

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 101 & 102/Ind/2017
Assessment Years 2009-10 & 2011-12
PAN : AWEPT0544J

Smt. Seema Tripathi,
12, Parika Grih Nirman Society,
Walmi Road, Bhopal

V/s

Deputy Commissioner
of Income Tax,
Central-1, Bhopal

(Revenue)

(Respondent)

ITA (SS)No 115 to 119/Ind/2017 & ITA No.300/Ind/2017
Assessment Years 2008-09 to 2012-13 & 2013-14
PAN : AAQPT4154N

Shri. Narendra Tripathi,
12, Parika Grih Nirman Society,
Walmi Road, Bhopal

V/s

Deputy Commissioner
of Income Tax,
Central-1, Bhopal

(Revenue)

(Respondent)

Revenue by
Assessee by

: Smt. Ashima Gupta, CIT
: S/Shri Ashish Goyal &
N.D. Patwa, Advocates

Date of Hearing

: 13.06.2019

Date of pronouncement

: 07.08.2019

ORDER

PER BENCH.

The above captioned appeals filed at the instance of assessee's
pertaining to Assessment Years 2009-10 & 2011-12 and Assessment

Smt. Seema Tripathi & Narendra Tripathi

IT(SS)Nos.101to102/Ind/2017,IT(SS)Nos.115to119/Ind/17&ITA.No.300/Ind/17

Years 2008-09 to 2013-14 are directed against the orders of Ld. Commissioner of Income Tax (Appeals)-3 (in short 'Ld.CIT(A)'), Bhopal dated 22.02.2017 & 23.02.2017 which are arising out of the order u/s 153A r.w.s 143(3) dated 25.02.2015 & 21.03.2015 respectively framed by DCIT(Central)-I, Bhopal.

2. As 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. First we take up the case of Smt. Seema Tripathi ITA (SS)No 101 & 102/Ind/2017 Assessment Years 2009-10 & 2011-12.

4. Briefly stated facts as culled out from the records are that the assessee is an individual derives income from business being interest, remuneration and share of profit from firm M/s. Rajeev Homes and income from other sources. A search was conducted u/s 132 of the Act on 20.06.2012 in connection with 'DBL Group'. Notices u/s 153A were served upon the assessee. In response to the notices assessee filed return of income at Rs.66,036/- and Rs.5,47,560/- for Assessment Years 2009-10 & 2011-12 respectively. The assessment was completed at an income of Rs.5,80,196/- and

Rs.8,26,060/- after making addition of Rs.4,00,266/-and Rs.2,78,500/- for Assessment Year 2009-10 and 2011-12 respectively on account of unexplained investment in purchase of plot. Assessee preferred appeals before Ld. CIT(A) but could not succeed.

5. Now the assessee is in appeal before the Tribunal raising following grounds of appeal;

ITA (SS)No 101/Ind/2017

Assessment Years 2009-10

1. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the addition of Rs.4,00,266/- made u/s 69B on account of unexplained investment in purchase of plot without accepting the explanation offered by the assessee that the said plot was purchased in A.Y 2006-07 i.e. beyond the block period and only registry was executed in the year and during the course of search, no any incriminating documents was found from which it could be established that any on money was paid on the purchase of the property.*
The learned CIT(Appeals) also erred in not appreciating the fact that provisions of section 69B is not applicable in the case of immovable property but is applicable for any bullion, jewellery or other valuables article.
2. *That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.*

ITA (SS)102/Ind/2017

Assessment Year 2011-12.

1. *That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the addition of Rs.2,78,500/- made u/s 69B on account of unexplained investment in purchase of plot without accepting the explanation offered by the assessee that no on money was paid on the purchase of the property. Further it is submitted that during the course of search, no any incriminating documents was found from which it could be established that any on money was paid on the purchase of the property.*
The learned CIT(Appeals) also erred in not appreciating the fact that provisions of section 69B is not applicable in the case of immovable

property but is applicable for any bullion, jewellery or other valuables article.

2.That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

6. The sole and common issue raised in above grounds for Assessment Years 2009-10 and 2011-12 are towards the addition made u/s 69B of the Act on account of unexplained investment in purchase of plots.

7.(a) Ld. Counsel for the assessee referring to written submissions submitted that with reference to the alleged addition of Rs.4,00,266/- for Assessment Year 2009-10 the impugned land was purchased and transferred to the assessee in the year 2006 and only the registry was done on 23.3.2009. Since the full payment was made before 13.3.2006 and possession of the land also taken on 13.03.2006, the alleged transaction is beyond the block period and therefore no addition should have been made by the Ld. A.O.

7(b). With regard to the addition of Rs.2,78,500/- u/s 69B of the Act for Assessment Year 2011-12, Ld. Counsel for the assessee submitted that no 'on money' was paid and no incriminating material was found during the course of search. Further there is no evidence

on record to show that the seller has received the price of the land more than the amount mentioned in the registered deed and such addition merely made on assumptions and surmises is liable to be deleted.

8. Following written submission were filed by the Ld. Counsel for the assessee:-

“The additions are based on assumptions and surmises and the onus to prove that the on money was paid was not discharged by the Ld.AO. Above additions are done by the AO u/s 69B of the Act. It is pertinent to note that Id.CIT(A) in para 3.2 of his order stated that *“The onus of proving that no payment above the registered value of the property is on the assessee. It is very unlikely that a property can be bought by the appellant assessee at a rate which is much lower than the prevailing market rate....”*

The finding of Ld. CIT(A) is wrong in the light of **CIT v/s Dinesh Jain HUF(Delhi) (High Court) 352 ITR 629** wherein it was stated that *“Section 69B in terms requires that the Assessing Officer has to first 'find' that the assessee has 'expended' an amount which he has not fully recorded in his books of account. It is only then that the burden shifts to the assessee to furnish a satisfactory explanation. Till the initial burden is discharged by the Assessing Officer, the section remains dormant”*

Further in case of **CIT vs. Chandni Bhuchar (2010) 323 ITR 510 (High Court of Punjab & Haryana)**, order of Tribunal was upheld which stated that *“in absence of any legally acceptable evidence, valuation done for the purpose of Section 50 C would not represent actual consideration passed on to seller”*.

So far as regards investment over and above that recorded in the books of account, the onus, rather the burden, is on the department to prove such allegation, as has been held in, inter alia, **CIT v. Daulat Mal Rawat Mal, 87 ITR 349 (SC)**, **K.P. Verghese v. ITO, 131 ITR 597 (SC)** and **CIT v. Bedi & Co. (P) Ltd., 230 ITR 580 (SC)**.

No corroborative evidence that on money payment was done for procuring the land. It was further stated in the case of **CIT v/s Dinesh Jain HUF (supra)** that "A "finding" obviously should rest on evidence". *"Section 69B does not permit an inference to be drawn from the circumstances surrounding the transaction that the purchaser of the property must have paid more than what was actually recorded in his books of account for the simple reason that such an inference could be very subjective and could involve the dangerous consequence of a notional or fictional income being brought to tax contrary to the strict provisions of Article 265 of the Constitution of India and Entry 82 in List I of the seventh schedule thereto which deals with "Taxes on income other than agricultural income"*.

Since the entire case has proceeded on the assumption that there was understatement of the investment, without a finding that the assessee invested more than what was recorded in the books of account, such additions are illegal, void and hence shall be deleted.

9. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of both the lower authorities.

10. We have heard rival contentions and perused the records placed before us. The assessee's appeal for Assessment Year 2009-10 and 2011-12 challenge the common finding of Ld. CIT(A) confirming the

action of the Ld. A.O making the addition u/s 69B of the Act for unexplained investment of Rs.4,00,266/- and Rs.2,78,500/- for Assessment Year 2009-10 and 2011-12 respectively for the properties registered in favour of the assessee on 29.3.2009 and 22.12.2010 respectively.

11. Apropos to Assessment Year 2009-10, we find that Ld. A.O made the addition for the unexplained investment of 4,00,266/- alleged to have been made by the assessee in the purchase of plot No.139, Jyoti Nagar, Bhopal by taking fair market value at Rs.5,40,000/-. In the paper book page-18 shows that the assessee has taken the possession of alleged land on 13.03.2006 after making all necessary payments towards purchase consideration on and before 13.3.2006. So for all technical purposes the payment for the purchase of land and the possession of the land was completed on and before 13.3.2006. Only the sale deed was registered on 23.3.2009. The fact that the payment for purchase of land and possession formalities have been completed on and before 13.3.2006 is not disputed by the revenue authorities. Since the actual transaction has taken place during financial year 2005-06, making addition for unexplained investment in the hands of the assessee for

Assessment Year 2009-10 does not seem to be justified. Moreover the actual date of transaction of payment falls in the period beyond the block period and in absence of any incriminating material found during the course of search, we find no merit in the action of the Ld. A.O making the addition. We accordingly set aside the finding of Ld. CIT(A) and delete the addition of Rs.4,00,266/- made for Assessment Year 2009-10. The ground raised and so also the appeal by the assessee is allowed.

