

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D' : NEW DELHI)**

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.2504/Del./2014
(Assessment Year : 2009-10)**

Ms. Kusum Mehta, vs. ACIT, Central Circle 3,
2042, Katra Tobacco, New Delhi.
Khari Baoli,
Delhi – 110 006.
(PAN : AAPP3938E)

**ITA No.2773/Del./2014
(Assessment Year : 2009-10)**

ACIT, Central Circle 3, vs. Ms. Kusum Mehta,
New Delhi. 2042, Katra Tobacco,
Khari Baoli,
Delhi – 110 006.
(PAN : AAPP3938E)

**ITA No.2503/Del./2014
(Assessment Year : 2009-10)**

Shri Mahesh Mehta, vs. ACIT, Central Circle 3,
2042, Katra Tobacco, New Delhi.
Khari Baoli,
Delhi – 110 006.
(PAN : AGBPM7320C)

**ITA No.3347/Del./2014
(Assessment Year : 2009-10)**

ACIT, Central Circle 3, vs. Shri Mahesh Mehta,
New Delhi. 2042, Katra Tobacco,
Khari Baoli,
Delhi – 110 006.
(PAN : AAPP3938E)
(APPELLANT) **(RESPONDENT)**

ASSESSEE BY : Shri Suresh Gupta, Advocate
REVENUE BY : Shri J.K. Mishra, CIT DR

Date of Hearing : 11.09.2019

Date of Order : 31.10.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Present cross appeals filed by the assessee as well as by the Revenue are being disposed off by way of composite order to avoid repetition of discussion.

2. Appellant, Ms. Kusum Mehta & Shri Mahesh Mehta (hereinafter referred to as the 'assessee') by filing the present appeal being ITA No.2504/Del/2014 & No.2503/Del/2014, sought to set aside the impugned orders dated 13.02.2014 & 14.03.2014 respectively passed by the Commissioner of Income - tax (Appeals)-I, New Delhi qua the assessment year 2009-10 on the identical ground inter alia that :-

“The Ld. CIT (A) has erred both in law and on facts in confirming an addition of Rs.2,04,00,000/- being income allegedly earned by the appellant form the deal of transfer of shares of M/s. Raj Refuellers & Fire Safety Equipments Pvt. Ltd. which had been terminated by the parties.”

3. Appellant, ACIT, Central Circle 3, New Delhi (hereinafter referred to as the 'Revenue') by filing the present appeal being ITA No.2773/Del/2014 & 3347/Del/2014, sought to set aside the impugned orders dated 13.02.2014 & 14.03.2014 respectively passed by the Commissioner of Income - tax

(Appeals)-I, New Delhi qua the assessment year 2009-10 on the grounds inter alia that:-

“ITA No.2773/Del/2014

That the Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in deleting the addition of Rs.9,20,00,000/- (correct amount is Rs.7,16,00,000/-) made by AO on account of income from undisclosed sources.”

ITA No.3347/Del/2014

1. That the Commissioner of Income Tax (Appeals) has erred in law and on facts of the case in deleting the addition of Rs.1,48,51,840/- made by AO on account of income from undisclosed sales.”

2. That the Commissioner of Income Tax (Appeals) erred in law and on facts of the case in restricting the addition of Rs.9,20,00,000/- made by AO on account of income from undisclosed sources.”

BRIEF FACTS OF

ITA NOS.2504/DEL/2014 & 2773/DEL/2014

(CROSS APPEALS) IN CASE OF MS. KUSUM MEHTA

ITA NOS.2503/DEL/2014 & 3347/DEL/2014

(CROSS APPEALS) IN CASE OF SHRI MAHESH MEHTA

4. Briefly stated the facts necessary for adjudication of the issue at hand are : On the basis of search and seizure operation carried out in case of Mahesh Mehta Group of Companies on 30.06.2009, assessment was framed under section 143 (3)/153A of the Income-tax Act, 1961 (for short ‘the Act’). In response to the notice issued u/s 153A of the Act, assessee preferred to treat the return of income filed u/s 139 of the Act as reply to notice u/s 153A of the Act vide reply dated 25.11.2010 declaring taxable

income of Rs.1,53,50,110/-, which includes short term capital gain from sale of property of D-17, Ashok Vihar which was sold during the year under assessment for a sale consideration of Rs.50,50,000/- by way of cheque and further receiving a sum of Rs.1,49,50,000/- by way of cash. During the search proceedings, assessee surrendered the amount of Rs.1,49,50,000/- which was subsequently disclosed in the return of income also.

