y. 2009-10	Amount
	Total income as shown in the return of income filed in response to notice u/s 153A of the IT. Act	4,55,29,800
Add:	Non-genuine agricultural income treated as income from undisclosed sources	9,60,589
Add:	Unexplained investment in share capital out of income from undisclosed sources as per	1,50,00,000

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

	discussion in para 3 above	
Add:	Unexplained investment in Gold jewellery as per discussion in para 5 above	6,67,090
Add:	Payment of ON money for purchase of land as per discussion in para 6 above	87,46,000
Add	Non-genuine unsecured loans as per discussion in para 8 above	70,00,000
	Total Income	7,79,03,479
	Rounded Off;	7,79,03,480
	Agricultural income	252500

5. Against various additions made by the Ld. Assessing Officer (in short Ld. AO) assessee filed appeal before the Ld. CIT(A) and partly succeeded.

6. Now the revenue is in appeal against the addition deleted by the Ld. CIT(A) and assessee has filed cross objection raising following grounds:

I.T.(SS) No.88/Ind/2013 (Revenue)

“On the facts and in the circumstances of the case, the CIT(Appeal) has erred in

- 1. Not following the provisions of section 250(1) of the Income Tax Act 1961 by not giving a notice to the Assessing Officer of the date and place for the hearing the appeal,*
- 2. Not following the provisions of section 250(2) of the Income Tax Act 1961 by not providing the Assessing Officer an opportunity of being heard at the hearing of the appeal.*
- 3. admitting additional evidences without following the provisions of rule 46A of the Income Tax Rules and relying on the facts of the case not presented by the assessee before the AO*

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

4. deleting the addition of Rs. 50500/- made by the AO on account of non-genuine agricultural income treated

5 deleting the addition of Rs. 15000000/- made by the AO on account of unexplained investment in share

6.deleting the addition of Rs. 580555/- made by the AO on account of unexplained investment in gold

7.deleting the addition of Rs. 8746000/- made by the AO on account of payment of on money for purchase of land.

8. deleting the addition of Rs. 6500000/- made by the AO on account of non genuine unsecured loans.

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.

C.O.No.76/Ind/2014 (Assessee)

That on facts and circumstances of the case and in law and in any view of the matter, the Ld. Assessing officer and Ld. CIT (A), Bhopal have erred in assessing and upholding the agricultural income at Rs.25,000/- and Rs.30,000/- per acre respectively as against total agricultural income declared Rs.12,13,089/- for 10.1 acres of agriculture land which come to Rs.1,20,100/- per acre. The summary of which is as under:

Area of Land	Agri. Income declared	Agr income assessed	Agr income after appeal effect	Addition after appeal effect
10.1 Acres	12,13,089 i.e. Rs.1,20,100/- per acre	2,52,500 i.e. Rs.25,000/- per acre addition Rs.9,60,589/-	3,03,000 i.e. Rs.30,000/- per acre deletion Rs.50500/- (303000-252500)	1213069-303000+910089 i.e. Rs.90108/- per acre

2. That on facts and circumstances of the case and in law and in any view of the matter, Commissioner of Income Tax (Appeals), Bhopal has correctly deleted the addition of Rs. on account of alleged unexplained investment in shares.
3. That on facts and circumstances of the case and in law and in any view of the matter, the Id Assessing Officer and Ld. Commissioner of Income Tax (Appeals), Bhopal , have erred in making and up holding the addition of Rs. 6,67,090/- and Rs 86,535/- on account of unexplained investment in Jewelry.
4. That on facts and circumstances of the case and in law and in any view of the matter, the Id Commissioner of Income Tax (Appeals), Bhopal has

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

correctly deleted the addition of Rs. 87,46,000/- on account of alleged unexplained investment as payment of on money in purchase of land.

5. *That on facts and circumstances of the case and in law and in any view of the matter, the Id Assessing Officer and Id Commissioner of Income Tax (Appeals), Bhopal , have erred in making and up holding the addition of Rs. 70,00,000/- and Rs. 5,00,000/- on account of non genuine unsecured loans.*

That, the respondent craves leave to add and/or amend any ground(s) of the cross objection before and/or at the time of hearing.

Revenue's appeal for A.Y. 2009-10 in case of Mukesh Sharma

7. Though ground No. 1 & 2 of Revenue has challenged the validity of the order of Ld. CIT(A) contending that the ld. CIT(A) has not followed the provisions of section 250(1) of the Act by not giving the notice to the Assessing Officer of the date and place for the hearing of the appeal.

8. At the outset, Ld. Departmental Representative (DR) placed on record letter dated 13.03.2019 requesting for not pressing ground No.1 & 2 raised in this appeal. Learned Authorised Representative (in short AR) did not oppose.

9. We have heard the rival contentions and perused the record placed before us. From going through the letter issued by the Office of Commissioner of Income Tax (DR) bearing No.F-CIT(DR)I.T.A.T./Ind/2018-19 dated 13.05.2019 we observe that the department has requested for not pressing ground No.1 & 2 raised by the Revenue in IT(SS) No.88/Ind/2013. We, therefore, dismiss ground No.1 & 2 as not pressed.

10. Now we take up ground no.3 through which revenue has challenged that the ld. CIT(A) admitted additional evidences without following provisions of Rule 46A of I.T. Rules.

11. At the outset, Ld. senior counsel for the assessee submitted that the additional evidences challenged in ground no.3 relate to addition for unexplained cash credit of Rs.70,00,000/- which were placed before the ld. CIT(A) and are going to the root cause of the issue but no remand report was called from Assessing Officer. Therefore, the issues raised in this ground no.8 for which assessee has filed additional evidences may be remanded back to the file of Ld. CIT(A) for afresh adjudication.

12. Ld. DR raised no objection if the additional evidences relating to the addition for unexplained cash credit of Rs.70 lacs raised in Ground no.8 are set aside to the Ld. CIT(A) for afresh adjudication.

13. We have heard the rival contentions and perused the record placed before us. Through ground No.3 Revenue has challenged the action of the Ld. CIT(A) admitting additional evidences without following the provisions of Rule 46A of the I.T. Rules. The ld. senior counsel for the assessee conceded that additional evidences go to the root cause of the issue relating to addition for unexplained cash credit of Rs.70 lacs and were admitted by the ld. CIT(A) without calling for remand report. Further Ld. DR raised no objection if the impugned additional evidences are remanded back to the assessing

officer for preparing remand report to be submitted to Ld. CIT(A).

We therefore, allow the revenue's ground No.3 holding that the ld. CIT(A) erred in admitting additional evidences without following provisions of Rule 46A of the IT Rules. Ground No.3 of the Revenue's appeal is allowed.

14. Now we take ground No.4 relating to deletion of addition of Rs.50,500/- made by the AO on account of non-genuine agricultural income.

15. Ld. DR vehemently argued supporting the order of the Ld. AO and ld. Senior Counsel for the assessee submitted that the assessee is holding agricultural land since last many years and is regularly carrying agricultural operations and therefore claim of agricultural income needs to be allowed.

16. We have heard the rival contentions and perused the record placed before us. This ground of appeal by the revenue is directed against the treatment of part of the agricultural income as non-genuine and income from undisclosed sources. Ld. AO while examining the assessee's claim of earning agricultural income of Rs.12,13,089/- asked the assessee to substantiated the claim by furnishing documentary evidences regarding holding of agricultural land, details of agricultural lands put to cultivation, crops grown, quantities produced, sale consideration, expenses incurred etc. and also to file the profit and loss account. We find that ld. CIT(A) while

adjudicating the issue given following finding of facts by directing the assessing officer to estimate agricultural income of Rs.25,000/- per acre for A.Y. 2003-04 and Rs.30,000/- for A.Y. 2006-07 to 2009-10 respectively.

6) Ground No.3

This ground of appeal is directed against treating of part of the agricultural income as non-genuine and income from undisclosed sources. The AO has observed that the appellant was required to substantiate the claim of earning agricultural income shown at the declared amount by furnishing documentary evidences regarding holding of agricultural lands, details of agricultural lands put to cultivation, crops grown, quantities produced, sale consideration, expenses incurred, etc. and also to file agricultural profit and loss account. It was held that as per details filed, the agricultural income comes as high as Rs.57,500/- per acre in A.Yr.2003-04 and Rs.1,20,100/- in A.Y..2009-10. The crops cultivated were traditional crops, like wheat, chana, hence, it was possible to earn such huge income. It was also observed that out of nearly 10 acres of agricultural land owned in 2005-06 to 2009-10, around 6 acres is located at village Kalapani, where only one crop of Soybean was grown. According to the AO, hardly any income would have been earned from the other smaller pieces of land. Giving the details of copies of 34 bills for expenses, and summarizing his findings, the AO has observed that the relevant documents relied also include papers pertaining to the appellant's spouse. Most of the bills vouchers did not bear the name of the purchaser. Out of 34 bills/vouchers only 15 bear the name of the appellant and could be related to his agricultural income. The petrol and diesel expenses may not relate to agricultural operations of the assessee and his family. The bills relating to purchase of khali, chunni, etc. relate to diary business. The gross agricultural receipts for the assessment years 2003-04 to 2009-10 were claimed at Rs. 42,63,178/-, but sale vouchers for Rs.1,22,337/- only were produced and out of six sale bills

produced, 4 bills relate to A.Yr.2010-11, which appear to have been obtained after search only to support claim of huge agricultural income. It was also held that the sale bills themselves cannot prove that the produce sold was obtained from the appellant's land and even a trader can sell food grains in mandi or to other traders and receive the payments through cheques and it did not mean that such income relates to agriculture income. It was also held that both wheat and chana are Rabi crops and cannot be grown simultaneously. The claim of 80 qtl.chana and 290 qtl wheat sold in the month of May, 09 is not practicable. Referring to the legal position settled in various case-laws cited at page 39 of the assessment order, the A.O. has held that the onus to prove that income sought to be taxed is agricultural income lies on the appellant, which has not been properly discharged. Therefore, the AO has rejected the tall claims. However, after considering the orders of Hon'ble ITAT, Jabalpur Bench in the case of Shri Suresh Chand Khausal vs ITO Itarasi and Shri Dulichand Goel vs DCIT, Indore and CIT vs Paras Kumar Samirmal Jain, Indore, where the agricultural income was held acceptable respectively at Rs.15,000/- per acre in A. Yr. 1998-99 and at Rs.10,000/- in the block period 01.04.1996 to 17.02.2002, the AO has estimated the agricultural income at Rs.20,000/-per acre in A.Yrs. 2003-04 to 2004-05 and at Rs. 25,000/- per acre in A.Yrs. 2005-06 to 09-10.pplying these standards, the following amounts were held as non-genuine agricultural income and treated the same as income from other sources.

<i>Ayr.</i>	<i>Agril. Income treated as income from other sources Rs.</i>
2003-04	75,000/-
2004-05	78,000/-
2006-07	8,048/-
2007-08	1,24,412/-

2008-09	3,90,000/-
2009-10	960589/-

6.1) *In the course of appeal proceedings, the ld. Counsel for the appellant has contended that the appellant owned agricultural lands with all agricultural facilities. All the necessary details were submitted during the course of assessment proceedings and since the agricultural income was exempt, no regular and proper books of accounts were maintained. According to the ld. A.R, the AO has not doubted agricultural landholdings and cultivation activity. He has accepted a part of agricultural income and estimated the balance as non-agricultural on the ground that bills, etc. were not maintained. It was contended that the two comparable cases referred by the AO cannot be taken as correct, because, the agricultural produce obtained from two lands located at different places cannot be compared, as it largely depends on various factors like fertility, availability of irrigation facilities, nature of crops grown, area of cultivation, extent of agricultural inputs, extent of mechanization, climatic conditions, availability of fertilizers, pesticides and financial capacity of the cultivator to hold the crops to get better prices in the market. The AO has not considered all these factors and estimated the agricultural income on ad hoc basis at amounts much lesser than the income shown by the appellant. Therefore, according to the ld. AR, the action of the A.O. is not correct. Finally, the appellant has relied on the decision of Hon'ble Jodhpur Tribunal in the case of Kamal Kishore Chandak vs ITO (2006) 103 TTJ (Jd)843 to support his contentions.*

6.2 *I have gone through the observations of the AO and submissions of the appellant. The dispute covered in this ground of appeal relates to reasonableness of the quantum of agricultural income shown by the appellant with reference to his landholdings. There is no dispute regarding ownership of the land so also about the cultivation activities. However, the AO was of the opinion that the appellant had shown agricultural*

income highly disproportionate to the total lands put to cultivation and crops obtained. The average per acre agricultural income shown by the appellant is as

<i>A.Y.</i>	<i>Agril. Income shown per acre Rs.</i>
<i>2003-04</i>	<i>57,500/-</i>
<i>2004-05</i>	<i>41,667/-</i>
<i>2005-06</i>	<i>16,667/-</i>
<i>2006-07</i>	<i>25,745/-</i>
<i>2007-08</i>	<i>36,510/-</i>
<i>2008-09</i>	<i>61,110/-</i>
<i>2009-10</i>	<i>1,20,100/-</i>

The onus to prove the claim of agricultural income, being an exempted income, heavily lies on the appellant. In view of the detailed findings given in the assessment order and summarized above, the appellant has not satisfactorily explained the reasonableness of the quantum of agricultural income claimed to have been earned by him. There are huge variations in the figures shown in different years, for which no explanation was forthcoming. At the same time, the estimation made by the AO cannot be held to be reasonable. The AO did not conduct any independent enquiry from revenue authorities or cite comparable cases of the close localities to support his findings. The orders of the Hon'ble ITAT Benches relate to different periods and the income held reasonable in the subsequent period is lesser than

the preceding period. Thus, it is clear that the facts of those cases are different. However, in the absence of sufficient material to support the claim, the income prescribed in the Tribunal orders can be taken as indicative and after considering the consistent figure of agricultural income shown by the appellant, the AO is directed to estimate the agricultural income at Rs. 25,000 per acre for A. Y rs. 2003 -04 and 2004-05 and at Rs.30,0001- per acre in AYrs. 2006-07 to 2009-10. This ground of appeal is, therefore, partly allowed. date of bill being 28.01.2007, it relates to F.Yr.2006-07 relevant to A.Yr.2007-08 and not in the A.yr.2008-09. Therefore, the addition made by the AO is not correct.