12. Apropos to Assessment Year 2011-12, we find that the property was purchased at Vineet Kunj Colony, Bhopal on 22.12.2010 for consideration of Rs.2,65,000/-. Ld. A.O on the basis of the value adopted by the Stamp Valuation Authority took the fair market value of the property at Rs.5,43,500/- and made the addition for the difference of Rs.2,78,500/- (Rs.5,43,500/- (-) Rs.2,65,000/-). We observe that there is no incriminating material found during the course of search which could establish that the assessee made any payment over and above the consideration mentioned in the registered sale deed. The provisions of Section 50C of the Act relevant to Special provision for full value of consideration in certain cases deals with “consideration received or accruing as a result of the

transfer by an assessee”. Thus the provision of Section 50C is primarily applicable on the seller of the property. There is no evidence on record which could show that the Ld. A.O carried out any investigation against the seller or took his/her statement or whether any addition has been made in the hands of the seller for the alleged amount being received over and above the amount stated in the registered sale deed. There is no statement of the seller accepting that he received any ‘on money’ . Even the Ld. A.O made no effort to refer the matter to the Departmental Valuation Officer.

13. In these given facts and circumstances and in view of the proposition laid down by Hon'ble Apex Court in the case of CIT V/s Daulat Mal Rawat Mal, 87 ITR 349 (SC) and K.P. Verghese V/s ITO 131 ITR 597 (SC) that, *“the burden was on the department to prove such allegation that the assessee has paid any ‘on money’ over and above of stated consideration in registered sale deed.”* We find no justification in the addition made by the Ld. A.O u/s 69B of the Act for Assessment Year 2011-12 in the hands of the assessee at Rs.2,78,500/-. We accordingly set aside the finding of Ld. CIT(A) and allow the sole ground raised by the assessee in the appeal for Assessment Year 2011-12.

14. In the result both the appeals of the assessee for Assessment Year 2009-10 and 2011-12 are allowed.

15. Now we take up the assessee's appeal in the case of Shri Narendra Tripathi ITA (SS)No 115 to 119/Ind/2017 & ITA No.300/Ind/2017 for Assessment Years 2008-09 to 2012-13 & 2013-14.

16. Briefly stated facts as culled out from the records are that the assessee is employed with Barkatullah University, Bhopal. He is also engaged in liasoning work for the admission of the students and income from liasoning is shown under income from other sources in the return filed. A search u/s 132 of the I.T. Act was carried out on 20.06.2012 at the residential premises of the assessee. Search was also conducted on premises of another business concerns of DBL Group. Notices u/s 153A were served upon the assessee to file return of income for the Assessment Years 2008-09 to 2013-14. In response to the notices assessee filed return of income as were filed u/s 139 of the Act. Thereafter, a consolidated assessment for Assessment Years 2008-09 to 2013-14 was passed u/s 153A r.w.s. 143(3) of the Act dated 23.02.2017 wherein substantial additions

were made. Against the addition assessee preferred appeal before

Ld. CIT(A) who partly confirmed the addition as mentioned below;

Assessment Year	Returned income	Addition by Ld. A.O	Relief by CIT(A)	Income after CIT(A) order
2007-08	97,700	Nil	Nil	97,700
2008-09	1,06,790	27,27,834	Nil	27,27,834
2009-10	3,48,350	23,10,159	Nil	23,10,159
2010-11	3,71,380	26,89,285	Nil	26,89,285
2011-12	3,79,740	23,34,500	1,400	23,33,100
2012-13	4,52,890	1,80,000	5,000	1,75,000
2013-14	8,06,690	52,86,060	4,000	52,82,060

17. Now the assessee is in appeal before the Tribunal raising following grounds of appeals;

ITA (SS)No 115/Ind/2017

Assessment Year 2008-09

- 1. That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the addition of Rs.27,27,834/- being undisclosed receipt from various persons on various dates without considering the explanation offered by the assessee and without considering the fact that this is not cash receipt but figure of certain contract works allotted on various dates. The learned CIT(Appeals) also erred in not appreciating the fact that the document LPS-1 page 5 is not related with the assessee but related with his brother and necessary evidences and explanation of each contract work was given during appellate proceedings but was not considered.*
- 2. That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.*

ITA (SS)No 116/Ind/2017

Assessment Year 2009-10

- 1. That on the facts and in the circumstances of the case, the learned (IT (Appeals) erred in confirming the addition of Rs.16,00,893/- being undisclosed receipt from various persons on various dates without considering the explanation offered by the assessee and without considering the fact that this is not cash receipt but figure of certain contract works*

allotted on various dates. The learned (IT (Appeals) also erred in not appreciating the fact that the document LPS-l page 5 is not related with the assessee but related with his brother and necessary evidences and explanation of each contract work was given during appellate proceedings but was not considered.

2.That on the facts and in the circumstances of the case, the learned (IT (Appeals) erred in confirming the addition of Rs.3,00,000/- being unexplained investment in the purchase of property without considering the explanation offered by the assessee and without considering the fact that the documents belongs to Shri G.P. Tripathi, father of the assessee and necessary evidences in this regard has already been filed.

3.That on the facts and in the circumstances of the case, the learned (IT(Appeals) erred in confirming the addition of Rs. 4,09,266/- made u/s 69B on account of unexplained investment in purchase of plot from housing society without accepting the explanation offered by the assessee that the said plot was purchased in AY 2006-07 i.e. beyond the block period and only registry was executed in the year and during the course of search, no any incriminating documents was found from which it could be established that any on money was paid on the purchase of the property.

The learned (IT (Appeals)also erred in not appreciating the fact that provisions of section 69 B is not applicable in the case of immovable property but is applicable for any bullion, jewelary or other valuables article.

4. That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

ITA (SS)No 117/Ind/2017 Assessment Year 2010-11

1. That on the facts and in the circumstances of the case, the learned (IT (Appeals) erred in confirming the addition of Rs.1,64,785/- being undisclosed receipt from various persons on various dates without considering the explanation offered by the assessee and without considering the fact that this is not cash receipt but figure of certain contract works allotted on various dates. The learned (IT (Appeals) also erred in not appreciating the fact that the document LPS-l page 5 is not related with the assessee but related with his brother and necessary evidences and explanation of each contract work was given during appellate proceedings but was not considered.

2.That on the facts and in the circumstances of the case, the learned (IT (Appeals) erred in confirming the addition of Rs.24,75,000/- being undisclosed investment in the property without considering the fact that the aforesaid documents of land does not pertains to appellant but pertains to

Shri Narendra Hemnani and necessary evidences and explanation in this regard has already been filed during appellate proceedings and nothing incriminating during the course of search was found which could suggest tht the investment was made by the appellant.

3.That on the facts and in the circumstances of the case, the learned (IT(Appeals) erred in confirming the addition of Rs. 49,500/- being cash deposit in bank treating the same as undisclosed without considering the explanation offered by the assessee and without considering the fact the cash deposit in the bank is partly out of own sources as shown in the return and partly out of withdrawals from bank earlier and re-deposited later on any necessary evidences in this regard were submitted during assessment proceedings as well as appellate proceedings.

4. That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

ITA (SS)No 118/Ind/2017 Assessment Year 2011-12

1.That on the facts and in the circumstances of the case, the learned CIT(Appeals) erred in confirming the addition of Rs.22,33,100/- made u/s 69B on account of unexplained investment in purchase of plot without accepting the explanation offered by the assessee that no on money was paid on the purchase of the property. Further, it is submitted that during the course of search, no any incriminating documents was found from which it could be established that any on money was paid on the purchase of the property.

The learned CIT (Appeals) also erred in not appreciating the fact that provisions of section 69 B is not applicable in the case of immovable property but is applicable for any bullion,jewelary or other valuables article.

2.That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs.1,00,000/- being cash deposit in bank treating the same as undisclosed without considering the explanation offered by the assessee and without considering the fact that the cash deposit in the bank is partly out of own sources as shown in the return and partly out of withdrawals from bank earlier and re-deposited later on and necessary evidences in this regard were submitted during assessment proceedings as well as appellate proceedings.