5. During the search and seizure operation, documents Annexure A-5 (bunch of loose papers- pages 1 to 102) qua property bearing Plot No.115, Phase-I, Udyog Vihar, Gurgaon, in M/s. Raj Refuellers and Fire Safety Equipment Co. Pvt. Ltd. (hereinafter referred to as 'RRFSL') Seized documents include draft Agreement on a stamp paper of Rs.100/- dated 22.02.2008 qua Plot No.115, Udyog Vihar, Gurgaon owned by Mahesh Mehta and Kusum Mehta showing Agreement of Sale for a consideration of Rs.25,00,00,000/- by Mahesh Mehta and Kusum Mehta to one Kunjan Arora, c/o M/s. Lambda Microwave Technologies Pvt. Ltd.. Assessing Officer (AO) also noticed from the documents seized that Mahesh Mehta and Kusum Mehta had purchased shares of RRFSL in the month of November 2007 from Rakesh Kumar Garg and Santosh Kumar Garg for Rs.2,18,00,000/- and paid Rs.3,00,00,000/- towards payment of loan outstanding in the books of RRFSL, thus the cost of purchase of the shares was Rs.5,18,00,000/-. From the Agreement to Sell, AO noticed that it is clear that transaction qua property bearing Plot No.115, Phase I, Udyog

Vihar, Gurgaon took place between Mahesh Mehta and Kusum Mehta before the date of Agreement and the amount has been received by the seller is of Rs.18,50,01,100/- as on 22.02.2008.

6. When due to some technical objection raised by HSIIDC qua the transaction of the aforesaid plot, Mahesh Mehta and Kusum Mehta agreed to transfer the property to Kunjan Arora through transfer of shares in favour of Arora family for recorded consideration of Rs.5,18,00,000/- and the remaining amount was apparently paid in cash by Kunjan Arora to Mahesh Mehta. AO also recorded that Mahesh Mehta admitted that the real transaction qua the property was for Rs.25,00,00,000/- only and further admitted that net profit of Rs.18,40,00,000/- on sale of shares i.e. Rs.9,20,00,000/- each in his own hand and in the hands of his wife is an unrecorded income. The said statement was also signed by Kusum Mehta. Statement of Kunjan Arora was also recorded. From the facts on record and circumstances in this case, AO proceeded to hold that the property bearing Plot No.115, Phase I, Udyog Vihar, Gurgaon stands transferred in the name of Kunjan Arora and Associates and the original documents found from the residence of Mahesh Mehta also speaks of the transfer of the same manner which was finally executed and as such, company along with property was also transferred to Kunjan Arora and his associates for a consideration of Rs.25,00,00,000/- as per Agreement. AO also noticed that the purchase of RRFSL was executed in accordance with the original agreement dated

22.02.2008 as Kunjan Arora has never denied the existence of the correctness of the agreement dated 22.02.2008 rather admitted the existence of the same as per his statement recorded with Income-tax authorities. AO further observed that Kunjan Arora has made payment of Rs.18,40,00,000/- in cash to Mahesh Mehta and Kusum Mehta and the same is treated the income from undisclosed sources of Mahesh Mehta and Kusum Mehta and made addition thereof to the total income of Kusum Mehta and Mahesh Mehta to the tune of Rs.9,20,00,000/- each.

7. In response to the notice issued u/s 153A of the Act, assessee Mahesh Mehta stated that the return of income filed by him on 15.06.2011 declaring income of Rs.2,12,15,410/- be treated as having been filed u/s 153A of the Act. Assessee, Mahesh Mehta has also surrendered an amount of Rs.5,56,00,000/- during the search proceedings. Assessee, Mahesh Mehta has shown his income as salary being Director of M/s. Mahesh Wood Products (P) Ltd., income from house property, share from the partnership firm and business income from the proprietary firm, capital gains and income from other sources.

8. On failure of the assessee, Mahesh Mehta to explain as to how the value of the stock stated to be destroyed of Rs.1,48,51,840/- was arrived at, AO proceeded to hold that since during the inspection, some stock has been found to be spoiled of the value of the stock to the extent of gross profit estimated is treated to be struck out by the assessee, thus a sum of

Rs.1,48,51,840/- is treated as sale outside the books being not recorded in the regular books of account and thereby made addition thereof to the total income of the assessee.

9. Assessee, Mahesh Mehta and Kusum Mehta, carried the matter by way of appeals before the Id. CIT (A) who have partly allowed the appeals vide order dated 13.02.2014 & 14.03.2014 passed in case of Kusum Mehta & Mahesh Mehta respectively for statistical purposes. Feeling aggrieved, both the assessee as well as Revenue in case of Mahesh Mehta and Kusum Mehta have come up by filing cross appeals before the Tribunal.

10. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

11. Undisputedly, in a search and seizure operation carried out at the premises of Mahesh Mehta Group of cases on 30.06.2009, a draft unsigned Agreement dated 22.02.2008 on a stamp paper of Rs.100/- qua the property bearing Plot No.115, Phase I, Udyog Vihar, Gurgaon, available at pages 4 to 6 of the paper book, was found and seized. It is also not in dispute that in the draft Agreement to Sell, Kusum Mehta and Mahesh Mehta was referred to as vendor and Kunjan Arora was referred to as buyer. It is also not in dispute that a recital has been made in the Agreement to Sell itself that Kusum Mehta and Mahesh Mehta were not registered owner of the property

in question at the time of execution of the agreement. It is also not in dispute that Rakesh Kumar Garg and Santosh Kumar Garg of RRFSL was the original owner of the property in question. It is also not in dispute that out of the total sale consideration of Rs.25,00,01,100/- settled in the draft agreement, an amount of Rs.18,50,01,100/- was paid but the sum of Rs.6,50,00,000/- was withheld by the owner till no objection certificate is issued by the HSIIDC for transfer of the plot from original owner, Rakesh Kumar Garg and Santosh Kumar Garg. It is also not in dispute that one Kunjan Arora vide his statement recorded by DDIT u/s131(1A) on 25.08.2009 admitted that he has paid a sum of Rs.9,66,00,000/- up till December 2007 and given post dated cheques of Rs.8,84,00,000/- to Kusum Mehta and Mahesh Mehta which have not been encashed till date, thus explained the total payment of Rs.18,50,01,100/- made to Kusum Mehta and Mahesh Mehta.

12. Ld. AR for the assessee challenging the impugned order contended inter alia that the draft agreement dated 22.08.2008 on stamp paper worth Rs.100/- found/seized during the search and seizure operation qua the sale of Plot No.115, Udyog Vihar, Gurgaon was never acted upon nor intended to be acted upon by the parties as Kusum Mehta and Mahesh Mehta were not registered owner of the property in question; that the plot in question could not be transferred in favour of Kusum Mehta and Mahesh Mehta due to some queries raised by the HSIIDC; that AO/CIT (A) have erred in

rejecting the actual agreement dated 21.04.2009 on the basis of which the property in question was transferred and they have also erred in making the addition on the basis of draft agreement dated 22.08.2008 which is a bald document; that the statement of Kunjan Arora recorded on 25.08.2009 u/s 131 (1A) of the Act has been wrongly relied upon by the AO which was recorded subsequently; that Mahesh Mehta in his statement dated 01.07.2009 recorded u/s 132 (4) co-signed by Kusum Mehta duly explained that agreement found was just a draft agreement and as such, is a dumb document; that Mahesh Mehta has retracted his statement under Rules and as such, the same cannot be relied upon; that the deal has never been matured on the basis of draft unsigned agreement as HSIIDC has raised certain objections; that assessee has duly clarified that he has already entered into same agreement and the post-dated cheques have never been encashed; that the property in question has already been transferred in someone others name and the assessee has been cheated and relied upon the cases of *Shri Santosh Kumar Garg in ITA No.2864/Del/2013 order dated 29.09.2017*, *CIT vs. Harjeev Aggarwal (2016) 290 CTR 263 (Del.)*, *Bansal High Carbons (P) Ltd. (2009) 223 CTR 179 (Del.)*, *M. Narayanan & Bros. vs. ACIT (2011) 13 taxmann.com 49 (Mad.)*, *Chetnaben J Shah vs. ITO in ITA No.1437 of 2007 order dated 14.07.2016*, *CIT vs. Ramanbhai B. Patel in ITA No.207 & 208 of 2008 order dated 20.07.2016* and *CIT vs. K. Bhuvanendra & Ors. (2008) 303 ITR 235 (Mad.)*.