11.2) I have gone through the observations of the AO and submissions of the appellant. Admittedly, this bill confirms the purchase of a phone in cash. The disputed paper being cash memo, mentioning of the appellant's name is not necessary. Further, as per of provision of Section 292C of the Act, the A.O. has rightly presumed that the said paper belongs to the appellant. The appellant has not rebutted the presumption. Therefore, the addition made by the A.O. is confirmed. However, since it pertains to A.Yr.2007-08, the AO is directed to exclude the same from computation total income for A.Yr. 2008-09 and include the same in the total income of A.Yr. 2007-08. The appeal is, accordingly, dismiss.

17. From perusal of the above finding of the Ld. CIT(A) which goes uncontroverted by the ld. DR, we observe that the Revenue authorities have nowhere disputed that the assessee holds agricultural land measuring 10 acres since last many years. It is a known fact that regular maintenance of books of accounts and

documentary evidences for each and every transactions entered into during the course of agricultural operations for buying the seeds, labour charges, sale of produced, purchase of fertilizers etc. cannot be fully documented for various practical reasons. The AO has also not placed any contrary material to support its finding. Only remedy is estimation of income per acre. In certain cases as referred in the finding of the Ld. CIT(A), the tribunal has estimated income per acre at Rs. 15000/- during A.Y. 1998-99 and Rs.25000/- during A.Y. 2005-06.

18. In these given facts and circumstances of the case, we are of the view that Ld. CIT(A) has rightly estimated the agricultural income of Rs.30000/- per acre for A.Y. 2009-10. No interference is therefore called for in the well reasoned finding of the Ld. CIT(A). We uphold the same and dismiss the revenue's ground no.4

19. Now we take ground No.5 relating to addition of Rs.1,50,00,000/- made by the AO and deleted by the Ld. CIT(A).

20. Brief facts relating to this ground are that during the course of search certain documents relating to company Prem Prakash Tube Pvt. Ltd. (in short PPTPL) was found in which major shareholding is with the assessee and his family members. Subscription to the equity share capital and share premium was received at Rs.1,50,00,000/- by PPTPL during the A.Y. 2009-10. Documents also reveal that some Kolkata based company invested in the share capital of PPTPL for equity shares having face value of Rs.10 and

share premium of Rs.90 per share. During the course of search when the assessee was confronted with these documents, he admitted that the sum of Rs.1.50 crore was his undisclosed income and was introduced in the company PPTPL through various companies based in Kolkata. Later on in the income tax return filed in reply to notice u/s 153A of the Act the assessee failed to offer the alleged sum of Rs.1.50 crores for tax. Ld. AO conducted necessary inquiry to come to a conclusion that the invested companies based in Kolkata are merely accommodation entries providers and the alleged amount was undisclosed income of the assessee. When the matter come up before the Ld. CIT(A) the addition was deleted.

21. Now the revenue is in appeal before the Tribunal.

22. At the outset, Ld. Senior Counsel for the assessee submitted that the alleged share capital & share premium of Rs.1.50 crores was received in the hands of the company namely Prem Prakash Tube P. Ltd. in which Shri Mukesh Sharma is a shareholder. The Tribunal vide in ITANo.188/Ind/2013 in the case of ACIT vs. Prem Prakash Tube P. Ltd. has restored this issue of protective addition of Rs.1.50 crores relating to A.Y. 2009-10 to Ld. CIT(A) for afresh adjudication vide order dated 09.07.2015. He prayed that this ground raised by the Revenue should also be set aside to the file of the Ld. CIT(A) for deciding afresh.

23. On the other hand, Ld. DR could not controvert the submissions made by the Ld. counsel for the assessee and raised

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

no objection if the issue for unexplained investment of Rs.1.50 crores is set aside to the file of Ld. CIT(A) for deciding afresh.

24. We have heard the rival contentions and perused the record placed before us. The revenue's grievance in ground No.5 is against the finding of Ld. CIT(A) deleting addition of Rs.1.50 crores made by the Ld. AO on account of unexplained investment in shares. We observe that the assessee Mr. Mukesh Sharma along with his relatives are shareholders in the company named Prem Prakash Tube P. Ltd. During A.Y. 2009-10 amount of Rs.1.50 crores was received by PPTPL towards share capital and share premium through some corporate based in Kalkatta which were allotted the shares having face value of Rs.10 and premium of Rs.90 per share. Ld. Assessing Officer during the course of assessment proceedings made necessary enquiries and after going through the statements given by the assessee during the course of search come to a conclusion that Rs.1.50 crores was unaccounted income of the assessee which was routed through accommodation entries providers into the books of PPTPL. Protective addition of the same amount of Rs.1.50 crores was also made in the case of PPTPL. Ld. CIT(A) deleted the protective addition made in the case of PPTPL against which the revenue come in appeal before the Tribunal and PPTPL also filed cross objection.

25. The Tribunal vide ITANo.188/Ind/2013 & CO No.60/Ind/2013 dated 09.07.2015 held that the assessing officer was not heard

during the course of appellate proceedings conducted by the Ld. CIT(A) and therefore, all the issues raised in the revenue's appeal and the cross objection are set aside to the file of the Ld. CIT(A) for deciding the issue afresh.

26. As the issue before us in the instant appeal in ground No.5 relates to unexplained investment in shares of Rs.1.50 crores is very same issue which was before the Tribunal in the case of ACIT vs. PPTPL (supra), therefore, in these given facts and circumstances of the case, we are of the considered view that the instant issue raised in ground no.5 for unexplained investment of Rs.1.50 crore also needs to be set aside to the file of the Ld. CIT(A) for deciding the matter afresh after providing reasonable opportunity of being heard to the assessee. In the result ground No.5 of the revenue's appeal is allowed for statistical purpose.

27. Now we take up ground No.6 through which the Revenue has challenged the finding of the Ld. CIT(A) deleting the addition of Rs.5,80,555/- made by the Ld. AO on account of unexplained investment in gold.

28. Brief facts relating to this issue are during the course of search gold jewellery having net weight of 1199.830 gms was found from the appellant residence and the lockers available in the name of the assessee, his mother and wife. Certain bills for the purchase of 900 gms gold jewellery was found during the search along with certain evidences showing that gold jewellery weighing 1602.330 gms were

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

sold during the A.Ys. 2002-03 and 2007-08. The Ld. Assessing Officer asked the assessee to explain the total jewellery of 2802.16 gms. Necessary reply was submitted and after considering the same Ld. Assessing Officer treated 402.160 gms jewellery as unexplained and made an addition of Rs.6,67,090/-. The assessee challenged this addition before the Ld. CIT(A) and partly succeeded.

29. Now the revenue is in appeal before the Tribunal.

30. Ld. DR vehemently argued supporting the order of the Ld. Assessing Officer and Ld. senior Counsel for the assessee supported the finding of the Ld. CIT(A).

31. We have heard the rival contentions and perused the record placed before us. The revenue's grievance in ground no.6 is against deletion of addition for unexplained investment in gold jewellery of Rs. 5,80,555/-. We observe that the assessee's family consists of the assessee his mother Smt. Vimla Rani Sharma, wife Neena Sharma, son Indra Prakash and daughter Miss Ronak Sharma. As per the CBDT Instruction No.1916 dated 11.05.1994 jewellery should not be seized to the extent of 500 gms per married lady, 250 gms unmarried lady and 100 grms per male person/child. The Ld. CIT(A) after applying CBDT Instruction No.1916 gave part relief to the assessee observing as follows:

This ground of appeal is directed against the addition of Rs.6,67,090/- made on account of unexplained investments in gold jewellery. The AO has observed that total gold jewellery

having net weight of 1199.830 gms was found from the appellant's residence and the lockers available in the names of the appellant, his mother Smt. Vimla Rani Sharma and his wife Smt. Neena Sharma. It was held that Smt. Vimla Sharma and Smt. Neena Sharma have sold jewellery weighing 1602.330 gms in A.Yrs.2002-03 and 2007-08 and as per several purchase bills found during search, nearly 900 gms of jewellery was purchased in the names of the appellant, Smt. Neena Sharma and Smt. Vimla Rani Sharma. Therefore, the total jewellery of 2802.16 gms was required to be explained-by the appellant. The A.G. has held that gold jewellery totalling to 1500 gms might have been received by Smt. Vimla Rani Sharma, Smt. Neena Sharma and the appellant on various occasions including their marriage, receipts by inheritance, etc. but possession of the balance jewellery of 402.160gms (2802.160 less 1500 less 900 gms) remained unexplained. Therefore, he had worked out and made the addition at Rs.6,67,0901- applying the average rate taken in the valuation report prepared at the time of search.

13.1 In the course of appeal proceedings, the appellant has contended that the addition made by the AO is not justified. The appellant belongs to a well to do family and the entire jewellery was either inherited from the parents or received by the family members including their children on various occasions or purchased subsequently. In the course of intensive search, the details of jewellery sold and purchased were found and all these facts were accepted by the AO without any dispute. However, the AO has considered the jewellery received on marriages and other occasions by Smt. Vimla Rani Sharma, Smt. Neena Sharma and the appellant and received on inheritance only at 1500 gms. The jewellery received and owned by the unmarried children of the appellant i.e. son, Shri Indra Prakash and daughter Miss Ronak Sharma was not considered him. The balance quantity of 402.160 gms relate to the children. It was contended that even as per the CBDT's instructions regarding seizure of jewellery, jewellery in respect of unmarried daughter at 250 gms and unmarried son at 100 gm was to be considered reasonable. Therefore, even as per the standards of the Board, the credit of

350 gms should have been allowed and after giving credit of 350gms of jewellery of the children, only meager quantity of 52.160 gms remains to be explained and looking to the family status, this much of jewelery deserves to be accepted, specifically, when the A.O. has adopted ownership of inherited jewelery on estimate basis.

13.2 I have gone through the observations of the AO and submissions of the appellant. It appears, looking to the family status, the AO has given credit for 1500 gms of jewellery as received by Smt. Vimla Rani Sharma and Smt. Neena Sharma and the appellant on their marriages and that was inherited by the family and it is reasonable. However, he did not consider the availability of jewellery in the case of the children and considering the family status, it cannot be ruled out. Therefore, after considering the facts and circumstances of the case, the appellant deserves further credit of 350 gms of jewellery against holding of the children. However, there is no explanation available for the remaining quantity of 52.16 gms and the addition made by the A.O. deserves to be sustained to this extent. Therefore, applying the average rate of Rs.16.59 per gm, the unexplained investment comes to Rs.86,5351-. Accordingly the addition made by the A.O. is confirmed to this extent. The appellant gets relief of Rs.5,80,555/-. This ground of appeal is partly allowed.