3.That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

ITA (SS)No 119/Ind/2017
Assessment Year 2012-13

1. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs.1,75,000/- being cash deposit in bank treating the same as undisclosed without considering the explanation offered by the assessee and without considering the fact that the cash deposit in the bank is partly out of own sources as shown in the return and partly out of withdrawals from bank earlier and re-deposited later on and necessary evidences in this regard were submitted during assessment proceedings as well as appellate proceedings.

2. That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

ITA No. 300/Ind/2017
Assessment Year 2013-14

1. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs.23,11,760/- made on account of cash found during the course of search treating the same as unexplained without considering the explanation offered by the assessee and without considering the fact that the cash found belongs to various persons and necessary evidences in this regard were submitted during the assessment proceedings as well as during appellate proceedings.

2. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs.23,01,300/- being undisclosed receipt from various persons without considering the explanation offered by the assessee and without considering the fact that the document **LPS-1** page-4 is not the cash receipt but contain the details of various persons to whom contract allotted by Municipal Corporation, Bhopal, the amount of application form and amount of security deposit is written in it. The learned CIT (Appeals) also erred in not appreciating the fact that the document **LPS-1** page 4 is not related with the assessee but related with his brother and necessary evidences and explanation of each contract work was given during appellate proceedings but was not considered.

3. That on the facts and in the circumstances of the case, the learned CIT (Appeals) erred in confirming the addition of Rs.1,30,000/- being unexplained expenditure for purchase of jewellery without considering the explanation offered by the assessee and without considering the fact that the said jewellery was purchased out of income of the year and necessary evidences in this regard were submitted during assessment proceedings as well as appellate proceedings.

4. That on the facts and in the circumstances of the case, the learned **CIT (Appeals)** erred in confirming the addition of Rs.1,95,000/- being undisclosed receipt without considering the explanation offered by the assessee and without considering the fact that the documents on the basis of which addition made is of the nature of dumb document having no evidentiary value in the eye of law.

5. That on the facts and in the circumstances of the case, the learned **CIT (Appeals)** erred in confirming the addition of Rs.3,44,000/- being cash deposit in bank treating the same as undisclosed without considering the explanation offered by the assessee and without considering the fact that the cash deposit in the bank is partly out of own sources as shown in the return and partly out of withdrawals from bank earlier and re-deposited later on and necessary evidences in this regard were submitted during assessment proceedings as well as appellate proceedings.

6. That the appellant craves, leave to add, to urge, to alter or to amend any of the ground of the appeal on or before the date of hearing.

18. The appeals raised by the assessee in various assessment years are summarized issue wise in following manner;

Particulars	115/Ind/17 A.Y 08-09	116/Ind/17 A.Y 09-10	117Ind/17 A.Y 10-11	118/Ind/17 A.Y 11-12	119/Ind/17 A.Y 12-13	300/Ind/17 A.Y 13-14
Undisclosed receipt	27,27,834 (Ground.1)	16,00,893 (Ground.1)	1,64,785 (Ground.1)	-	-	23,01,300 (Ground No.2)
Undisclosed cash deposit	-	-	49,500 (Ground 3)	1,00,000 (Ground 2)	1,75,000 (Ground 1)	3,44,000 (Ground 5)
Unexplained investment	-	3,00,000 (Ground 2)	-	-	-	-
Unexplained investment u/s 69B		4,09,266 (Ground 3)		22,33,100 (Ground1)		

Undisclosed investment	-	-	24,75,000 (Ground 2)	-	-	-
Unexplained cash found	-	-	-	-	-	23,11,760 (Ground 1)
Unexplained Jewellery	-	-	-	-	-	1,30,000 (Ground 3)
LPS-4						1,95,000/- (Ground 4)

19. From perusal of the above chart for some of the assessment years common issues have been raised.

20. We will first take up common ground raised by the assessee for Assessment Year 2008-09, 2009-10, 2010-11 and 2013-14 relating to the addition for undisclosed receipts confirmed by the Ld. CIT(A).

21. Brief facts relating to this issue are that during the course of search loose papers appearing No. 4 & 5 of LPS-1 were found and seized. These loose papers contained details of various parties. In some papers there was a mention of the dates. When the assessee was asked to explain the transactions mentioned in the loose papers it was submitted that these papers do not belong to the assessee and not in the handwriting of the assessee. Two brothers are engaged in the engineering work with the Government and one is a contractor.

The assessee lives in a joint family. There is high possibility that these documents have some connection with the contract business the assessee's brother. With regard to the amount of Rs.23,01,300/- which was calculated by the Ld. A.O on the basis of figures appearing on the loose papers, since no date was mentioned, the total of this comes to Rs.23,01,300/- was confronted to the assessee for necessary explanation. It was submitted that the particulars of seized papers LPS-1 Page-4 which do not have any date relates to application form fees, security money received and some of the names relates to some contractors but there is no direct nexus of the assessee with these seized documents. Ld. A.O was not convinced and made the addition for undisclosed receipts for the Assessment Year 2008-09, 2009-10, 2010-11 and 2013-14 at Rs.27,27,834/-, Rs.16,00,893/-, Rs.1,64,785/- and Rs.23,01,300/-. When the assessee came up before Ld. CIT(A) he failed to succeed as Ld. CIT(A) confirmed the view taken by Ld. A.O.

22. Now the assessee is in appeal before the Tribunal.

23. Ld. Counsel for the assessee made following written submissions.

(a) Written submissions with reference to addition for undisclosed receipt of Rs. 27,27,834/-, Rs.16,00,893/- and Rs.1,64,785/- for Assessment Years 2008-09, 2009-10 and 2010-11 respectively

Facts:

The following additions in various A.V.'s were done on the basis of some loose papers (LPS1- Pg.5) found during search at the residence of assessee. (PB:93). Details of contents given at PB 92.

A.Y.	2008-09	2009-10	2010-11
Various additions made as per LPS-1, Pg.5	12,15,083.00	3,28,437.00	1,09,077.00
	12,71,930.00	3,17,590.00	19,860.00
	2,40,821.00	1,53,550.00	35,848.00
		6,12,759.00	
		1,84,895.00	
		3,662.00	
Total	27,27,834.00	16,00,893.00	1,64,785.00

Submissions before AO.

- The rough papers do not belong to the assessee and were not in the handwriting of the assessee.
- It is a dumb document, whether received or paid, not clear. Transaction therein is not clear. Not in handwriting of assessee, assessee unable to explain.

Two brothers of assessee are in engineer works in Govt. department

and one brother is a contractor.

The assessee belongs to a very social family. There was a high possibility that some person might have left the papers at the assessee's residence.

What AO did?

- No material evidence was submitted by the assessee to substantiate the claim .
- It was presumed that the transactions recorded in this loose paper pertain to the assessee and the content of this paper were true.
- The argument of rough estimations is a concocted story as the entries in the paper were exact.

What Ld. CIT(A) did?

Assessee further submitted that this paper relates to brother of assessee, Mr. Vinod Tripathi, who was Engineer in Municipal Corporation. The same related to work allotment. Evidences in form of bank account of Girija Construction and Alok Mishra were submitted. PB 94-95.

The fact that the LPS page 5 contained details of work allotted by Municipal Corporation, Bhopal to different persons and belonged to the brother of the assessee Mr. Vinod Tripathi was not appreciated by the Ld. CIT(A) because of following reasons:

- Though amount was appearing in the bank account of Girija Construction, no supporting evidence such as an affidavit or confirmation or work allotment letter is filed. Such evidence would prove that the amount does not relate to the appellant but to his brother.
- Though amount was appearing in the bank account of Shri Alok Mishra, it was not clear that the bank statement belonged to Shri

Alok Mishra. Identity of Shri Alok Mishra has not been proved and details like copy of income tax returns, work allotment letter, affidavit, details of office address are not filed.

Submissions:

1. The Document is a dumb Document

- It is not in handwriting of assessee
- The content is not showing nature of transaction whether receipt or payment.
- The document could not be correlated with any corroborative evidence.

2. The Document Belongs to Brother of the assessee Shri Vinod Tripathi. It is submitted that the loose papers (LPS page-5) on the basis of which addition were made relates to the younger brother of the assessee, Shri Vinod Tripathi, who is working in Municipal Corporation, Bhopal as an engineer. The contents of the documents relate with the work order allotted by Bhopal University to the persons mentioned in coloumn 2 the following table.