32. The above finding of fact has not been controverted by the Id. DR. In our considered view the Ld. CIT(A) has rightly given the benefit of 350 gms of gold jewellery (250 gms for daughter and 100 gms for son) thereby giving relief of Rs.5,80,555/- and confirming the remaining amount as unexplained investment at Rs. 86,535/- . We therefore, find no reason to interfere in the finding of Ld. CIT(A) deleting the addition of Rs.5,80,555/- and same is upheld. Ground No.6 of Revenue's appeal stands dismissed.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

33. Now we take up Ground No.7 wherein the revenue has challenged the deletion of addition for unaccounted investment of Rs.87,46,000/- made by the Ld. A.O on account of “on money” paid for purchase of land. Brief facts relating to this issue are that search and seizure actions were carried out u/s 132 of the Act at the residence of the assessee i.e. Shri Mukesh Sharma at Bhopal on 21.7.2008. Various documents along with the memorandum of agreement to purchase 1.9 hectare of land (approximate 4.70 acre land) at Ratanpur, Misord near Bhopal dated 24.5.2008 were found. During the post search enquiry it was found that the said land was purchased on 23.6.2008 by the assessee along with 14 other co-purchasers which belong to a place called Dabra. 21 registration deeds were made showing total sale consideration at Rs. 5 crores and Rs. 49,18,335/- (roughly Rs.50 lakhs) as registry charges, stamp and other fees were incurred as detailed below;

S.No	Name of the Purchasers	Amount of Registry (Rs.)	Stamp Duty (Rs.)	Stamp Paper fee (Rs.)	Other fees (Rs.)	Khasra No./total area	Area sold
1	RC Parashar	2700000	239625	600	21775	556/(1.1 80 hec.)	0.100 Hec.
2	-do-	2595000	230310	280	20935	556/(1.1 80 hec)	0.080 Hec.
3	Lalta Prasad Choudhary	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
4	Kamlesh Choudhary	479000	42520	2500	4010	559/(0.1 60 Hec.)	0.020 hec.
5	-do-	2168000	192500	3000	17520	557/(0.4 00 hec.)	0.080 hec.
6	-do-	2647000	235000	3000	21355	556/(1.1 80 hec.)	0.100 hec.
7	Khemraj singh Chouhan 12680	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
8	-do-	1563000	138720	680	12680	556/(1.1	0.060

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

						60 hec)	Hec
9	-do-	1084000	96205	1000	8850	559/(0.1 60 hec.	0.040 hec.
10	Santosh Kumar Sharma	2647000	235000	2500	21355	558/(1.1 60 hec.	0.100 hec.
11	Sukhdev Singh	2647000	235000	3000	21355	557/(0.4 00 hec.	0.100 hec.
12	Suresh Upadhya	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
13	Dharmendra Choudhary	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
14	Ram Kumar	2647000	235000	3000	21355	557/(0.4 00 hec.	0.100 hec.
15	Virendra Kumar Sharma	2647000	235000	3000	21355	557/(0.4 00 hec.	0.100 hec.
16	Sanjay Sahu	2647000	235000	3000	21355	559/(0.1 60 hec.	0.100 hec.
17	Pradeep Kumar Sharma	2647000	235000	3000	21355	559/(0.1 60 hec.	0.100 hec.
18	Chandra Kumar Sharma	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
19	Vijay Kumar Shrivastava	2647000	235000	3000	21355	556/(1.1 80 Hec.)	0.100 hec.
	Total	45000000	3994880	45560	363385		
20	Mukesh Sharma	2647000	235000	900	21355	556/(1.1 80 Hec.)	0.100 hec.
21	Mukesh Sharma	2647000	235000	900	21355	556/(1.1 80 Hec.)	0.100 hec.
	Grand Total	50000000	4464880	47360	406095	54918335	

34. Mr. Mukesh Sharma was confronted with these documents at the time of search. He stated that these pertains to the land deal with Mr. Vinod Vaish and he along with other purchasers purchased agriculture land for total sum of Rs.5 crores plus registry charges. Ld. A.O thereafter issue notice u/s 153A of the Act dated 10.7.2009 directing the assessee to file the return of income. Assessee complied to the notice and filed income tax return. Case was selected for scrutiny by issuing notices u/s 143(2) and 142(1) of the Act. As regards the issue of purchase of land discussed above the Ld. A.O

examined these transactions along with seized documents LPS-1/1 page No.74 (front and back) which contained certain calculations for the alleged land deal with Mr. Vinod Vaish. Ld. A.O observed that certain details of receipt and payments and some calculation were there on these loose papers. On back side certain calculations have been made. The alleged seized documents forms part of impugned assessment order at page 51to 55. When the assessee was confronted with these seized documents it was submitted that these are merely rough jottings and the calculations relates to the future planning of selling the agriculture land after converting it for residential purpose. However Ld. A.O was not convinced with the submissions. On observing the fact that the actual transaction relating to purchase of land was having some nexus with the seized document which included the reference to cheque payment of Rs.50 lakhs, area of land, the figure 225 mentioned in the seized document denoting the cheque of Rs.225 lakhs deposited in the bank account of co-purchasers. Ld. A.O also linked the amount of Rs.323 lakhs mentioned on the seized documents with the cash deposited in the bank account of the co-purchasers. On the basis of these facts Ld. A.O came to the conclusion that the actual deal of land was carried out at Rs.14,24,60,600/- out of which Rs.5 crores was the stated purchase consideration and Rs.49,18,335/- roughly to Rs.50 lakhs was the registry charges, stamp and other charges. Ld. A.O also held that the land measuring 4.70 acres which is equal to 43,560 sq.ft sold @Rs.660/- per sq.ft for total consideration of Rs.13,65,60,600/-

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

and Rs.9,00,000/- was paid to a person named Kaushal Bhaiya for arranging entries in the name of various parties i.e. the co-purchasers. This unaccounted payment in the entire deal was worked out by Ld. A.O at Rs.8,74,60,600/- (Rs.13,65,60,600/-+ Rs.9,00,000/- (-) Rs. 5,00,00,000/-). Since the assessee's share in the stated consideration is 1/10th only, the unaccounted payment alleged to have been made by the assessee was added at Rs.87,46,000/- as undisclosed income. On the basis of the finding by the Ld. A.O in the case of Mr. Mukesh Sharma addition for unaccounted receipt of Rs.8,74,60,600/- was also made in the hands of the seller namely Mr. Vinod Vaish. Subsequently Ld. CIT(A) vide his order dated 28.3.2013 passed u/s 263 of the Act held that the order of the Ld. A.O passed in the case of Mr. Mukesh Sharma dated 31.12.2010 was erroneous and prejudicial to the interest of revenue and directed the Ld. A.O to examine the issue of undisclosed income invested in the purchase of said agriculture land and to make total addition of Rs.8,74,60,600/- in the hands of Mr. Mukesh Sharma as the other co-partners were merely accommodation entry providers as they were funded by Mr. Mukesh Sharma to make the payment for purchase of property. However the assessee Mr. Mukesh Sharma succeeded in the appeal before the Tribunal against the order passed u/s 263 of the Ld. CIT(A) vide order dated 31.10.2014 in ITA No.366 to 372/Ind/2013 as the order passed u/s 263 of the Act dated 28.03.2013 was quashed by Tribunal.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

35. In the case of other 14 co-purchasers protective addition of Rs.8,07,43,547/- was made after giving the credit of income surrendered by them in their income tax return.

36. The assessee Mr. Mukesh Sharma aggrieved with the order of the Ld. A.O dated 31.10.2012 filed appeal before Ld. CIT(A) challenging various additions. The additions have been discussed in other grounds raised by the Revenue. As far as the issue relating to the addition of Rs.87,46,000/- assessee succeeded before Ld. CIT(A) as this addition was deleted by Ld. CIT(A) giving detailed finding of fact and coming to a conclusion that the impugned addition was based on the basis of seized document and jottings contained in these loose papers may have generated a suspicion but they were not sufficient enough to conclude that the alleged "on money" has changed hands as there is no corroborative evidence to prove it.

37. Now revenue is in appeal before the Tribunal raising Ground No.7.

38. Ld. Departmental Representative vehemently argued supporting the order of Ld. AO. She also referred to the finding of Ld. CIT(A) in the case of co-purchasers where detailed finding is given that other co-purchasers are not man of means to the extent of income they have shown for Assessment Year 2009-10 It was only for Assessment Year 2009-10 that they had disclosed higher income but in the subsequent assessment year normal income have been shown. These co-purchasers have also offered the unsecured loan

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

taken during the year to tax. Cash was deposited in their respective bank accounts which is alleged to have been received from Mr. Mukesh Sharma. She further submitted that various figures mentioned in the alleged seized documents seems to have direct nexus with the actual land deal and Ld. A.O was justified in making the addition for “on money” paid at Rs.8,74,60,600/-.

39. Per contra Ld. Counsel for the assessee submitted that the purchase of the land were made by the assessee along with other persons but there was no direct relation with them. Notings found in the papers reproduced at page 51 to 55 of the assessment order depicted in the seized document are rough notings. They do not contain any date, name or narration against the calculations. The assessee along with other buyers has made a planning regarding future prospects of the land after completion of the transaction and the alleged seized documents are dumb documents and they cannot be relied as the assessment order making additions by it is mischievous. The calculation made by the Ld. A.O are based only on suspicion and assumption and are not supported with any coherent material as assumed by the Ld. A.O, over and above the amount of investment shown by the appellant. Ld. Counsel for the assessee further asserted that the alleged papers relates to future planning with respect to the land and loose paper No.74 & 75 was shown for the prospective buyers in furtherance of their business. No such transaction ever happened. The situation of land i.e. Ratanpur, Misrod is slightly away from Bhopal and at the relevant point of time

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

at no stage the rate was Rs.660/- per sq.ft. It was also submitted that the land under consideration was agriculture land and un diverted land which was not commanding such price as assumed by the Ld. A.O. There is no corroborative evidence which could support the rough jottings made on the seized documents. Registered sale deed has been signed by all the concerned parties i.e. the buyers and sellers and transactions taken place through account payee cheques. Revenue authorities have not initiated any action for valuing the property by registered valuer or Departmental Valuation Officer so as to prove that the market price of the alleged agriculture land was much more than the stated sale consideration of Rs. 5 crores. He further submitted that all the other persons who are the co-partners in purchasing the land have filed their respective Income Tax Returns showing sufficient income to cover up the purchase consideration. Under these circumstances the addition made by the Ld. A.O was not justified and Ld. CIT(A) has rightly deleted the addition.

40. In support of the contention that no addition is possible on account of imaginary and non reliable entries found in diary and loose papers. Ld. Counsel for the assessee placed reliance on the following judgements of Hon'ble Apex Court/Hon'ble High Courts and Tribunals;

Sr. No.	Party Names & Citation	Proposition	Para	Page No
1	(1998) SCC 410 CBI v. V.C. Shukla	Entries appearing in loose paper not seized from one person cannot from evidence for another person	Para 34 & 39	1-18
2	(1988) 172-ITR 250/251 (Hon'ble Supreme Court) Chuharmal vs. CIT	Rule of evidence & Salutory principal of common law jurisprudence	Para 6 & 7	19-22
3	(2001) 70 TTJ (Ahd) 122 Prarthana Construction (P) Ltd. vs. DCIT	The presumption under the provision of section 132(4A) would in any case not applicable to a third party from whose possession such papers and documents have not been obtained	Para 12	23-29
4	(1991) 39 ITD 183(Del) Ashwin Kumar vs. ITO	The loose sheet forming part of seized material is a dumb document and no addition can be made in the hand of assessee on the basis of dumb documents	Para 24	30-38
5	(2005) 1 SOT 515 (Del) Nem Chand Daga v. ACIT	Whether entries found in loose paper can have any authenticity or evidentiary value value-in self-held no	Para 16 & 21	39-50
6	(2002) 82 ITD 85 (Mum) (TM) S.P. Goyal vs. DCIT	Addition cannot be made on basis of entry on loose paper is has to be supported by circumstantial evidence and corroborative evidence	Para 11 and para 15 of Second part	51-62
7	(2008) 307 ITR 137(Guj) CIT vs. Maulik Kumar K Shah	The addition made by the AO toward "on money" on the basis of seized paper along without any corroborative evidence accnot be sustained	Para 6	63-66
8	(2007) 291 ITR 36 (Delhi) CIT v. Kulwant Rai	No addition can be made based on surmises and gues work	Para 12 & 13	67-70
9	(2007) 289 ITR 509 ACIT v. Kences Foundation P. Ltd.	Seized docuemnts are not a conclusive proof to arrive at undisclosed income	Para 16 & 17	71-75
10	(2009) 308 ITR 230 (Del) CIT v. D.K. Gupta	If there is no corroborative or direct evidence to presume that the notings/jottings has materialized into transactions giving rise to income not disclosed in the books by the assessee the department's presumption cannot	Para 3	76-78

		be tenable in law		
11	(2008) 301 ITR 134 (MP) Prakash Chand Nahta v. CIT	That seized document must be speaking document no addition permissible on the basis of dumb papers	15 & 16	79-83
12	(2007) 295 ITR 352(Jabalpur I.T.A.T.) ACIT v. Satyapal Wassam	That seized document must be speaking document no addition permissible on the basis of dumb papers	Para 29	84-110
13	(2008) 25 SOT 387 (Kol) Nirmal Fashions (P) L. v. DCIT	Since paper/documents seized on search were found to be untenable and contrary to ther evidence on record impugned addition was not justified		111-118
14	(1997) 224 ITR 180 CIT vs. Ram Narain Goel	That suspicion however strong cannot take the place of evidence or proof	Para 5 & 6	119-121
15	(2003) 262 ITR 295 (P & H) CIT vs. Faqir Chaman Lal	It is settled proposition that the presumption however strong cannot substitute evidence	Para 3	122-124
16	(2001) 250 ITR 539 CIT vs. Emerald Commercial Ltd. & Anr.	The finding of the Income Tax Officer and CIT(A) were based on presumption and not warranted by the facts of the case	Para 5 & 6	125-126
17	332 ITR 468 (P&H) CIT vs. Atam Valves P. Ltd.	As such the Ld. CIT(A) to that extent is justifies in holding that estimation of sales on the basis of lose slips represented payment of wages is not possible	Para 2	128
18	(2003) 84 ITD 320 (Mum) Straptex (India) P. Ltd. v. DCIT	The presumption under the provision of section 132 (4A) would in any case not applicable to a third party from whose possession such papers and documents have not been obtained	Para 7	129-135
19	(2006) 99 ITD 177 (Del)	Dumb Documents or documents with no certainty have no evidentiary value	Para 36	136-153
20	(2017) 394 ITR 220 (Hon'ble Supreme Court) Common cause (A registered Society) v. UOI	Investigation could not have been directed in cas of high public functionaries on the basis of legally inadmissible evidence in form of loose papers		154-162
21	(2018) 32 ITJ 510 (Trib- Indore) Assessment. CIT v. Narottam Mishra	AO made additions without any basis and only on the basis of suspicion and doubts and the reference drawn by AO were also	36	163-193

		not base on the reliable evidence and material –CIT(A) was right in allowing relief to the assessee		
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Reliance was also placed on following judgments;

- (i) Central Bureau of Investigation V V.C. Shukhla (1998) Taxmann.com 2155(SC)
- (ii) Chuharmal V/s Commissioner of Income Tax (1998) 172 TR 250/251 (SC)
- (iii) Prarthana Constructions Pvt. Ltd V/s Deputy Commissioner of Income Tax (2001) 70TTJ (Ahd) 122
- (iv) Ashwin Kumar Vs Income Tax Officer (1991) 39 ITD 183 (Del)
- (v) Nem Chand Daga V/s Assistant Commissioner of Income Tax (2005) 1 SOT 515 (Delhi)
- (vi) S.P. Goyal Vs Deputy Commissioner of Income Tax (2002) 82 ITD 85 (Mum) (TM)
- (vii) Commissioner of Income Tax V/s Maulikumar K. Shah (2008) 307 ITR 137 (Guj.)
- (viii) Commissioner of Income Tax Vs. Kulwant Rai (2007) 291 ITR 36 (Delhi)
- (ix) Assistant Commissioner of Income Tax Vs. Kences Foundation Pvt. Ltd (2007) 289 ITR 509 High Court of Madras
- (x) Commissioner of Income tax Vs D.K. Gupta (2009) 308 ITR 230 (Del) High Court of Delhi
- (xi) Prakash Chand Nahta Vs Commissioner of Income Tax (2008) 301 ITR 134 (MP) High Court of Madhya Pradesh
- (xii) ACIT V/s Sri Satyapal Wassan (2007) 295 ITR 352 ITAT, Jabalpur Bench
- (xiii) Nirmal Fashions (P) ltd Vs. DCIT (2008) 25 SOT 387 (Kol) ITAT, Kolkata Bench
- (xiv) Commissioner of Income Tax Vs Tam Narain Goel (1997) 224 ITR 180, Punjab & Haryana High Court.
- (xv) Commissioner of Income Tax Vs. Faqir Chand Chaman Lal (2003) 262 ITR 295 (P&H)
- (xvi) Commissioner of Income Tax Vs. Emerald Commercial Ltd & Ors (2001) 250 ITR 539, High Court of Calcutta
- (xvii) Commissioner of Income Tax Vs. Atam Valves (P) Ltd 332 ITR 468 (P&H)
- (xviii) Starptex (India) (P) Ltd Vs. Deputy Commissioner of Income Tax (2003) 84 ITD 320 (Mum)
- (xix) Bansal Strips Pvt. Ltd Vs. Asstt. Commissioner of Income Tax (2006)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

99 ITD 177 (Del.)

(xx) Common Cause (A registered Society) Vs Union of India (2017) ITR 220 (SC)

(xxi) Asstt. Commissioner of Income tax Vs. Narottam Mishra (2018) 32 ITJ 510 (Indore) ITAT, Indore Bench.

(xxii) Bansal Strips Pvt. Ltd V/s ACIT (2006) 99 ITD 177 (Del)

41. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments/decisions of Hon'ble Apex Court/High Courts and Tribunals. In Ground No.7 raised by the revenue in the case of Shri Mukesh Sharma for Assessment Year 2009-10 the finding of Ld. CIT(A) has been challenged for the deletion of addition for unaccounted investment of Rs.87,46,000/- alleged to have been made on account of 'ON MONEY' paid for purchase of land. On 21.7.2008 search and seizure action u/s 132 of the Act was carried out at the residence of assessee at Bhopal. Various documents were seized which also included memorandum of agreement to purchase 1.9 hectare of land (approximately 4.70 acre land) at Ratanpur, Misrod, near Bhopal dated 24.5.2008. Statements of the assessee were taken. During post search enquiry it was found that through the above referred agreement 21 sale deeds were registered in the name of assessee and 14 other co-purchasers to purchase the land from Mr. Vinod Vaish. The total consideration paid for the purchase of land was Rs.5 crores along with payment on stamp duty charges at Rs.46,64,880/- and other charges. At the cost of repetition we are again reproducing the details of 21 sale deeds;

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

S.No	Name of the Purchasers	Amount of Registry (Rs.)	Stamp Duty (Rs.)	Stamp Paper fee (Rs.)	Other fees (Rs.)	Khasra No./total aria	Area sold
1	RC Parashar	2700000	239625	600	21775	556/(1.180 hec.)	0.100 Hec.
2	-do-	2595000	230310	280	20935	556/(1.180 hec)	0.080 Hec.
3	Lalta Prasad Choudhary	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
4	Kamlesh Choudhary	479000	42520	2500	4010	559/(0.160 Hec.)	0.020 hec.
5	-do-	2168000	192500	3000	17520	557/(0.400 hec.)	0.080 hec.
6	-do-	2647000	235000	3000	21355	556/(1.180 hec.)	0.100 hec.
7	Khemraj singh Chouhan 12680	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
8	-do-	1563000	138720	680	12680	556/(1.160 hec)	0.060 Hec
9	-do-	1084000	96205	1000	8850	559/(0.160 hec.	0.040 hec.
10	Santosh Kumar Sharma	2647000	235000	2500	21355	558/(1.160 hec.	0.100 hec.
11	Sukhdev Singh	2647000	235000	3000	21355	557/(0.400 hec.	0.100 hec.
12	Suresh Upadhya	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
13	Dharmendra Choudhary	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
14	Ram Kumar	2647000	235000	3000	21355	557/(0.400 hec.	0.100 hec.
15	Virendra Kumar Sharma	2647000	235000	3000	21355	557/(0.400 hec.	0.100 hec.
16	Sanjay Sahu	2647000	235000	3000	21355	559/(0.160 hec.	0.100 hec.
17	Pradeep Kumar Sharma	2647000	235000	3000	21355	559/(0.160 hec.	0.100 hec.
18	Chandra Kumar Sharma	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
19	Vijay Kumar Shrivastava	2647000	235000	3000	21355	556/(1.180 Hec.)	0.100 hec.
	Total	45000000	3994880	45560	363385		
20	Mukesh Sharma	2647000	235000	900	21355	556/(1.180 Hec.)	0.100 hec.
21	Mukesh Sharma	2647000	235000	900	21355	556/(1.180 Hec.)	0.100 hec.
	Grand Total	50000000	4464880	47360	406095	54918335	

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

42. During the course of search various documents were seized which also included LPS 1/1 page No.74 & 75 (front and back). These seized loose papers contained certain entries and calculations. These are not signed by any of the parties. For better understanding we reproduce below the scan copy of the typed version of seized document on the basis of which the Ld. A.O came to a conclusion that "ON MONEY" of Rs.8,74,60,600/- was paid by all the purchasers including the assessee to Mr. Vinod Vaish and to the extent of assessee's share in the land i.e. 10% addition for unaccounted investment of Rs.87,46,000/- was made by the Ld. A.O. In the assessment order Ld. A.O has reproduced the original seized document as well as typed version of the seized documents which are placed at page 53 and 55 of the paper book.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

Page No 74 & back

It is detailed calculation of land deal with Shri Vinod Vaish for Rs 5 crore. The details of registry & payments in each deal has been given. On back side certain calculations have been mentioned.

4.75A.... - 206910 Sq ft @ 660 per Sq ft = 136560600 then below it is mentioned.

011.00 B	
400.00 B	
050.00 Che	
<u>100.00</u>	
561.00	
<u>125.00 Che</u>	
686.00	
450	
<u>- 125</u>	
<u>325</u>	
<u>100</u>	
<u>425</u>	134491500
B .680	<u>112500000</u>
<u>- 425</u>	<u>220</u>
250	<u>184</u>
	15.00
	<u>2.50</u>
	17.50
	<u>4.25</u>
	3.25
	<u>21.75</u>
	1.00
	160
5.00	
1.50	
<u>2.00</u>	
<u>8.50</u>	

Seized document LPS 1/1 page 75 which contains jottings of certain calculations pertaining to payments made in connection with a particular land deal is reproduced below:

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

Page No 75
4.75
<u>x 43560</u>
206910 Sq ft
<u>660</u>
136560600
5000000 (Reg kharch + stamp + receipt)
141560600
<u>900000</u> (kaushal bhaiya)
142460600
011
400
<u>050</u>
461
225
<u>323</u>
<u>548</u>
548
<u>+461</u>
1009
1424
- <u>1009</u>
- <u>0415</u>
Indore - 15 + 5 =20
500
<u>-415</u>
85
Indore

43. In the seized document LPS 1/1 page No.74 there were also details of bifurcation of the total land along with the amount paid for which portion and the total consideration for 1.9 hectare land is stated at Rs. 5 crores only.

44. Now coming to the English typed version of the seized documents scanned above these contains various figures and certain calculation for 206910 sq.ft land @660/- per sq.ft. These are loose papers having no specific mention of names of the related parties.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

Mr. Mukesh Sharma has denied to have made the alleged unaccounted investment. As far as these loose sheets are concerned it has been stated that the co-purchasers including the assessee were planning to sell the land in future @660/- per sq.ft. It is contended by Ld. Counsel for the assessee that the land purchased is agricultural land and as per the stamp valuation authorities the circle rate of the alleged land was below the stated purchase consideration of Rs.5 crores and by no stretch of imagination the value of the land can be Rs.13,65,60,600/- as shown in the alleged seized document at page-74 arrived at by multiplying 206910 sq.ft with the rate of Rs.660/- per sq.ft.

45. Ld. Counsel for the assessee also contended that notings made on the loose papers were rough notings and they have no relation with any transaction happened on or before the date of search and no addition can be made on the basis of rough jottings. Further all the other co-purchasers have duly reflected their investment in the purchase of land and they have also offered income for tax which is not in dispute. The seller has also not stated to have received any 'ON MONEY' from the purchaser. Sale deeds have been signed by all the concerned parties in the presence of the registering authority. It is not the case that the stated consideration of Rs.5 crores is less than the circle rate. The Ld. A.O has also not taken any pains to get the valuation of the land from the approved valuer before coming to the conclusion that the fair market value of the land was much more than stated consideration.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

46. We find that Ld. CIT(A) after appreciating the fact deleted the addition of Rs.87,46,000/- observing as follows:-

“This ground of appeal is directed against addition of Rs.87,46,000/-- made on account of payment on money for purchase of land. The AO has observed that certain documents along with a memorandum of agreement for purchase of land of 1.9 hectares (4.70 acres) at Ratanpur, Miss Road near Bhopal was seized in the course of search at the appellant's residential premises. Further, it was held that in the course of subsequent enquiry, it was found that the land was purchased by the appellant along with 14 other persons on 23.06.2008 for total sale consideration of Rs.5 crores and Rs.49,18,355/- (roughly Rs.50,00,000/-) was incurred towards registry charges, stamp duty, etc. This land was purchased from Shri Vinod Vaish and his family members through 21 registries. In the course of search, the appellant has admitted that the entire amount of Rs.5 crores pertains to him and he was ready to surrender the amount as his undisclosed income. The AO further held that seized documents showed that total payment of Rs.14,24,60,600/- was made in the land deal out of which Rs.5,50,00,000/- (including registry charges) was paid and the balance amount was paid in cash over and above the stated purchase consideration. The AO has held that page no.74 of LPS-III and back side of the said page, give detailed calculations of the land deal with Shri Vinod Vaish. As per calculation given in page no.75, the area in sq.ft comes to 206910 sqfts and the total cost @Rs.660/- per sq.ft works out to Rs.13,65,60,600/- and after including Rs.50,00,000/- towards registry expenses and Rs.9,00,000/- paid to one Shri Kaushal Bhaiya, the total amount works out to Rs.14,24,60,600/-. The payment details are given on the reverse side on page no. 74. He further held that page no. 26 of loose paper of LPS-I/l give names of 14 persons in whose names the land was purchased. Therefore, the AO has concluded that the persons are known to the appellant and are under his control. The AO had further held that cheque payment of Rs.50,00,000/- mentioned in page no.74 backside gets corroborated with the actual cheque payment of Rs.50,00,000/- made on 23.05.2008. The area of the land and the registration expenses tally with the actual area of the land and the amount of expenditure incurred with the

registration. The amount of 225 mentioned in this document denotes the amount of Rs. 225,00,000/- deposited in DDI cheque in the bank account of 14 purchases of Dabra. The amount of Rs.3,23,00,000/- mentioned on this document is the amount of cash deposited in the bank accounts of these 14 purchases. It was also held that the documents at page no. 74 backside and 75 also corroborated with each other. Accordingly, the AO has inferred that the total payment of Rs.14,24,60,600/- was made for purchasing the land and the unaccounted payments in the entire deals works out to Rs.8,74,60,600/- (Rs.13,65,60,600 + 9,00,000 - 50,00,000/-). Since, the assessee's share was 1/10th, the AO has added Rs.87,46,000/- as his undisclosed income.