S.No.	Contract Given to	Names appearing in LPS 5	PB	Amount
1	Alok Mishra	Teachers Quarters	PB 97	3,28,437/-
2	Alok Mishra	Electronic Department	PB 96	3,17,590/-
3	Girija Constructions	CRIM (Crishamachari Institue of Management)PB 94	PB 94	12,15,083/-
4	Alok Mishra	Girls Hostel	PB 96	12,71,930

			PB 97	1,53,550/-
			PB 96	6,12,759/-
5	Alok Mishra	Commerce Department	PB 96	1,84,895/-
			PB 97	9,662/-

The above figures which are in dispute were paid to Girija Construction and Shri Alok Mishra by municipal corporation. Assessee has no connection with municipal corporation. Brother of assessee is employee in Municipal corporation. No nexus of assessee with these papers were established. The bank accounts of Girija Constructions and Shri Alok Mishra are on record (PB:94-97). Exact matching of such figures cannot be a coincidence. Hence, findings of Id.CIT(A) that the claims made by the assessee are not supported by proper evidences was wrong, devoid of any merit and unsustainable. Id lower authorities choose not to examine the brother, Vinod Tripathi, nor the parties mentioned therein.

The above submissions and evidences prove to the hilt that the loose papers on the basis of which additions are made do not belong to the assessee.

The appellant therefore prays that the addition may kindly be deleted.

(b) Written submissions with reference to addition for undisclosed receipt of Rs.23,01,300/- for Assessment Year 2013-14

AO Pg. 6-9; Para 7.4 CITCA) pg. 16 ; Para 4.4

FACTS

1. That during the course of search proceedings, a document LPS-1,Pg 4 (Aa pg. 7) was seized which contains details of names, fees of application form and security money.

Name	Amount
Deepak Thakur	4,40,400
Rajesh Pradhan	2,01,900
Sudhir	1,17,300
Parvez	2,65,100
B.D Chourasia	2,29,600
Vinod Pandey	3,36,000
Virendra Singh	1,85,000
Pappu Barua	3,75,000
Shiv Sharma	89,000
Shankar	39,000
Rani Sati	23,000
<u>Total</u>	<u>23,01,300</u>

No date is mentioned. It is the presumption of the Id AO that the same relates to current year.

2. The Ld AO assumed that since the LPS was seized during the course of search on 20.06.12 and no date was mentioned in it, thus it was contended to be pertaining to A.Y. 2013-14. It was further alleged that the details of these receipts were not recorded in books of accounts of the assessee and therefore are undisclosed receipts.
3. The Id CIT(A) also confirmed the addition.

SUBMISSIONS

1.The Document is undated, not in handwriting of assessee and is not at all related to him. It is a dumb document

2.The assessee lives in a joint family arrangement and his brother Shri Vinod Tripathi is an engineer in Municipal Corporation, Bhopal. The names entered in the sheet are of contractor whom contract works were allotted by Municipal Corporation.

24. Per contra Departmental Representative vehemently argued and supporting the orders of both the lower authorities.

25. We have heard rival contentions and perused the records placed before us and also gone through the impugned orders and documents. Common ground have been raised for Assessment Year 2008-09, 2009-10, 2010-11 & 2013-14 for the addition for undisclosed receipts of Rs.27,27,834/-, Rs.16,00,893/-, Rs.1,64,785/- and Rs.23,01,300/- respectively.

26. During the course of search in the seized records at LPS-1 page 4 & 5 certain transactions were mentioned the two seized documents were not signed by the assessee or any other person. Assessee has disowned these two loose papers. Assessee lives in a joint family with three brothers of which Devendra Tripathi and Vinod Tripathi are Engineers and are in Government service and one brother Shri

Ajay Tripathi works as a contractor. The assessee is employed with Burkattullah University, Bhopal. All these four brothers lives with their family along with their parents namely Shri G.P. Tripathi and Smt. Saroj Tripathi. In the alleged seized documents in one of the sheets dates are mentioned along with some names. Ld. A.O bifurcated the figures as per the date which were falling under Assessment Year 2008-09, 2009-10 and 2010-11 totalling to Rs.27,27,834/- , Rs.16,00,893/- and Rs.1,64,785/- and the addition of Rs.23,01,300/-for Assessment Year 2013-14 was on the basis of another loose paper on which no date was mentioned.

27. With regard to the addition for 2008-09, 2009-10 and 2010-11 we find that the assessee during the course of appellate proceedings gave the details in order to prove that addition for Assessment Years 2008-09, 2009-10 and 2010-11 are un called for as the alleged amount mentioned with the dates relates to the business transactions carried out by his brother Shri Ajay Tripathi. Copies of bank statements were also filed which are placed at paper book page 94 to 97. These pages contains the bank statements and following entries are appearing in these bank statements;

S.No	Contract Given to	Names appearing in LPS 5	PB	Amount
1	Alok Mishra	Teachers Quarters	PB 97	3,28,437/-
2	Alok Mishra	Electronic Department	PB 96	3,17,590/-
3	Girija Constructions	CRIM (Crishamachari Institue of Management)PB 94	PB 94	12,15,083
4	Alok Mishra	Girls Hostel	PB 96 PB 97 PB 96	12,71,930 1,53,550/- 6,12,759/-
5	Alok Mishra	Commerce Department	PB 96 PB 97	1,84,895/- 9,662/-

28. All the said figures are appearing on the bank statement of M/s. Girija Constructions as well as the joint bank account of Shri Ajay Sharma and Shri Alok Mishra. It is clearly visible that all the alleged entries in the seized documents stands explained with the bank statement and they cannot be doubted as undisclosed receipts in the hands of the assessee since the assessee's name is nowhere appearing in the seized document. We, therefore are of the considered view that no addition for undisclosed receipts for Assessment Years 2008-09, 2009-10 and 2010-11 at Rs.7,27,834/-, Rs.16,00,893/- and Rs. 1,64,785/- respectively is called for and direct the Ld.A.O to delete the same. However, the Ld. A.O will be at

liberty to make necessary investigation if required to assess the correct income of Shri Alok Mishra specifically with regard to the seized document LPS-1 page-5. We accordingly set aside the finding of Ld. CIT(A) and delete ground No.1 for Assessment Year 2008-09, 2009-10 and 2010-11.

29. With regard to the addition of Rs.23,01,300/- for undisclosed receipt made by the Ld. A.O on the basis of seized document appearing in LPS-1 page-4, the Ld. Counsel for the assessee contended that the alleged document is undated and not in the handwriting of the assessee and not at all related to him and the same are to be considered as a dumb document for the purpose of assessing the income. He also contended that since he lives in joint family and his brother is working in Municipal Corporation, Bhopal these papers may be related to him. From perusal of the seized document which also forms part of the assessment order and has been reproduced at page-7, we find that it contains the name, amount for the form, security and total amount. In the names, apart from the individual persons there also names of business concerns namely Girija Construction, Ranisati, Legend Marketing. This

particular sheet is not signed by any person but figures mentioned therein are in the form of an account in which out of the gross amount some amount is subtracted. Prima facie these transactions looks to be part of business concern or the business of the contractor. The Ld. A.O in order to make any addition must bring some material evidence on record to prove the nexus of the assessee with the alleged transaction mentioned therein Ld. A.O was well aware that the assessee lives in a joint family and two brothers are working at Municipal Corporation and one into the business of contractor. He ought to have confronted other parties present in the premises with these documents. Leaving the burden only on the assessee to explain each and every document found at the residential premises where other family members are also living cannot be said to be justified. In our considered view since no nexus have been established by the revenue authorities for the assessee of having entered into the alleged transaction mentioned in the seized document which is neither signed nor contains any dates cannot be taken as a basis to make the addition in the hands of the assessee.

30. Hon'ble High Court of Gujarat in the case of CIT (2008) 378 has held that “the additions made by the AO on the basis of seized papers lying without any corroborative evidence cannot be sustained”. Similar view was also taken by the Co-ordinate Bench in the case of M.M. Financiers V/s DCIT 2007 107 TTJ 200 (Chennai).

31. 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 mere 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".

32. We therefore respectfully following the above judgments and in the given facts and circumstances of the case are of the considered view that the addition made for the undisclosed receipt of Rs.23,01,300/- for Assessment Year 2013-14 needs to be deleted since the revenue authorities have made the addition merely on the basis of seized document which is an unsigned document having no name and date and no other corroborative evidence have been brought on record by the revenue authorities to support the addition for undisclosed receipt. Accordingly Ground No.2 of the assessee's appeal for Assessment Year 2013-14 is allowed.