15.2 In the course of appeal proceedings, the Id. Counsel for the appellant has contended that the action of the Id. AO is not justified. Though the appellant has purchased the land simultaneously with other persons, he had no direct or indirect relation with them. Notings found in the papers reproduced at page no.51-55 of the assessment order are rough notings. There are no dates, names or narration mentioned against these calculations. The appellant along with the other buyers has made a planning regarding further prospects of the land after completion of the transaction and these papers are dumb documents and they cannot be relied up on for the purpose of assessments by any stretch of imagination. It was further contended that the calculations made by the AO are merely based on suspicion and presumption and without any supporting cogent material to establish the fact of investment as assumed by the AO over and above the amount of investments shown by the appellant. In this connection, the appellant further contended that these papers relate to future planning with respect to the land and loose paper no.74 and 75 were made for showing them to a prospective buyer in furtherance of their business. The figures were written only to make believe the prospective customers about the transaction, whereas no such transactions had ever happened. The appellant further contended that Ratanpur, Misrode is slightly away from Bhopal and the relevant land had no rate of Rs.660/- per sq.ft at the relevant point of time. Filing a copy of the written submission made during the course of assessment proceedings, the appellant has contended that land under

consideration was agricultural and un-diverted land and it was not commanding any such price as assumed by the AO. The estimated rough jottings at page no.75 relate to the calculation of estimated return after diversion of land for residential and commercial purposes after obtaining necessary approvals from various authorities. Therefore, the action of the AO, treating the documents as correct evidences is not justified and hence, the addition is also not correct. The appellant has also referred to the statement of Shri Vinod Vaish to press his point that no such payment was made. It was contended that Shri Vinod Vaish has denied receipt of any such payments. It was also contended that as per the appellant's information all other persons, who have purchased the land, have also filed their individual returns of income and the same were accepted without any reservations. Under these circumstances, the appellant has stated that the addition made by the AO is not correct. Finally, the appellant has relied on several case laws to support this contention that no addition is possible on account of imaginary and non-reliable entries found in diary/loose papers.

15.3 I have gone through the observations of the AO and submissions of the appellant. The AO has made the addition mainly on the basis of inferences drawn about the jottings contained in loose papers - LPS-111 page no.74 back side and page no. 75 . The AO has summarized the basis of his conclusions at page no.58 of the assessment order by stating that the cheque payment of Rs.50,00,000/- on the backside of page ~ no.74 tallies with the actual amount of Rs.50 lakhs paid on 23.5.2008. The area of land and registry expenses tally with the actual land area and the expenses incurred on registration. The figure of '225' mentioned at page no.75 denotes the amount of Rs.225 lakhs deposited by DD/ cheque in the bank accounts of 14 persons of Dabra. The figure of '3.23' mentioned in these documents tallies with the amount of cash deposited in the bank accounts of the 14 persons plus registration charges and page no.74 back side and page no. 75 corroborated each other. Though the first observation is found to be correct, the subsequent observations are only inferences and are not based on facts. There is nothing unusual in tallying the land area. The amount of registration expenses were incurred at Rs.49, 18,335/- and not Rs.50,00,000/-, i.e., the figure mentioned against the narration. The total of the amount

deposited through DD/ cheques in the bank accounts of the 14 persons comes to Rs.2,70,05,400/- and it is not matching with the figure of '225'. Similarly, the total amount of cash deposited in the bank: accounts of the 14 persons comes to Rs.2, 76, 77 ,877/-. Thus, it is also not tallying with the figure of '323'. Since, the above figures are not tallying with the above figures, it cannot be concluded that page no.74 backside and 75 are corroborative to each other. Except these jottings, there are no other corroborative evidences to justify the addition. On the contrary, the appellant's contention that the entire exercise is based on inferences carries more force.No incriminating documents establishing transfer of funds between the buyers and the sellers were found. The land was purchased at a price higher than the Guide Line Price fixed by the Collector. The land was un-diverted agricultural land and considering the location and the status of the land, it did not command such price as opined by the A.O. Under these circumstances, I am of the considered opinion that though the jottings contained in the loose papers may generate a suspicion, they are not sufficient enough, without corroborating evidences, to conclude that actual money has changed hands. In this view of the matter, the addition covered in this ground of appeal is not sustainable, hence, deleted. This ground of appeal is, accordingly, allowed".

47. After perusal of the finding of Ld. CIT(A) and also examining the facts of the case. We observe that except the loose papers, other evidences placed on record clearly proves that the transaction of purchase of land took place and the assessee and other co-purchasers purchased 1.9 hectare land from Mr. Vinod Vaish and total consideration paid by the purchasers as per the registered sale deeds is Rs.5 crores. What remains to be adjudicated in the light of judicial pronouncements is that whether the Ld. A.O was justified in making the addition merely on the basis of loose papers found during

the course of search without establishing any nexus with the actual transaction or placing any corroborative evidence on record.

48. In the case of Ashwin Kumar V/s ITO (supra) the Tribunal held that *“when a dumb document, like the present slip, is recovered and the revenue wants to make use of it, it is the duty of the revenue to collect necessary evidences which may provide acceptable narration to the various entries. The evidences collected should be such that any reasonable man would accept the hypothesised advanced by the revenue, that the figure written on the right side of the slip represent incomes earned by the assessee. It was conceded by the Departmental Representative that no such evidence have brought out on record”*.

Hon'ble Supreme Court in the case of Dhakeshwari Cotton Mills Ltd V/s CIT 1954 261 ITR 775 held that *“in making assessment u/s 23(3) of the Indian Income Tax Act, the ITO is not fractured by technical rules of evidence and fluctuations and he is entitled to act on material which may not accept an evidence in the court of law, but the IT is not entitled to make and power comes and making assessment without reference to any evidence or any material delivered. There must be something more than more where suspicion to support the assessment u/s 23(3)”*. The rule of law on this subject has been fully and rightly stated by Hon'ble High Court in the case of Sree Shanmugar Mills Ltd v/s Commissioner of Income Tax, Punjab 1944 12 ITR 393. Similar view was also taken by Delhi Tribunal in the case of Bansal Strips V/s ACIT (supra) observing that *“the A.O cannot first make certain conjectures and surmises and thereafter deemed provisions based on such conjectures and surmises”*. In the absence of material as to the nature of ownership of the transaction, undisclosed income cannot be assessed in the hands of the assessee summarily by arithmetically total various figures dotting down on the loose document. Any other seized for the purpose of exercising to deemed provisions dumb documents order documents with no certainty for no evidential value”.

49. Hon'ble High Court of Delhi in the case of CIT V/s Anil Bhalla (2010) 322 ITR 191 (Del) also held that *"when no independent material or evidence has been brought on record by the A.O to establish that the notices of jottings of loose sheets or on the paper written on accounted transactions cannot be made"*.

50. Hon'ble High Court of Gujarat in the case of CITV/s Maulikumar K Shah 2008 307 ITR 137 wherein it has held that *"the additions made by the A.O on the basis of seized paper alone without any corroborative evidence could not be sustained"*.

51. Similar view was taken by the Co-ordinate Bench in the case of M.M. Financiers V/s DCIT 2007 107 TTJ 200 (Chennai).

52. There are also certain legal precedent which clarifies that the loose documents cannot alone make basis where loose sheets are found, there was inference drawn by the AO that they represent concealed transactions but such inference can be positively made only on identification of papers and after due verifications. Figures therein cannot be rightly inferred to represent un accounted income unless there is something more to it.

53. In the case of CIT V/s Girish Choudhary 2008 296 ITR 691 (Delhi) the Hon'ble High Court had dismissed the revenue's appeals holding that *"when there was no materials on record to show on what basis the AO had reached to the conclusion that the figure 48 was to be read as Rs.48 lakhs when the document recovered during the course of search a dumb document and lead nowhere"*.

54. Hon'ble High Court of Madras in the case of CIT vs. P. V Kalyanasundaram (*supra*) wherein also addition was made in the appellants income towards purchase consideration of land merely on the basis of statement of sellers who gave contradictory statements. No independent enquiry was carried out to value the property in order to support the addition. For proper understanding we are reproducing the issue involved, facts and the judgment as follows;

"A) Whether or not when the Returns and the Statements of the seller admit higher sale consideration actually received, the revenue is justified in fixing the sale consideration at the higher amount than what has been declared?"

B) When the Assessee did not give any explanation to the notings found and at the same time the revenue is able to corroborate the same with the statement of the seller for the purpose of determination of actual sale value, would the lower authority be justified in interfering with the same? C) When consistent sworn statements were taken into consideration along with evidences found at the time of search, would all be liable to be rejected on the basis of one statement in between contradicting the earlier ones which was also explained away as a result of intimidation?"

2. The facts leading to the above questions of law are as under:

i) The assessment was made under Section 158BC of the Income Tax Act. The relevant Block Period was 01.04.1988 to 08.12.1998. The assessee had purchased land at Brindavan Road, Fairlands, Salem on 26 .10.1 998. The land was registered for Rs.4.10 lakhs. During the course of search in the office premises of Polimer Net Work, certain notings were found in the seized material RK/S/B&D/25. In the statement recorded on 08.12.98, the assessee stated that he did not remember for what purpose he had made

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

notings, which was confirmed by the assessee in a subsequent statement recorded on 11.12.1998. The land was purchased from one Shri Rajarathinam. His statement was also recorded on the date of search i.e. 08.12.1998 and also on 11.12.1998. In the sworn statement dated 08.12.1998, in question No.3, Shri Rajarathinam admitted that he had received Rs.4.10 lakhs as sale consideration but in question No.4, he admitted that he had received Rs.34.35 lakhs. Again in the statement recorded on 11.12.1998, Shri Rajarathinam, the seller admitted that a total consideration of Rs.34.85 lakhs was received from the assessee out of which Rs.4.10 lakhs was received in demand draft and the balance in cash. In the affidavit given on 08.01 .1999 by Shri Rajarathinam, it was mentioned that the sale consideration received by him from Sri P.V.Kalyanasundaram i.e. the assessee, was only Rs.4.10 lakhs and the earlier statements given before the Income Tax authorities were not true. On 10.08.2000, the seller Sri Rajarathinam submitted a letter before the Assessing Officer withdrawing the affidavit given on 08.01.1999. In the subsequent sworn statement recorded before the Assessing Officer on 20.11.2000, Sri Rajarathinam had mentioned that the sale consideration of Rs.34.85 lakhs which was received by him from the purchase consideration was actually Rs.34.85 lakhs, as against Rs.4.10 lakhs stated in the registered deed for purchase of land. In the cash flow statement for the assessment year 19 99-2000 i.e. block period 01.04.1998 to 08.12.1998, the Assessing Officer adopted the sum in the cash flow relating to purchase of land at Rs.35.45 lakhs as against Rs.4,69,995/- disclosed by the assessee in his cash flow statement. This had resulted in an addition of Rs.3 0,75,005/- as undisclosed income for the Block Period 01.04.1998 to 08.12.1998.

ii) Aggrieved by the order, the assessee filed an appeal to the Commissioner of Income Tax (Appeals). The Commisioner of Income Tax (Appeals), noted

that due to conflicting nature of the statements given by the seller, his statement could not be relied upon and hence he deleted the addition made by the Assessing Officer. Aggrieved by the order of the C.I.T. (A), the Revenue filed an appeal before the Income Tax Appellate Tribunal. The Tribunal dismissed the Revenue's appeal and confirmed the order of the C.I.T. (A). The learned counsel for the Revenue submitted that the value declared by the assessee for the purchase of the plot was Rs.100/- per sq.ft. even when the guideline value was Rs.400/- per sq.ft. and hence the order of the Tribunal was perverse, wrong and without basis.

3. We heard the counsel. The seller had initially given conflicting statement about the sale consideration he received. When confronted by the Revenue on 11.12.1998, the seller admitted that he had deposited Rs.4.10 lakhs received through draft in the bank and the rest amount was held by him in cash. The Revenue authorities could well have seized the cash invoking Section 132 of the Act, but for obvious reasons this was not done. Had the cash been seized from the seller, the matter would have been concluded in favour of the Revenue. In a subsequent submission, the seller claimed on 20.11.2000 that he had paid Rs.15 lakhs out of the sale proceeds to settle old family debts, Rs.4 .80 lakhs for construction of house in Pullkasi Village and the balance was advanced to parties for keeping Rs.2 lakhs and Rs.3 lakhs in the house for family expenses and educational expenses of his daughter, respectively. It was also noted that the revised return was filed by the seller wherein he had shown approximately Rs.2.5 lakhs being available with him in cash. Even after giving the retraction and admitting that he had sold the property for a sale consideration of Rs.4.10 lakhs, the seller filed his I.T. Return on 28.01.2000 wherein he did not admit the cash on money consideration for the sale transaction. Subsequently he revised the I.T. Return wherein he admitted the sale consideration and showing Rs.4.80 lakhs out of the above as utilised for

construction of residential house property and consequently claiming exemption under Section 54, the seller filed the computation of income paying Rs.1,83,576/- as tax, which was quite evident from the conflicting statements given by the seller and the conflicting I.T. Returns filed by him that his action of admitting sale consideration and paying tax was nothing but an obvious effort to save from further harassment from the Revenue and escape from the exigibility of tax on undisclosed income of the cash consideration under Section 158 BD of the Act, which in magnitude would far exceed the tax paid by him. The burden of proving actual consideration in such transaction was that of Revenue. The Tribunal had given factual finding and held as follows: "We find that it is the uniform view of the Courts and also held by the Apex Court as reported in 131 ITR 397 the burden of proving actual consideration in such transaction is that of revenue. Considering the entire gamut of the case, we find that revenue has failed to discharge its duties and as held by the Id. CIT(A) instead made up a case on surmises and conjectures which cannot be allowed. Under the circumstances, we do not find any infirmity in the order of the Id. CIT(A) and we uphold the appellate order in this regard."

We also found that the Assessing Officer did not conduct any independent enquiry relating to the value of the property purchased. He merely relied on the statement given by the seller. If he would have taken independent enquiry by referring the matter with the Valuation Officer, the controversy could have been avoided. Failing to refer the matter was a fatal one.

4. In view of the foregoing conclusions, we find no error in the order of the Income Tax Appellate Tribunal and requires no interference. Hence no substantial questions of law arise for consideration of this Court. Accordingly, the above tax case is dismissed. No costs."

55. In the case of **CENTRAL BUREAU OF INVESTIGATION v. V.C. SHUKLA 1998 Taxmann.com 2155 (SC)**, the Hon'ble Supreme Court, on the question of whether entries appearing in loose papers seized from one person can constitute evidence for another person, held as under:

“34. Now that we have found (in disagreement with the High Court) that entries in MR 71/91 would be admissible under Section 34 of the Act we have to next ascertain their probative value. Mr. Altaf Ahmed took great pains to decode and analyses the entries in the above book and, correlating them with the entries in the other three books and in some of the loose sheets found in the files, submitted that the intrinsic evidence furnished by their internal corroboration and inter-dependence unmistakably demonstrated their authenticity and trustworthiness. According to Mr. Altaf Ahmed the entries reflect such periodicity and regularity as was compatible with the modus operandi of the business of Jain brothers of corrupting public servant including Members of Parliament and Ministers in order to influence their decisions and seek their favours for promotion of their (Jain brothers) economic interests. Besides, he submitted, the external independent corroboration of those entries as required under Section 34 was also available to the prosecution from the statements made by Shri Jacob Mathai, Danial P. Rambal and P. Ghoshal and Ejaj Ilmi during investigation, in that, they have admitted receipts of the payments as shown against them in MR.71/91. While on this point, he made a particular reference to those entries in MR 71/91 Which, according to him if corresponded with the entries in the other books and the enclose sheets would prove the payments to Shri Advani and Shri Shukla. As regards the proof of authorship of the entries he drew our attention to the statements of Pawan Jain, A. V. Pathak and O.K. Guha who have stated that the entries were made by J. K. Jain and that the Jain Brothers had put their signatures against some of these entries in token of verification thereof. He also drew our attention to the written opinion given by the hand writing expert in this regard.

39. *In Beni v. Bisan Oayal [AIR 1925 Nag. 445J it was observed that entries in books of aCCcount are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his Own books behind the back of the parties. There must be independent evidence of the transaction to which he entries relate and in absence of such evidence no relief can be*

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

given to the party Who relies upon such entries to support his claim. against another. In Hiralal v. Ram Rakha [AIR 1953 Pepsu

the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the

ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability.

*It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with **facts.** "*

56. Hon'ble Apex Court in the case of Common Cause (A registered Society) Vs. Union of India (2017) 77 taxmann.com 245 (SC) held as follows:-

“22. *In case of Sahara, in addition we have the adjudication by the Income Tax Settlement Commission. The order has been placed on record along with I.A.No.4. The Settlement Commission has observed that the scrutiny of entries on loose papers, computer prints, hard disk, pen drives etc. have revealed that the transactions noted on documents were not genuine and have no evidentiary value and that details in these loose papers, computer print outs, hard disk and pen drive etc. do not comply with the requirement of the Indian Evidence Act and are not admissible*

evidence. It further observed that the department has no evidence to prove that entries in these loose papers and electronic data were kept regularly during the course of business of the concerned business house and the fact that these entries were fabricated, non-genuine was proved. It held as well that the PCIT/OR have not been able to show and substantiate the nature and source of receipts as well as nature and reason of payments and have failed to prove evidentiary value of loose papers and electronic documents within the legal parameters. The Commission has also observed that Department has not been able to make out a clear case of taxing such income in the hands of the applicant firm on the basis of these documents.

24. Since it is not disputed that for entries relied on in these loose papers and electronic data were not regularly kept during course of business, such entries were discussed in the order dated 11.11.2016 passed in Sahara's case by the Settlement Commission and the documents have not been relied upon by the Commission against assessee, and thus such documents have no evidentiary value against third parties. On the basis of the materials which have been placed on record, we are of the considered opinion that no case is made out to direct investigation against any of the persons named in the Birla's documents or in the documents A-8, A-9 and A- 10 etc. of Sahara.

27. Considering the aforesaid principles which have been laid down, we are of the opinion that the materials in question are not good enough to constitute offences to direct the registration of F.I.R. and investigation therein. The materials should qualify the test as per the aforesaid decision. The complaint should not be improbable and must show sufficient ground and commission of offence on the basis of which registration of a case can be ordered. The materials in question are not only irrelevant but are also legally inadmissible under Section 34 of the Evidence Act, more so with

respect to third parties and considering the explanation which have been made by the Birla Group and Sahara Group, we are of the opinion that it would not be legally justified, safe, just and proper to direct investigation, keeping in' view principles laid down in the cases of Bhajan Lal and V.C. Shukla (supra).

57. Hon'ble Jurisdictional High Court recently in the case of Principle CIT V/s Pukhraj Soni Income-tax Act, 1961, No.53/2017 dated 6.2.2019 adjudicated the similar issue relating to addition made by the Ld. A.O on the basis of notings found in the seized documents, confirmed the order of the Tribunal by relying on the judgment of Hon'ble Apex Court in the case of CBI V/s V.C. Shukla (Supra) and in the case of Common Cause (A registered Society) Vs. Union of India (2017) 77 taxmann.com 245 (SC) (supra).

58. Respectfully following the above judgments of Hon'ble Apex Court/Hon'ble High Courts and Tribunal we are of the considered view that the impugned addition for unaccounted investment in the land has rightly been deleted by Ld. CIT(A) as they were merely based on the rough jottings on the alleged seized loose papers which were not signed by any of the parties, nor transaction mentioned therein have actually taken place nor revenue has been successful to place any contrary material in the form of valuation report of the impugned land to support the market price of land adopted for making the addition 'ON MONEY' payment. Therefore

the alleged seized loose papers are Dumb documents and addition cannot be made on such dumb documents. Rather the jottings on the seized papers were stated to be a part of future planning and references of the transaction in the loose papers are not supported by any corroborative evidence and the evidence in the form of registered sale deeds only indicates that the transaction of purchase/sale of land between the various concerned parties was actually entered at consideration of Rs.5 crores only and no evidence of any 'ON MONEY' of Rs.8,74,60,600/- has been paid. We therefore find no reason to interfere in the finding of Ld. CIT(A) deleting the addition of Rs.87,46,600/- and dismiss the revenue's Ground No.7.

59. Though Ground No.8 revenue has challenged the deletion of addition of Rs.65,00,000/- which was made by the Ld. Assessing Officer on account of non-genuine unsecured loans.

60. At the outset, Ld. Senior Counsel for the assessee giving reference to his submissions for ground no.3 submitted that certain additional evidences were filed before the Ld. CIT(A) relating to the addition of Rs.70,00,000/- for unexplained cash credit. Ld. CIT(A) gave part relief to the assessee by deleting the addition of Rs.65,00,000/- without calling for remand report from the assessing officer. Prayer was made to set aside to the issue to the file of Ld. CIT(A) for deciding afresh. Ld. DR raised no objection if the issue raised in ground no.8 are set aside to the file of Ld. CIT(A)

for afresh adjudication after calling for remand report from the assessing officer relating to the additional evidences filed by the assessee before the Ld. CIT(A).

61. We have heard the rival contentions and perused the record placed before us. The revenue has raised the issue relating to deletion of addition of Rs.65,00,000/- made by the Ld. Assessing Officer on account of non-genuine unsecured loans. During the course of assessment proceedings certain loose papers were found showing name of the assessee and his wife received unsecured loan of Rs.70,00,000/- from various persons. Assessee failed to prove identity, genuineness and creditworthiness of the cash creditors due to which the addition u/s 68 of the Act was made. When the matter came up before the Ld. CIT(A) assessee filed additional evidences in order to prove the identity genuineness and creditworthiness of the cash creditors. Ld. CIT(A) failed to comply to the provision of Rule 46A of the IT Rules before admitting additional evidences and deleting the addition of Rs.65,00,000/-.

62. We find that the additional evidences filed by the assessee are vital for adjudication of the issue and the ld. CIT(A) before admitting the additional evidence should have given a proper opportunity to the Ld. Assessing Officer to file a remand report on the additional evidences filed by the assessee. Both Ld. Senior counsel for the assessee and Ld. DR have no objection if the issue for unexplained cash credit of Rs.70,00,000/- is set aside to the file of the Ld. CIT(A)

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

for deciding afresh.

63. In the given facts and circumstances of the case and in the interest of justice we accept the request of both the parties and set aside this issue of unexplained cash credit of Rs.70,00,000/- to the file of Ld. CIT(A) for afresh adjudication with a direction that the additional evidences filed by the assessee which were not placed before the assessing officer should be sent to the assessing officer calling for remand report and thereafter decide the issue afresh as per the provisions of law after giving reasonable opportunity of being heard to the assessee. We, therefore, allow the revenue's ground no.8 for statistical purposes.

64. In the result appeal of the revenue for Assessment Year 2009-10 is partly allowed for statistical purposes as per the terms indicated herein above.

65. Now we take the Cross Objection raised by the assessee in the case of Mr. Mukesh Sharma for Assessment Year 2009-10.

66. Ground No.1 relates to addition for agriculture income. We have already dealt with this issue in the revenue's appeal and have confirmed the finding of Ld. CIT(A) thereby dismissing the revenue's Ground No.4 relating to addition of Rs.50,500/- made on account of non genuine agriculture income. Since we have confirmed the finding of Ld. CIT(A) this Ground No.1 of the assessee's Cross Objection deserves to be dismissed.

67. Ground No.2 of the Cross Objection relates to unexplained investment of Rs.1.50 crores. We find that the same issue has been raised by the revenue in Ground No.5 of its appeal for Assessment Year 2009-10 and after adjudicating the same we allowed revenue's ground for statistical purposes to the file of Ld. CIT(A) for afresh adjudication. Therefore this ground No.2 of the Cross Objection also deserves to be allowed for statistical purposes.

68. Ground No.3 of Cross Objection relates to addition of un disclosed investment in jewellery. We have dealt with this issue in the revenue's appeal for Assessment Year 2009-10 and have confirmed the finding of Ld. CIT(A) deleting the addition of Rs.58,555/-. Therefore Ground No.3 of Cross Objection deserves to be dismissed.

69. Ground No.4 raised by the assessee relates to deletion of addition of Rs.87,46,600/- on account of unexplained investment towards payment of on money for purchase of land is merely supportive to the finding of Ld. CIT(A). Since we have confirmed the view of Ld. CIT(A) deleting the addition of Rs.87,46.600/- , Ground No.4 becomes infructuous.

70. Ground No.5 relates to the addition for unexplained unsecured loan of Rs.70 lakhs and Rs.5 lakhs. While adjudicating the revenue's appeal for 2009-10 we observed that some additional evidence which were filed by the assessee before Ld. CIT(A) were not sent to the Ld. A.O for calling remand report. We therefore allowed

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

revenue's ground for statistical purposes. Accordingly Ground No.5 of the Cross Objection is allowed for statistical purposes.

71. Ground No.6 is general in nature which needs no adjudication.

72. In the result the Cross objection of appeal of the assessee is partly allowed for statistical purpose.

73. Now we take up revenue's appeal in the case of Mr. Vinod Vaish in Appeal No.189/Ind/2013 for Assessment Year 2009-10 which reads as follows:-

*“On the facts and **in the circumstances of the case, the CIT(Appeal) has erred in***

- 1. Not following the provisions of section 250(1) of the Income Tax Act 1961 by not giving a notice to the Assessing Officer of the date and place for the hearing the appeal,*
- 2. Not following the provisions of section 250(2) of the Income Tax Act 1961 by not providing the Assessing Officer an opportunity of being heard at the hearing of the appeal.*
- 3. deleting the addition of Rs.87460600/- made by the AO on account of undisclosed income.*

The appellant reserves his right to add, amend or alter the grounds of appeal on or before the date, the appeal is finally heard for disposal.