33. Now we take up second common issue relating to addition of undisclosed/unexplained cash deposits made in 2010-11, 2011-12,

2012-13 and 2013-14 at Rs. 49,500/-, Rs.1,00,000/-, Rs.1.75,000/- and Rs.3,44,000/- respectively.

34. Brief facts relating to this addition are that Ld. A.O on perusal of the bank statement of the assessee found that huge amount of cash was deposited in the bank account with State Bank of India. Though the assessee gave details of date wise deposits with the explanation about their source but Ld. A.O was not convinced and he made addition for undisclosed/unexplained cash deposits of Rs. 49,500/-, Rs.1,00,000/-, Rs.1.75,000/-and Rs.3,44,000/- for Assessment Years in 2010-11, 2011-12, 2012-13 and 2013-14 respectively. The assessee got part relief from Ld. CIT(A). Now the assessee is in appeal before us raising this common issue for four assessment years from 2010-11, 2011-12, 2012-13 and 2013-14.

35. Ld. Counsel for the assessee submitted that the impugned addition were uncalled for as the assessee has explained the source of each and every deposits through cash flow statement. He also submitted that the source of the cash deposits are either through withdrawals from the bank or from the income earned during the year which are duly offered to tax. In support of the contention Ld.

Counsel for the assessee has provided following summary of date wise withdrawal and cash deposit in bank.

Date of deposit	Amount	Source	Amount
25.05.09	49,500	Cash withdrawal on 13.05.09	10,500
		Cash withdrawal on 13.05.09	20,000
		Cash withdrawal on 13.05.09	10,000
		Income from other sources	9,000
			49,500/-
07.07.10	10,000	Other Income	10,000
23.07.10	10,000	Other Income	10,000
23.07.10	20,000	Other Income	20,000
29.07.10	1400	Other Income	1400
Total A.Y. 10-11	49,400		
03.01.11	20,000	Out of Withdrawal from bank on 10.11.10 Rs. 3,50,000/-	20,000
03.01.11	40,000	Out of Withdrawal from bank on 10.11.10 Rs. 3,50,000/-	40,000
Total	60,000		
Grand Total A.Y. 11-12	1,01,400/-		
11.04.11	65,000	Out of Withdrawal from bank on 10.11.10 Rs. 3,50,000/-	65,000
16.08.11	30,000	Out of Withdrawal from bank on 10.06.11 Rs.15,000	10,000
		Out of Withdrawal from bank on 07.07.11 Rs.15,000	10,000
		Out of Withdrawal from bank on 01.08.11 Rs.10,000	10,000
Total			30,000
19.10.11	20,000	Out of Withdrawal from bank on 29.09.11 Rs.25,000	20,000
21.10.11	10,000	Income from other source shown in return	10,000
18.02.12	25,000	Out of Withdrawal from bank on 03.01.12 Rs.25,000	25,000

25.02.12	5,000	Income from other sources shown in return	5,000
25.03.12	25,000	Out of Withdrawal from bank on 08.02.12 Rs.14,000	14,000
Grand Total A.Y.12-13			1,80,000
18.04.12	25,000	Out of Withdrawal from bank on 03.04.12 Rs.49,500	25,000
09.05.12	12,000	Out of Withdrawal from bank on 17.04.12 Rs 15,000	12,000
15.05.12	25,000	Income from other sources shown in return	25,000
16.05.12	20,000	Income from other sources shown in return	20,000
19.05.12	20,000	Out of Withdrawal from bank on 17.05.12 Rs 20,000	20,000
05.06.12	10,000	Income from other sources shown in return	10,000
19.07.12	20,000	Income from other sources shown in return	10,000
		Out of Withdrawal from bank on 14.07.12 Rs 10,000	10,000
26.07.12	10,000	Income from other sources shown in return	10,000
21.08.12	25,000	Out of Withdrawal from bank on 29.08.12 Rs 1,00,000	25,000
31.08.12	25,000	Out of Withdrawal from bank on 29.08.12 Rs 1,00,000	25,000
03.09.12	10,000	Out of Withdrawal from bank on 29.08.12 Rs 1,00,000	10,000
17.09.12	25,000	Out of Withdrawal from bank on 29.08.12 Rs 1,00,000	25,000
18.09.12	4000	Out of Withdrawal from bank on 29.08.12 Rs 1,00,000	4,000
23.10.12	25,000	Out of Withdrawal from bank on 25.09.12 Rs 1,00,000	25,000
23.10.12	10,000	Out of Withdrawal from Indusind bank on 01.10.12 Rs 10,000	10,000
19.11.12	25,000	Out of Withdrawal from bank on 01.11.12 Rs 25,000	25,000
26.12.12	20,000	Out of Withdrawal from bank on 18.12.12 Rs 80,000	20,000
27.01.13	22,000	Out of Withdrawal from bank on	22,000

		18.12.12 Rs 80,000	
22.03.13	15,000	Out of Withdrawal from bank on 04.03.13 Rs	15,000
Grand Total A.Y.13- 14			3,48,000

36. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

37. We have heard rival contentions and perused the records placed before us. The common issue for four assessment years in 2010-11, 2011-12, 2012-13 and 2013-14 relates to the addition for undisclosed/unexplained cash deposits at Rs.49,500/-, Rs.1,00,000/-, Rs.1,75,000/- and Rs.3,44,000/-. The assessee is an employee of Burkatullah University, Bhopal. Apart from salary income he has also offered income from other sources consistently for past many assessment years. Total income of Rs.3,71,380/-, Rs.3,79,740/- Rs.4,52,890/- and Rs.8,06,690/-has been offered for Assessment Year 2010-11 to 2013-14. The Ld. A.O made the addition of various entries of cash deposited in the bank account held with State Bank of India. This bank account is duly disclosed in the return of income by the assessee. Assessee has given summary of date wise cash withdrawal and cash deposited before

both the lower authorities and before us. From perusal of this summary which is in the form of written submission filed by the assessee it is discernible that proper explanation has been given against each cash deposit. Source of the cash deposit is mostly from the cash withdrawal from the bank or from the income earned by the assessee during the year. Looking to the totality of facts and income earned by the assessee during the year and the amount of cash withdrawal from the bank account, we are of the considered view that no addition for undisclosed cash deposits was called for in the hands of the assessee and we accordingly delete the addition of Rs.49,500/-, Rs.1,00,000/-, Rs.1,75,000/- and Rs.3,44,000/- and allow this common issue raised in Ground No.3 for Assessment Year 2010-11, Ground No.2 for Assessment Year 2011-12, Ground No.1 for Assessment Year 2012-13 and Ground No.5 for Assessment Year 2013-14.

38. Now we take up Ground No.2 of Assessment Year 2009-10 of Rs.3,00,000/- through which the assessee has challenged the finding of Ld. CIT(A) for unexplained investment in the purchase of property.

32. Brief facts relating to this addition are that during the course of search an agreement for sale was seized bearing No. LPS-

3/Page2Meena Rai (seller) and Shri G.P. Tripathi (purchaser). An advance payment of Rs.3,00,000/- was mentioned in the agreement. During the assessment proceedings assessee contended that this transaction is between his father and seller Smt. Meena Rai has no connection with him. Assessee however failed to convince the Ld. A.O, who finally made the addition of Rs.3,00,000/-. No relief was given by Ld. CIT(A). Now the assessee is in appeal before us.

39. Ld. Counsel for the assessee submitted that the alleged amount of Rs.3,00,000/- was paid through bank account in the name of his father. Confirmation of his father in this regard has been filed. The deal mentioned in the agreement sale was subsequently cancelled. No cash was deposited in the account of father before issue of cheque. He prayed for deletion of the addition.

40. Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

41. We have heard rival contentions and perused the records placed before us. Through this Ground No.2 for Assessment Year 2009-10 addition of Rs.3,00,000/-for unexplained investment made by the Ld. A.O and confirmed by Ld. CIT(A) is challenged. The source of this addition is from the 'agreement to sale' found during the course of

search. In this agreement to sale, seller is Smt. Meena Rai and the purchaser is Shri G.P. Tripathi who is the father of the assessee. Shri G.P. Tripathi is a retired government servant and receives pension. He has confirmed that Rs.3,00,000/- was paid as advance by him from his bank account for the purchase of land. Copy of the bank account of the father Shri G.P. Tripathi is placed on record. The alleged deal was subsequently cancelled. Sufficient material has been placed on record to prove that the alleged investment of Rs.3,00,000/- one from the coffers of the assessee's father and the investment was not made by the assessee. It is also the fact that no cash was deposited in the bank account of the father before the issue of cheque. In the given facts and circumstances of the case it is proved beyond doubt that the alleged amount of Rs.3,00,000/- was paid by Shri G.P. Tripathi and not by the assessee. We find no justification in the addition made at Rs.3,00,000/-. We accordingly delete the addition of Rs.3,00,000/- for unexplained investment and allow Ground No.2 raised in the assessee's appeal for Assessment Year 2009-10.