74. The facts in brief are that Mr. Vinod Vaish filed return of income on 30.7.2009 declaring total income of Rs.3,32,98,372/-. During the course of search conducted on 21.07.2008 at the residential premises of Mr. Mukesh Sharma certain documents were found which indicated that the assessee i.e. Mr. Vinod Vaish has sold agriculture land measuring 1.9 hectare to Mr. Mukesh

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

Sharma and others. The stated consideration received by Mr. Vinod Vaish was Rs.5 crores but the Ld. A.O on the basis of the finding in the case of Mr. Mukesh Sharma came to a conclusion that "on money" of Rs.8,74,60,600/-has been paid by all the purchasers to Mr. Vinod Vaish. Ld. A.O made the addition of Rs.8,74,60,600/- in the hands of Mr. Vinod Vaish and assessed the income at Rs.12,07,58,972/- vide his order dated 29.12.2011 u/s 143(3) of the Act. Against this impugned addition of Rs.8,74,60,600/- assessee preferred appeal before Ld. CIT(A) and succeeded as the Ld. CIT(A) deleted the addition.

75. Now the revenue is in appeal before the Tribunal.

76. We have heard rival contentions and perused the records placed before us. The issue raised by the revenue in Ground No.3 deleting the addition of Rs.8,74,60,600/- made by the Ld. A.O on account of undisclosed income. We find that the issue relates to the sale of 1.9 hectare land owned by the assessee for which consideration of Rs.5 crores was stated in the registered sale deed but the Ld. A.O in the case of one of the purchaser Mr. Mukesh Sharma, on the basis of loose paper seized during the course of search u/s 132 of the Act conducted on 21.07.2008 held that an 'ON MONEY' of Rs.8,74,60,600/- is alleged to have been paid by various purchases

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

to Mr. Vinod Vaish. We find that we have already adjudicated this issue in the case of Mr. Mukesh Sharma for Assessment Year 2009-10 wherein we have held that the Ld. CIT(A) has rightly deleted the addition for alleged 'ON MONEY' payment. We have also held that the Ld. A.O erred in making the addition merely on the basis of 'seized loose papers' without proving any nexus with the actual transaction by placing corroborative evidence on record and were merely dumb in nature and out this view was supported by various judgments of Hon'ble Apex Court and other Hon'ble courts as referred in the preceding paras.

77. Since we have already confirmed the view of Ld. CIT(A) deleting the addition in the case of Mr. Mukesh Sharma for his share of 'ON MONEY' , therefore no addition could be made in the hands of the seller Mr. Vinod Vaish also. Therefore the Ld. CIT(A) has rightly deleted the addition of Rs.8,74,60,600/- made by the Ld. A.O on account of undisclosed income giving following finding of fact.

All these grounds of appeal re directed against the addition of Rs.8,74,60,600/-made on account of receipt of 'on money' against sale of lands located at Vill. Ratanpur, Misrod, Bhopal. The A.O. has held that in

the course of search conducted on 21.07.2008 in the case of Shri Mukesh Sharma, B-99, Rajvaidh Colony, Kolar Road, Bhopal, one of the buyers of the land, various incriminating documents were found and on the basis of such documents, it was held that the buyers have paid .on money to the above extent to the appellant. The appellant did not disclose receipt of the same as his income. Accordingly, the above amount was added to the total income of the appellant after reproducing the observations made in the assessment order in the case of Shri Mukesh Sharma.

5.1) In the course of appeal proceedings, the ld. Counsel for the appellant has contended that the A.O. has erred in making the addition without providing copies of the evidences used against him and without allowing cross-examination of the person giving the statement. Copies of written submissions, copy of appellant's statement recorded by the A.O., copy of appellant's affidavit denying receipt of any on money and other details filed before the A.O. were filed. It was contended on the basis of the replies and other details filed that the notings if the loose papers seized from Shri Mukesh Sharma are not corroborated by any other evidences to establish that the appellant has received any on money. It was contended that the land was sold at the ruling market price which was higher than guideline price and capital gain on the same was offered to tax in the return filed. There is no basis for making the addition except the A.O's findings contained in the assessment order. The rough jottings relate to the calculation of estimated return on sale of such land, provided the land is diverted for residential and commercial purposes after obtaining approvals from various authorities. The land can be sold in terms of square feet only, when usage of land is changed and converted into residential/ commercial use. The hand writing contained in the loose paper is not in the handwriting of the appellant or any of his family members. There is no corrob01.-ative material to suggest that the appellant has actually received

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

any amount more than of Rs.3,10,50,000/- towards sale consideration of agricultural land. There is no conclusive presumption to hold that actual consideration that was passed between Shri Mukesh Sharma and the appellant of Rs.13,65,60,000/- and no addition is possible on the basis of suspicion, conjectures, surmises and on the basis of documents. The appellant has finally relied on the following cases.

CIT vs J.P. Dubey (1997) 223 ITR 451(MP)

39 ITD 183 - Aswani Kumar vs ITO in the ITAT Delhi Bench' D

Embee Clearing and Shipping vs ACIT on 26.09.2006

5.2 I have gone through the observations of the AO and submissions of the appellant. The papers, on the basis of which the addition was made, were considered in the case of Shri Mukesh Sharma in ground no.8 of the grounds of appeal for A. Yr.2009-1 0. The first objections of the Ld. Counsel for the appellant is that, despite repeated requests, the evidences used against him, except assessment order in the case of Shri Mukesh Sharma, were supplied to him. Similarly, the A.O. has not allowed cross examination of Shri Mukesh_Sharma, whose statement given in proceedings u/s.132, was used in the appellant's case. Therefore, according to the Ld. AR, the principles of natural justice were not complied with and the assessment is bad in law. Perusal of the assessment records reveal that no such opportunity was given to appellant during assessment proceedings, which is a fact. However, after considering the facts of the case, contents of the loose papers and the appellant's submission in case of Shri Mukesh Sharma, the addition made on account of payment on money was deleted in that case. Therefore, it is not considered necessary to allow cross examination of Shri Mukesh Sharma by the appellant at this stage. The other contentions of the present appellant are identical to the contentions raised and considered in the case of Shri Mukesh Sharma. The operative

part of the order at page Nos. 21 & 22 in ITA No.584/10-11, dated 30.01.2013 is reproduced below:

"15.3 I have gone through the observations of the A O and submissions of the appellant. The AD has made the addition mainly on the basis of inferences drawn about the jottings contained in loose papers - LPS-III page no. 74 back side and page no. 75. The A D has summarized the basis of his conclusions at page no. 58 of the assessment order by stating that the cheque payment of Rs. 50,00,000/- on the backside of page no. 74 tallies with the actual amount of Rs.50 lakhs paid on 23.5.200B. The area of land and registry expenses tally with the actual land area and the expenses incurred on registration. The figure of '225' mentioned at page no. 75 denotes the amount of RS.225 lakhs deposited by DDI cheque in the bank documents of 14 persons of Dabra. The figure of '323' mentioned in these documents tallies with the amount of cash deposited in the bank accounts of the 14 persons plus registration charges and page no. 74 back side and page no. 75 corroborated each other. Though the first observation is found to be correct, the subsequent observations are only inferences and are not based on facts. There is nothing unusual in tallying the land area. The amount of registration expenses were incurred at Rs.49, 18,335/- and not Rs.50,00,000/-, i.e. the figure mentioned against the narration. The total of the amount deposited through DDI cheques in the bank accounts of the 14 persons comes to Rs.2, 70,05,400/- and it is not matching with the figure of '225 '. Similarly, the total amount of cash deposited in the bank accounts of the 14 persons comes to Rs.2, 76,77,877/-. Thus, it is also not tallying with the figure of '323 '. Since, the above figures are not tallying with the above figures, it cannot be concluded that page no. 74 backside and 75 are corroborative to each other. Except these jottings, there are no other corroborative evidences to justify the addition. On the contrary, the appellant's contention that the entire exercise is based on inferences carries

more force. No incriminating documents establishing transfer of actual funds between the buyers and the sellers were found. The land was purchased at a price higher than the Guide Line Price fixed by the Collector. The land was un-diverted agricultural land and considering the location and the status of the land, it did not command such price as opined by the A.O. Under these circumstances, I am of the considered opinion that though the jottings contained in the loose papers may generate a suspicion, they are not sufficient enough, without corroborating evidences, to conclude that actual money has changed hands. In this view of the matter, the addition covered in this ground of appeal is not sustainable, hence deleted. This ground of appeal is, accordingly, allowed. '

In this view of the matter, I am of the considered opinion that the addition made by the AO on account of receipts of on money in the appellants case is not suitable, hence deleted. According, these two grounds of appeals are allowed.

78. We therefore uphold the finding of Ld. CIT(A) and dismiss the revenue's Ground No.3.

79. As regards Ground No. 1 & 2 revenue is challenging that no notice was given to the Ld. A.O providing opportunity of being heard before Ld. CIT(A). At the outset the Ld. Departmental Representative requested for not pressing their grounds. Since the revenue has not pressed Ground No. 1 & 2 as per the letter given by them before us

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

during the course of hearing, we dismiss Ground No. 1 & 2 as not pressed.

80. In the result appeal of revenue in the case of Mr. Vinod Vaish for Assessment Year 2009-10 stands dismissed.

81. Now we take up the bunch of 14 appeals of the following assesseees in which protective addition for unaccounted investments in purchase of land as well as disallowance of expenses have been made. Details of the assessee's with appeal Nos along with total income disclosed, additions made and income assessee is detailed below;

	Name of Assessee & ITANo.	Total income	Addition on disallowance of expenses	Addition on protective basis	Assessed income
1	Suresh Kumar Upadhyay ITANo.699/Ind/2016	26,33,230	19,520	46,01,538	72,54,288
2	Chandra Kumar Sharma ITANo.700/Ind/2016	42,96,651	3,68,349	29,38,117	76,03,117
3	Sanjay Kumar Sahu ITANo.701/Ind/2016	4,62,060	NIL	67,72,708	72,34,768
4	Sukhdev Singh Dhariwal	22,21,765	17,78,235	50,13,003	90,13,003

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

	ITANo.702/Ind/2016				
5	Khemraj Singh Chauhan	50,21,671	NIL	94,47,865	1,44,69,536
	ITANo.703/Ind/2016				
6	Kamlesh Kumar Choudhary	25,91,668	NIL	1,18,77,868	1,44,69,536
	ITANo.704/Ind/2016				
7	Santosh Kumar Sharma	26,33,954	NIL	46,00,814	72,34,768
	ITANO.705/Ind/2016				
8	Lalta Prasad Choudhary	22,94,656	3,55,913	49,40,112	75,90,681
	ITA No.706/Ind/2016				
9	Pradeep Kumar Sharma	57,33,205	1,21,795	15,01,563	73,56,563
	ITANo.707/Ind/2016				
10	Ramesh Chandra Parashar	28,54,750	4,33,000	1,16,14,786	1,49,02,536
	ITANo.708/Ind/2016				
11	Vijay Kumar Shrivastava	46,61,357	3,38,643	25,73,411	75,73,411
	ITANo.709/Ind/2016				
12	Dharmendra K. Choudhary	21,95,008	4,55,561	50,39,760	76,90,329
	ITANo.710/Ind/2016				
13	Ram Kumar Swami	22,88,974	3,61,595	49,45,794	75,96,363
	ITANo.711/Ind/2016				
14	Virendra Kumar Sharma	23,58,560	2,92,010	48,76,208	76,26,778
	ITANo.542/Ind/2017				

82. Following grounds of appeal have been raised by the above stated 14 assessee's;

ITA No.699/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Id. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 19520/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 46,01,538/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(AJ has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capitols which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.700/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.3,68,349/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 29,38,117/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(AJ) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.701/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.
2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.
3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.
4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.
5. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 67,72,708/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.
6. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

7. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

8. That the Ld. CIT(AJ) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.702/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 17,78,235/- claimed as expenses by the assessee.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the

addition of Rs. 50,13,003/-- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.703/Ind/2016

- 1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings initiated by the AO were illegal, void and without jurisdiction.*
- 2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.*
- 3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.*
- 4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.*

5. *That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 94,47,865/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.*
6. *That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.*
7. *That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)*
8. *That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.*

ITA No.704/Ind/2016

1. *That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings initiated by the AO were illegal, void and without jurisdiction.*
2. *That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.*
3. *That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.*
4. *That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of*

reopening was not recorded is unsustainable.

5. *That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 1,18,77,858/-. made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.*

6. *That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.*

7. *That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)*

8. *That the Ld. CIT(AJ) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.*

ITA No.705/Ind/2016

1. *That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings initiated by the AO were illegal, void and without jurisdiction.*

2. *That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.*

3. *That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.*

4. *That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened*

therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. *That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.46,00,814/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.*

6. *That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.*

7. *That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition of substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)*

8. *That the Ld. CIT(AJ) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.*

ITA No.706/Ind/2016

1. *That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.*

2. *That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.*

3. *That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.*

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 3,55,913/- claimed as expenses.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 49,40,112/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.707/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped

assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) and the AO were not justified in law and on facts in sustaining the addition of Rs. 1,21,795/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 15,01,563/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.708/Ind/2016

1. That the Ld. CIT{A} erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Id. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT{A} has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT{A} and the AO were not justified in law and on facts in sustaining the addition of Rs. 4,33,000/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs.1,16,14,786/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT{A} erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the

CIT(A)

9. That the Ld. CIT(AJ has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capitols which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.709/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) and the AO were not justified in law and on facts in sustaining the addition of Rs. 3,38,643/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 25,73,411/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse

and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.710/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) and the AO were not justified in law and on facts in sustaining the addition of Rs.4,55,561/-.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the

addition of Rs. 50,39,760/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.711/Ind/2016

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the

income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) and the AO were not justified in law and on facts in sustaining the addition of Rs. 3,61,595/- claimed as expenses.

6. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 49,45,794/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

7. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

8. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

9. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

ITA No.542/Ind/2017

1. That the Ld. CIT(A) erred both in law and on facts in upholding the validity of reassessment proceedings u/s 148. The Ld. CIT(A) has failed to appreciate that the reassessment proceedings' initiated by the AO were illegal, void and without jurisdiction.

2. That the Ld. CIT(A) erred in law and on facts in failing to appreciate that reassessment proceedings were initiated on the basis of incorrect facts since the income alleged to have escaped assessment was already offered to tax in the return of income.

3. That the Ld. CIT(A) erred both in law and on facts in deciding the entire appeal on a preconceived hypothesis and predetermined notion without considering the written submissions and facts on record. Most of the findings in the appellate order are without any basis and appear to be on presumptions and surmises.

4. That the Ld. CIT(A) has erred in law and on facts in not appreciating that since no addition has been made in respect of the income on the basis of which assessment was reopened therefore the addition made for item in respect of which reason of reopening was not recorded is unsustainable.

5. That the Ld. CIT(A) and the AO were not justified in law and on facts in confirming the addition of Rs. 48,76,208/- made on the basis of a dumb document unrelated to the assessee and not found from the assessee's possession.

6. That the manner in which the Ld. CIT(A) has upheld the addition in para 14 over the alleged excess investment in land without even discussing the alleged document, submissions of the assessee and simply relying on the Assessment order is unwarranted and perverse and is devoid of any merit.

7. That the Ld. CIT(A) erred in law and on facts in confirming the protective addition as substantive addition in the hands of the appellant. The CIT(A) on one hand is doubting the financial capacity of the appellant to make the investment and on the other hand is confirming the protective addition as substantive addition. The said finding is perverse and contrary to the entire matrix built up by the CIT(A)

8. That the Ld. CIT(A) has exceeded her jurisdiction in giving directions to the AO to reopen the case for AY 2010-11 and giving directions for examining the opening capital which are not within the scope of the assessment year under consideration and which were not even the Subject matter of assessment.

9. That the Ld. CIT(A) has erred in law and on facts in confirming the addition of Rs. 2,92,010/- shown as agricultural income savings of the assessee without appreciating the facts and circumstances of the case.

83. From perusal of the above grounds following four common issues needs to be adjudicated:-

- (i) Challenging the validity of reassessment u/s 147 of the Act
- (ii) Protective addition made on the basis of dumb document unrelated to the assessee.
- (iii) Addition for disallowance of expenses
- (iv) Direction by Ld. CIT(A) for reopening of case for Assessment Year 2010-11.

84. Facts in brief commonly for all the assessee's are that pursuant to search u/s 132 of the Act at the residence of Shri Mukesh Sharma on 21.07.2008 various documents were seized. In the document one memorandum of agreement was found for purchase of 1.9 hectare of agriculture land at Ratanpur, Misroad, near Bhopal showing that Mr. Mukesh Sharma along with other co-purchasers i.e. 14 assessee's referred above in the chart jointly purchased the land from Mr. Vanod Vaish for consideration of Rs.5 crores. Ld. A.O on the basis of these documents concluded that "ON MONEY" of Rs.8,74,60,600/- has been paid by all the purchasers and addition of Rs.87,46,000/- in the hands of Mr. Mukesh Sharma for his share of 10% in the alleged land. Subsequently Ld. A.O made substantial addition of Rs.8,74,60,600/- in the hands of Mr. Mukesh Sharma on the

direction of Ld. CIT(A)'s order u/s 263 of the Act dated 28.3.2013. This order of Ld. CIT(A) passed u/s 263 of the Act was quashed by Tribunal vide order dated 31.10.2014. However amount of the 'ON MONEY' was added protectively in the hands of the 14 assessee's as per their share in land. Ld. A.O also made addition for disallowance of expenses in case of 10 assessee's for the alleged difference between the amount deposited in the bank as against the amount admitted as undisclosed income. The respective amount are already mentioned in the chart given herein above relating to the 14 assessee's. Aggrieved assessee's preferred appeal before Ld. CIT(A) and failed to succeed and now all the assessee's are in appeal before the Tribunal.

85. Ld. Counsel for the assessee reiterated the submissions made before the lower authorities and Ld. Departmental Representative supported the orders of the lower authorities.

86. We have heard rival contentions and perused the records placed before us. As regards the first common issue challenging the validity of reassessment u/s 148 of the Act, we find that there was certain information relating to these 14 assessee's found by the search team during the search u/s 132 of the Act conducted on 21.7.2008 at the premises of Mr. Mukesh Sharma including a memorandum of agreement for purchase of land by Mr. Mukesh Sharma and 14 other parties. Certain loose papers were also

seized which as per the Ld. A.O indicated some undisclosed investment. Return were filed on 31.03.2010 and notice u/s 148 of the Act issue within 4 years i.e. before 31.03.2014. Proper opportunity was given to assessee(s) to reply to the reasons recorded for reopening. In our considered view the cases of 14 assessee's were fit case for issue of notice u/s 148 of the Act and for conducting reassessment proceedings u/s 147 of the Act. We accordingly dismiss this common issue raised in 14 cases challenging the validity reassessment proceedings.

87. Now we take up second common issue relating to the addition on protective basis in the hands of the assessee's for the unaccounted investment in purchase of 1.9 hectare land jointly with Mr. Mukesh Sharma purchased from Mr. Vinod Vaish. We find that this issue stands adjudicated by us in the case of Mr. Mukesh Sharma and Mr. Vinod Vaish vide ITA (SS)No.88/Ind/2014 for Assessment Year 2009-10 and ITA No.189/Ind/2013 for assessment Year 2009-10 wherein we have held that no addition was called for the 'ON MONEY' payment of Rs.8,74,60,600/- as it was based on the seized loose papers which are merely dumb documents having no nexus with any corroborating evidence to prove the transaction. In the light of our decision in the case of Mr. Mukesh Sharma and Mr. Vinod Vaish, we are of the view that both the lower authorities were not justified in making the addition on protective basis in the hands of all the

14 assessee's. We accordingly allow this common issue in the case of the 14 assessee's and delete the addition made on protective basis on un accounted investments in purchase of land totalling to Rs.8,07,43,547/-.

88. Now we take up third common issue relating to disallowance of expenses totalling to Rs.45,24,621/- made in the case of 10 assessee's as referred in the chart above. Brief facts relating to this common issue are that the respective assessee deposited certain amount in the bank in the form of cash or from loan taken from some parties. But while filing the return of income they admitted certain amount as undisclosed income to be offered to tax and the difference was claimed to be expenses incurred for earning the income. However due to lack of details Ld. A.O made the addition. When the matter came up before Ld. CIT(A) the issue remained un adjudicated as Ld. CIT(A) devoted her energy only on the issue of addition on protective basis and failed to adjudicate the ground raising this issue. Now the respective assessee's are in appeal before the Tribunal.

89. We observe that the alleged disallowance for expenses is the difference between the amount deposited in the bank/amount of land taken and the amount admitted as undisclosed income by the following 10 assessee's;

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

	Name of Assessee & ITANo.	Amount Deposit in bank/loan	Amount admitted as undisclosed income	Difference
1	Suresh Kumar Upadhyay ITANo.699/Ind/2016	26,52,750	26,33,230	19,520
2	Chandra Kumar Sharma ITANo.700/Ind/2016	46,65,000	42,96,651	3,68,349
3	Sukhdev Singh Dhariwal ITANo.702/Ind/2016	40,00,000	22,21,765	17,78,235
4	Lalta Prasad Choudhary ITA No.706/Ind/2016	26,50,569	22,94,656	3,55,913
5	Pradeep Kumar Sharma ITANo.707/Ind/2016	68,55,000	57,33,205	1,21,795
6	Ramesh Chandra Parashar ITANo.708/Ind/2016	32,87,750	28,54,750	4,33,000
7	Vijay Kumar Shrivastava ITANo.709/Ind/2016	50,00,000	46,61,357	3,38,643
8	Dharmendra K. Choudhary ITANo.710/Ind/2016	26,50,569	21,95,008	4,55,561
9	Ram Kumar Swami ITANo.711/Ind/2016	26,50,569	22,88,974	3,61,595
10	Virendra Kumar Sharma ITANo.542/Ind/2017	26,51,070	23,58,560	292010

90. We find that the alleged difference was claimed by the assessee as expenses incurred to have been incurred for earning undisclosed income. Ld. A.O made the addition for want of details. Ld. CIT(A) has not adjudicated the issue. We however on the perusal of the chart find that except in the case of Sukhdev Singh Dhariwal ITA No.702/Ind/2016 in all the other cases the incidental expenses claimed are in the range of 10% of the amount admitted as undisclosed income. In the case of Shri Sukhdev Singh Dhariwal expense of Rs.17,78,235/- has been claimed against the undisclosed income of Rs.22,21,765/-. It is an accepted fact that the incidental expenses are ought to be incurred to earn any income. In the instant case though the actual source of earning the undisclosed income has not been stated but claiming certain expenses against the earning of said undisclosed income cannot be brushed aside. However, Ld. CIT(A) failed to adjudicate this issue and in the interest of justice we are of the view that this common issue needs to be set aside to the file of Ld. CIT(A) for adjudication after giving reasonable opportunity of being heard to the assessee's. In the result this common issue of disallowance totalling to Rs.45,24,621/- relating to 10 assessee's is allowed for statistical purposes.

91. Now we come to the fourth common issue through which the respective assessee's are aggrieved with the findings of Ld. CIT(A) to have exceeded her jurisdiction in giving direction to the Ld. A.O to reopen the cases for assessment year 2010-11 giving direction for examining the correctness of opening capital, which is not within

the scope of Ld. CIT(A).

92. We observe that Ld. CIT(A) in her common appellate order for the 14 assessee's have directed the Ld. A.O to consider the re-opening of the cases for Assessment Year 2010-11. We find that the power of the Commissioner (Appeals) are provided in Section 251 of the Act reads as follows:-

"251. (1) In disposing of an appeal, the Commissioner (Appeals) shall have the following powers –

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment

[(aa)in an appeal against the order of assessment in respect of which the proceedings before the Settlement Commission abates under section 245HA, he may, after taking into consideration all the material and other information produced by the assessee before, or the results of the enquiry held or evidence recorded by, the Settlement Commission, in the course of the proceeding before it and such other material as may be brought on his record, confirm, reduce, enhance or annul the assessment;]

(b)in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c)in any other case, he may pass such orders in the appeal as he thinks fit.

2.The Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.- In disposing of an appeal, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Commissioner (Appeals) by the appellant.

93. From going through the above provision we understand that the Commissioner (Appeals) has the powers to decide the appeal against the assessee of a particular assessment which he/she may confirm/reduce or enhance or annulled. The order of the assessment relates to particular assessment year or assessment years. Ld. CIT(A) is bound to adjudicate the issues emanating out of the appeal for the respective assessment year. Giving directions to the A.O to consider for re-assessment for other assessment years for which no appeal is pending before CIT, in our view seems to be out of his/her jurisdiction. In the instant case it seems that Ld. CIT(A) has exceeded her jurisdiction of giving direction for reopening of cases for Assessment Year 2010-11 because the appeals of the assessee(s) were pertaining to Assessment Year 2009-10 only. We therefore allow this common issue raised by the respective assessee's.

94. In the result these bunch of fourteen appeals of the assessee's for Assessment Year 2009-10 are partly allowed for statistical purposes.

95. In the result Appeal of the Revenue for Assessment Year 2009-10 in respect of Shri Mukesh Sharma is partly allowed for statistical purposes and Shri Vinod Vaish stands dismissed. The Cross Objection of Shri Mukesh Sharma for Assessment Year 2009-10 is partly allowed for statistical purposes. The appeals for other 14 assessee's for Assessment Year 2009-10 are partly allowed for statistical purposes.

Mukesh Sharma

IT(SS) No.88/Ind/2013 C.O.No.76/Ind/2014, ITA No.189/Ind/2013, ITA No.702 to 711/Ind/2016 & ITA No.542/Ind/2017

The order pronounced in the open Court on 04.06.2019.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

दिनांक /Dated : 04th June, 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