42. Now we move to the grounds relating to the addition for unexplained investment u/s 69B of the Act at Rs.4,09,266/- and

Rs.22,33,100/- made by the Ld. A.O for Assessment Year 2009-10 and Assessment Year 2011-12 which have been confirmed by Ld. CIT(A).

43. Brief facts relating to this issue are that during the course of assessment proceedings Ld. A.O noticed that the assessee had made investment in properties. One Plot at Jyoti Nagar, Babriya Kala, Bhopal was registered on 23.9.2009 for purchase consideration of Rs. 1,30,734/- and another property i.e. agriculture land at Kolar Road, Bhopal was registered on 30.10.2010 for purchase consideration of Rs.7,00,000/-. Fair market value for both the properties were adopted by Ld. A.O at Rs.5,40,000/- and Rs.29,33,100/- on the basis of Stamp Valuation Authority. Though the assessee contended that he has not paid any “on money” but Ld. A.O went ahead to make the addition for difference between the fair market value and purchase consideration paid by the assessee thereby making the addition of Rs.4,09,266/- and Rs.22,33,100/- for Assessment Year 2009-10 and Assessment Year 2011-12 respectively. The appeal before Ld. CIT(A) did not bring any relief as Ld. CIT(A) confirmed the view taken by Ld. A.O.

44. Now the assessee is in appeal before the Tribunal.

45. Ld. Counsel for the assessee made written submission in support of his contention that the impugned addition may be deleted.

FACTS

1. During the course of post search assessment proceedings, the ld AO noticed that assessee has invested in following properties. He added the difference between the purchase value and stamp value as unaccounted investment u/s. 69B.

Sr. No	Address	Seller	Date of Registry	Purchase Value	Fair Market Value
1.	Plot no. 140, Jyoti Nagar, Babriya Kala, Bhopal	Deepak Grih Nirman Sahkari Maryadit	23.03.09 (AY 2009-10)	1,30,734	5,40,000
2.	Agricultural Land at Village Bairagarh Chichli, Patwari halka 3829, Kolar Road, Bhopal	Rasheeda Iqbal	30.10.10 (AY 2011-12)	7,00,000	29,33,100
	Total			8,30,734	34,73,100

2. On enquiry it was submitted by assessee that:-
- There was no evidence to prove any “on money” paid by assessee.
 - In respect of 1st Property the cost was paid at the time of purchase in 2006 and registered deed was entered in 2009. In the lapse of 3 yrs the Stamp authority have revised the guideline rates. Thus, it is incorrect to compare the Fair market value of 2009 with cost of purchase in 2006. The source of purchase is out of cash balance out of explained source.
 - The Source of payment for purchase of Agricultural land at Rs. 7,00,000/- is Rs. 6,00,000/- through Cheque no 883 dated 31.10.10 from SBI account and the registry expenses of Rs. 1,00,000/- was met out of Cash withdrawal of Rs. 3,50,000/- made from SBI on 11.11.10.

What AO did?

- No prudent person will sell the land below market price.
- Claim for purchase out of block period is not correct as the registry was done in 2009.

- Summons u/s. 131 were issued, but the sellers did not appear. Assessee could not produce the sellers.
- Thus, the difference in fair market value and the registry value is added as undisclosed investment in hands of assessee. Rs. 26,42,366/- (Rs. 34,73,100 less 8,30,734/-)

Unexplained Investment	A.Y
4,09,2,66/-	2009-10
22,33,100/-	2011-12

What Id. CIT(A) did?

- The addition is made on account of difference in the purchase price and the market value after giving ample opportunity to the assessee to prove that receipt was not his income or that it is exempted from taxation.
- The assessee could not produce the sellers to justify his claim that no over and above payment were made in purchase of said properties.

SUBMISSIONS:

No evidence of on-money: - The pre-requisite conditions for making an addition under section 69B are that firstly, the assessee should have made investment and then the Assessing Officer should find that the amount actually expended on making such investment is more than the amount recorded in the books of account. In other words, there should be some positive evidence with the Assessing Officer to find that the assessee had, in fact, invested more amount than that actually recorded in the books of account. Such a finding by the Assessing Officer can be based on some positive evidence about the making of more investment than that declared in the books of account. This section cannot be triggered on a mere presumption of the Assessing officer.

The Hon'ble Supreme Court in the case of ***K.P. Varghese v. ITO [1981] 131 ITR 597/7 Taxman 13*** has held that the onus of establishing that the conditions of taxability are fulfilled, is always on the Revenue. It is for the Revenue to show that there is an understatement of the consideration. It further laid down that to throw the burden of showing that there is no understatement of the consideration on the assessee, would be to cast an almost impossible burden upon him to establish a negative. Similar view has been reiterated in ***CIT v. Shivakami Co. (P.). Ltd. [1986] 159 ITR 71/25 Taxman 80K (SC)***. In this case, their Lordships have laid down that no addition can be made unless there is evidence that more consideration than what was stated in the document, was received. In the light of the above decisions, it is manifest that no addition can be made

unless the Revenue proves understatement of consideration with some cogent evidence.

1. Ld AO issued summons u/s. 131 to the parties. These summons were not returned unserved. If the parties did not appear, assessee cannot be blamed for it.
2. There is no evidence found during search or subsequently to show any on-money payment.
3. Amendment in section 56(2) to tax the difference in stamp value and consideration in the hands of buyer; has been brought w.e.f. 01.04.2014 i.e. from A.Y. 2014-15. Same cannot be applied retrospectively.
4. The findings of ld CIT(A) is wrong in the light of **CIT vs Dinesh Jain (HUF) 352 ITR 629 (Del.)** wherein it was held “*Section 69B in terms requires that the AO has to first ‘find’ that the assessee has ‘expended’ an amount which he has not fully recorded in his books of account. It is only then that the burden shifts to the assessee to furnish a satisfactory explanation. Till the initial burden is discharged by the AO, this section remains dormant*”.

Further, in case of **CIT Vs Chandni Bhuchar 323 ITR 510 (P & H)**, it was held that “*in absence of any legally acceptable evidence, valuation done for the purpose of section 50C would not represent actual consideration passed on to seller.*”

Thus, it is humbly prayed that the addition may be deleted.

46. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

47. We have heard rival contentions and perused the records placed before us. Through Ground No.3 for Assessment Year 2009-10 and Ground No.1 for Assessment Year 2011-12 assessee has challenged the finding of Ld. CIT(A) confirming the addition of Rs.4,09,266/- and Rs.22,33,100/- respectively made u/s 69B of the Act.

48. The addition of Rs.4,09,266/- is the difference between the fair market value and purchase price paid for Plot No.140, Jyoti Nagar, Babriya Kala, Bhopal. The registry of the plot took place on 23.03.2009. Records shows that this property was purchased in the year 2006 and total purchase consideration was paid and possession taken. Only the registry was done on 23.3.2009 and therefore the market value adopted by the Ld. A.O is not correct. No evidence placed on record to prove that any “on money” was paid.

49. As regards agriculture land at village Bairagarh Chichli, Patwari halka 3829, Kolar Road, Bhopal purchased during the Assessment Year 2011-12 the consideration has been paid through cheques of Rs.6,00,000/- and registry expenses has been incurred in cash at Rs.1,00,000/-. Both the lower authorities have confirmed the addition on the assumption that the assessee has paid ‘on money’ for the purchase of these two properties. However both the lower authorities as well as Ld. Departmental Representative have not placed on any documentary evidence to prove that any ‘on money’ has been paid by the assessee to the sellers. No investigation was carried out by the Ld. A.O even though all the necessary details i.e. name and address of the sellers were available with him. Ld. A.O

has also not given due weightage to bring on the record the basis of taking fair market value. For making addition u/s 69B of the Act prerequisite condition is that the Ld. A.O should first find that the amount actually invested is much more than the amount recorded in the books of accounts. There is no positive evidence placed before us to show that any such excess amount i.e. 'on money' was paid by the assessee to the sellers.

50. Hon'ble Apex Court in the case of K.P. Verghese v ITO (1981) 131 ITR 597/7 Taxman 13(supra) has held that "*the onus of establishing that the conditions of taxability are fulfilled, is always on the Revenue*". It is for the revenue to show that there is an understatement of the consideration. Hon'ble Apex Court further laid down that "*to throw the burden of showing that there is no understatement of the consideration on the assessee, would be to cast an almost impossible burden upon him to establish a negative*".

51. Hon'ble Punjab & Haryana High Court in the case of CIT v/s Chandni Bhuchar 323 ITR 510 (P&H) held that "in absence of any legally acceptable evidence, valuation done for the purpose of section 50C would not represent actual consideration passed on to seller."

52. Further the provisions of Section 50C of the Act which empowers the Ld. A.O to adopt the consideration received or accruing as a result of the transfer by an assessee on the basis of valuation adopted by the Stamp Valuation Authority is applicable on the seller. In the instant case Ld. A.O has not conducted any enquiry through the jurisdictional A.O of the alleged sellers in order to invoke provisions of Section 50C of the Act in the respective hands. In this given facts and circumstances of the case and considering the ratio laid down by Hon'ble Apex Court, we are of the considered view that there is no material evidence against the assessee which could prove that an unexplained investment in the shape of 'on money' was ever paid by the assessee for the purchase of alleged properties. In our view the addition made by the Ld. A.O u/s 69B of the Act are merely based on surmises and assumptions and fail to stand. We accordingly set aside the finding of Ld. CIT(A) and delete the addition for unexplained investment u/s 69B of the Act at Rs.4,09,266/-and Rs.22,33,100/-for Assessment Year 2009-10 and Assessment Year 2011-12 respectively. Accordingly Ground No.3 for Assessment Year 2009-10and Ground No.1 for Assessment Year 2011-12 are allowed.

53. Now we take Ground No.2 for Assessment Year 2010-11 relating to addition for undisclosed investment at Rs.24,75,000/- made by the Ld. A.O on the basis of seized document No.LPS-3 page 42-64.

54. Brief facts of the case relating to the issue are that during the course of search various documents page 42to 64 of LPS-3 were found and seized. These contains sale agreement of land dated 22.4.2007 between Roop Singh and Narendra Hemnani. During the course of assessment proceedings the assessee failed to convince the Ld. A.O that the assessee is unrelated to these documents and Shri Narendra Hemnani left these document at the assessee's residential premises. Ld. A.O made the addition for undisclosed investment of Rs.24,75,000/- alleged to have been made by the assessee in the name of Shri Nand Kishore Yadav and Shri Narendra Hemnani as benami investment. When the matter came up before Ld. CIT(A) he considering the huge cash amount found and loose paper seized confirmed the addition of Rs.24,75,000/- as benami investment. Ld. CIT(A)however failed to give his finding of fact about the alleged connection between the assessee and the purchaser of the properties namely Shri Nand Kishore Yadav and Shri Narendra Hemnani.

55. Now the assessee is in appeal before the Tribunal.

56. Ld. Counsel for the assessee submitted that the assessee has nothing to do with the documents seized and named as LPS-3 Page 42-64. These papers were left by Shri Narendra Hemnani at the assessee's residence when he came for some personal work. The seized documents are legal documents which do not have any mention of the assessee's name. He also contended that the presumption u/s 132(4A)/292C of the Act are in favour of the assessee as the contents of the documents would be taken as correct unless rebutted by the Ld. A.O by bringing any evidence on record. Summons issued by the Ld. A.O returned un served but for this action of the none appearance of the parties, assessee should not be held liable and therefore prayed for deletion of addition.

57. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

58. We have heard rival contentions and perused the records placed before us. The issue raised in Ground No.2 for Assessment Year 2010-11 relates to the addition for undisclosed investment. From perusal of the seized records we find that following documents were found during the course of search of the assessee's premises.

Page No. (LPS -3)	Date	Particulars	Seller	Purchaser	Remarks
42-45 (PB172-174)	22.04.07	Sale Agreement of land of 1.10 acre - Rs. 24.75 lakh in which advance of Rs. 15.75 lakh given.	Roop Singh	Nand Kishore Yadav	Advance Given pertains to A.Y. 08-09
46-49 (PB175-178)	22.04.09	Copy of Will of 1.10 acre	Roop Singh Executor	Narendra Hemnani Executee	Will of same land of which sale agreement made on 22.04.07
50-54 (PB179-183)	22.04.09	Copy of Power of attorney of 1.10 acres	Roop Singh Executor	Narendra Hemnani Executee	POA of same land of which sale agreement made on 22.04.07
55-59 (PB184-186)	20.04.11	Copy of Power of attorney of 1.10 acres	Roop Singh Executor	Narendra Hemnani Executee	POA of same land of which sale executed on 22.04.07 and renewed on 20.04.11
60-64 (PB189-193)	11.05.09	Sale Agreement	Roop Singh	Narendra Hemnani	Sale agreement made on 22.04.07 and renewed on 11.05.09.

59. In the above stated tabular chart under the head particulars the details of the seized documents is mentioned. Some are sale

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agreements dated 22.4.2007 between Shri Roop Singh and Nand Kishore Yadav and copy of will of power of attorney dated 22.4.2009 and 20.4.2011 executed by Shri Roop Singh in favour of Narendra Hemnani and sale agreement dated 11.5.2009 in between Shri Roop Singh and Shri Narendra Hemnani. All the documents are duly registered before the competent authority and necessary details of the period mentioned therein is mentioned. An affidavit has been made by Shri Narendra Hemnani dated 16.3.2015 declaring that the alleged documents pertains to him and do not have any connection directly or indirectly with the assessee. He also declared that these documents were left by mistake at the assessee's premises when he came for a personal visit. Mr. Narendra Hemnani has also owned the transactions mentioned in the seized documents. In these given facts the Ld. A.O was duty bound to carry out investigation against Shri Narendra Hemnani. However making the addition in the hands of the assessee as undisclosed investment/ benami investment seems to be hollow because there is no connection directly or indirectly established by the revenue authorities with the seized documents pertaining to purchase of properties. Such addition cannot stand merely for the reason that these documents were found

at the assessee's residential premises looking to the fact that the assessee has duly explained the alleged documents and the same have been owned by Shri Narendra Hemnani through an affidavit. Action if any to have been called for by the Ld.A.O was against Shri Narendra Hemnani but by no stretch the addition could have been made in the hands of the assessee. We accordingly delete the addition of Rs.24,75,000/- made by Ld. A.O towards undisclosed investment and allow Ground No.2 raised by the assessee.

60. Now we take Ground No.1 for Assessment Year 2013-14 relating to addition for unexplained cash of Rs.23,11,760/- found at the residential premises.

61. Brief facts relating to this ground are that during the course of search cash of Rs.23,11,760/- was found at the residential premises. cash of Rs.22,00,000/- was seized by the revenue authorities. During the course of search itself it was stated by the assessee that some part of cash was received from various persons for their educational works. He also stated that some of cash belongs to his brother and father. However for want of sufficient details Ld. A.O made the addition for unexplained cash of Rs.23,11,760/-. When the matter came up before Ld. CIT(A) assessee could not get any relief as Ld.

CIT(A) merely observed that no evidence has been filed by Mr. Farhat regarding collection of cash from the students and institutions. In support of this statement, bank account and PAN of Mr. Farhat was filed. No details of the students and institutions were provided. Ld. CIT(A) also did not consider the submission that Rs.55,000/- belongs to the assessee's father and similarly claim of the assessee that Rs.6,00,000/- belongs to his brother Shri Ajay Tripathi were also not accepted as no confirmation and detailed bank account were filed.

62. Now the assessee is in appeal before the Tribunal.

63. Ld. Counsel for the assessee made following written submissions.

1. The cash was found from two places one from the ground floor from the bed room of assessee Rs. 13,11,760/- and second in the common room Rs. 10,00,000/- which is used by all the family members.
2. The cash found do not belong to the assessee but to various persons who have kept as a security, the same was confirmed in the statement recorded during search u/s 132.
3. The source was explained by assessee as:

AMOUNT	PURPOSE	REMARK
17,35,000	Admission fees	At the time of search mobile no and name were provided.
6,00,000	Brother Ajay Tripathi	Brother is into contract business and cash was accumulated by him.
55,000	Father G.P Tripathi	Cash was kept in Separate bag, owned by father who is retired govt employee and still earned pension income.

64. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

65. We have heard rival contentions and perused the records placed before us. The issue relates to the addition of unexplained cash of Rs.23,11,760/-. The assessee has contended that the source of alleged cash of Rs.17,35,000/- received as admission fee for which details of mobile number, name of persons were provided. During the course of search itself it was stated that Rs.6,00,000/- belongs to the brother Shri Ajay Tripathi who is into the contract business and Rs.55,000/- is owned by his father who kept it for himself.

66. As regards the cash of Rs.55,000/- alleged to be owned by the assessee's father Shri G.P. Tripathi we find that the confirmation letter has been filed and placed at page 330 of the paper book wherein it was stated that Shri G.P. Tripathi is a retired government servant and receives pension. Rs.55,000/- was owned by him which was kept in a separate bag and source of it was cumulative savings and cash withdrawal from bank. We are satisfied with the confirmation filed by the assessee's father and are of the view that

the sources of Rs.55,000/- is duly explained and thus addition for the same should be deleted.

67. As regards the sources of cash found at Rs.17,35,000/- alleged to have been received from various persons the details of which are mentioned below;

S.No.	Particulars	Amount
1	Received by Mr. Farhat on behalf of students fees	Rs. 3,10,000/-
2	National P.G. college – Students fee	Rs.1,75,000/-
3	Varshman College, Itarsi –Students fee	Rs.4,00,000/-
4	Rajiv Gandhi College -fees	Rs.1,20,000/-
5	Y.P. Singh, Principal J&C	Rs.85,000/-
6	Radhy Shyam Yadav	Rs.2,00,000/-
7	Chanakya College – Students fees	Rs.4,45,000/-
	Total	Rs.17,35,000/-

68. From the perusal of records we find that the assessee bifurcated all the amount received from various persons and given it to the search team. Complete details with confirmation of amounts are placed in the paper book from page 202 to 299. At the time of search itself the assessee stated that the sum of Rs.11,35,000/- does not belongs to him but to various persons enumerated above in

connection to his liaison work in the field of education. We find that both the lower authorities have not examined the details properly. In our considered view when during the course of search in the statement made and subsequently corroborative evidence have been filed by the assessee, then the revenue authorities should have carried out proper investigation before rejecting the contention of the assessee. In our considered view the factual examination of the assessee's contention supported by documentary evidence relating to alleged source of cash of Rs.17,35,000/- needs to be set aside to the file of Ld. A.O for fresh examination after providing proper opportunity of being heard to the assessee.

69. Now out of the total addition for unexplained cash of Rs.23,11,760/- we have already deleted the addition of Rs.55,000/- and have set aside the deletion of cash received from various parties at Rs.17,35,000/- for afresh examination by the Ld. A.O and for remaining amount of Rs.5,21,760/- in the submissions filed before the lower authorities sum of Rs.6,00,000/- has been mentioned which pertains to the cash withdrawn from bank by the assessee's brother. So for technical purposes the remaining amount is in challenge at Rs.5,21,760/-. As regards the claim of the assessee that

out of total cash found with him at Rs.23,11,760/-, sum of Rs.6,00,000/- belongs to brother Shri Ajay Tripathi, it was submitted that Mr. Ajay Tripathi had withdrawn the amount from State Bank of India account. Copy of bank statement has also been placed before the lower authorities. Since the assessee has given same submission during search and before the lower authorities and also since the issue of examination of unexplained cash of Rs.17,35,000/- has already been set aside for afresh examination by the Ld. A.O, we are of the considered view that this issue of genuineness of the source of cash of Rs.6,00,000/- claimed by the assessee to have been withdrawn from the bank account in the name of his brother Shri Ajay Tripathi also needs to be set aside to the file of Ld. A.O in order to carry out necessary verification. We direct the assessee to place the SBI bank statement of Shri Ajay Tripathi before the Assessing Officer in order to explain the withdrawal of cash of Rs.6,00,000/-.

70. Accordingly out of the total addition of Rs.23,11,760/-, we delete the addition of Rs.55,000/-for cash owned by the assessee's father Shri G.P. Tripathi and for the remaining amount of Rs.17,35,000/- and Rs.5,21,760/-, we set aside the issue to the file

of Ld. A.O for fresh examination as per the terms indicated above.

Accordingly Ground No.1 for Assessment Year 2013-14 is partly allowed for statistical purposes.

71. Apropos to Ground No.3 for unexplained jewellery of Rs.1,30,000/-, brief facts of the case are that during the course of search one invoice dated 4.5.2012 issued by Tanishq made in favour of Shri Narendra Tripathi for purchase of jewellery at Rs.1,30,000/- was found. Addition for the same was made by Ld. A.O which was subsequently confirmed by Ld. CIT(A).

72. Now the assessee is in appeal before the Tribunal.

73. Ld. Counsel for the assessee submitted that the assessee is showing sufficient income consistently for past many years and sufficient withdrawal for the alleged purchase of jewellery.

74. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

75. We have heard rival contentions and perused the records placed before us. The assessee is aggrieved with the addition confirmed by Ld. CIT(A) at Rs.1,30,000/-. We find that the assessee apart from salary income also shows vocational income for Assessment Year 2011-12 and 2012-13. Income of Rs.4,52,890/- has been offered for

taxation and for Assessment Year 2013-14 income shown is Rs.8,06,690/-. In the given facts, we find that the assessee is having sufficient income to cover up the purchase of jewellery of Rs.1,30,000/-. We find no justification in the finding of lower authorities confirming the addition of Rs.1,30,000/-. We direct the Ld.A.O to delete this addition of Rs.1,30,000/-. Accordingly Ground No.3 of assessee's appeal for Assessment Year 2013-14 is allowed.

76. Apropos Ground No.4 for the undisclosed receipt of Rs.1,95,000/- made by Ld. A.O and confirmed by Ld. CIT(A), brief facts of the case are that during the course of search loose paper LPS-4 page-59 was found and seized. These papers shows that Rs.1,95,000/- has been received from Mr. Farhat. The assessee failed to explain the entry in this document and merely contended that it is a dumb document not signed by any one. When the matter came up before Ld. CIT(A) the addition was confirmed.

77. Now the assessee is in appeal before the Tribunal.

78. Ld. Counsel for the assessee stated that the alleged paper is not in the handwriting of the assessee and is not known about the document. Further no corroborative evidence is found by the

revenue authorities to prove that the document belongs to the assessee.

79. Per contra Ld. Departmental Representative vehemently argued and supporting the orders of lower authorities.

80. We have heard rival contentions and perused the records placed before us. The issue raised in this Ground No.4 towards undisclosed receipt of Rs.1,95,000/-. From the perusal of the seized paper placed at page 348 of the paper book, we find that cash denomination are mentioned wherein 3 notes of Rs.1000/-, 330 notes of Rs.500/-, and 270 of Rs.100/- which are mentioned which makes a total of Rs.1,95,000/- and below this page name/sign is appearing of Mr. Ferhat. The assessee's contention that the alleged document is not related to him is devoid of any merit because Mr. Ferhat is a persons whose name was mentioned by the assessee with regard to the source of cash found at the assessee's premises of Rs.17,35,000/-. Assessee failed to file the confirmation from Mr. Ferhat. However with regard to Rs.1,95,000/-which is appearing in the seized document at LPS-4 Page-459 details of cash and name of Mr. Ferhat is appearing. In these given facts and circumstances since while adjudicating Ground No.1 for Assessment Year 2013-14 we have

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directed the Ld. A.O to examine the claim of the assessee of receiving cash from various persons for educational work including the amount received from Mr. Farhat on behalf of the student fees, we are inclined to set aside the issue for verification of the alleged unexplained receipt of Rs.1,95,000/- to the file of the Ld. A.O to make necessary verification from Mr. Farhat who needs to explain the alleged seized document. In case he denies to have any relation with the seized document then Ld. A.O may confirm the addition of Rs.1,95,000/- in the hands of the assessee. Accordingly Ground No.4 for Assessment Year 2013-14 is also allowed for statistical purposes.

81. In the result the appeal of the assessee for Assessment Year 2008-09 to Assessment Year 2012-13 are allowed and appeal for Assessment Year 2013-14 is partly allowed for statistical purposes.

The order pronounced in the open Court on 07.08.2019.

Sd/-

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

**(MANISH BORAD)
ACCOUNTANT MEMBER**

दिनांक /Dated : 07 August, 2019

/Dev

Smt. Seema Tripathi & Narendra Tripathi

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

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