13. However, on the other hand, ld. DR for the Revenue to repel the arguments advanced by the ld. AR for the assessee contended inter alia that u/s 292C, presumption is attached to the statement of Mahesh Mehta recorded u/s 132 (4A) which the assessee has failed to controvert that retraction has not been made spontaneously and the subsequent agreement dated 21.04.2009 has been prepared just to camouflage the actual facts; that the assessee has never filed any criminal case if any fraud has been committed with them qua the transfer of the property in question and relied upon the decisions of *Bela Juneja vs. CIT (2012) 20 taxmann.com 392 (Delhi)*, *Surendra M Khandhar vs. ACIT (2010) 321 ITR 254 (Bombay)*, *M/s. Pebble Investment and Finance Ltd. vs. ITO (2017-TIOL-238-SC-IT)*, *Greenview Restaurant vs. ACIT (2003) 263 ITR 169 (Gauhati)*, *Raj Hans Towers (P.) Ltd. vs. CIT 373 ITR 9*, *PCIT vs. Avinash Kumar Setia (2017) 81 taxmann.com 476 (Delhi)* and *ACIT vs. Hukum Chand Jain 337 ITR 238 (Chhattisgarh)*.

14. Undisputedly, Rakesh Kumar Garg and Santosh Kumar Garg were owner of 3500 shares of RRFSL and the said company was also owner of the said property, Plot No.115, Udyog Vihar, Gurgaon. It is also not in dispute that Mahesh Mehta and Kusum Mehta have entered into an agreement dated 04.09.2007 for purchase of 3500 shares of RRFSL from Rakesh Kumar Garg and Santosh Kumar Garg.

15. The Revenue to fasten the tax liability of both the assesseees relied upon the draft unsigned agreement dated 22.02.2008 on a stamp paper with Ramesh Arora and Mrs. Deepti Arora through Kunjan Arora to sell 3500 shares of RRFSL for a consideration of Rs.25,00,00,000/- along with token amount of Rs.1,100/-. It is mentioned in the agreement to sell in question that the seller has received an amount of Rs.18,50,01,100/-. It is also one of the recital in the agreement that an amount of Rs.6,50,00,000/- has been withheld by the seller with the purchaser to facilitate the transfer process at HSIIDC and the balance amount is agreed to be paid in two installments, one at the time of provisional transfer letter by HSIIDC and second installment at the time of issuance of final transfer letter and in case of dispute, the issue was agreed to refer to Sole Arbitrator, Shri H.S. Choudhary , R/o J-56, Ashok Vihar, Phase – I, New Delhi-110052.

16. It is the case of the assessee that draft agreement dated 22.08.2008 has never been acted upon being a dumb document rather sale has been effected by way of agreement dated 21.04.2009 which was for the same sale consideration but with different terms and conditions.

17. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower Revenue authorities and arguments addressed, the question arises for determination is :-

“as to whether transaction took place as per draft agreement dated 22.08.2008 or by way of signed agreement dated 21.04.2009 between the parties?”

18. Ld. CIT (A) extensively thrashed the facts of the case in paras 4.5 to 4.8 of the impugned order in the light of the statements of Mahesh Mehta and Kusum Mehta recorded during the search & seizure proceedings and reached the conclusion that agreement dated 21.04.2009 is not a legally enforceable document for lack of certainty of the purchaser party. When we examine both the agreements dated 22.08.2008 and 21.04.2009 in the light of the statement recorded by Mahesh Mehta during the course of search u/s 132 (4) to which presumption is attached and has not been retracted spontaneously and no material whatsoever has been brought on record by the assessee if the said statement was made under coercion or under any undue influence, agreement dated 21.04.2009 does not inspire confidence to believe the same.

19. Furthermore, when we examine facts and circumstances of the case, particularly statement of Kunjan Arora recorded during search investigation, it further leads to the conclusion that the agreement to sell in question dated 22.08.2008 owned by RRFSL was executed for a sale consideration of Rs.25,00,01,100/- as Kunjan Arora has specifically replied to question no.6 that :-

“He has paid a total sum of Rs.9.66 crores over a period from December 2007 till date and had issued post-dated cheques of Rs.8.84 crores which have not been encashed till date. Furthermore, a sum of Rs.1,100/- was paid in cash as initial deal signing amount thus paid a total payment of Rs.18,50,01,100/-.”

So, the question is answered accordingly that Agreement dated 22.08.2008 is not a dumb document.

20. In the backdrop of the aforesaid facts and circumstances of the case, now the second question arises for consideration is :-

“as to whether assessee, Mahesh Mehta and Kusum Mehta earned an amount of Rs.2,04,00,000/- each from the deal of transfer of shares of RRFSL allegedly having been terminated by the parties, as has been held by Id. CIT (A)?

21. When the aforesaid question is examined in the light of undisputed facts inter alia that the total consideration by transfer of shares of RRFSL was Rs.25,00,00,000/-, which facts is incorporated in both the agreements dated 22.02.2008 and 21.04.2009 entered into between Mehta and Kunjam Arora; that on account of non-receipt of NOC and PTC from HSIIDC in their favour, assessee could not get the shares of RRFSL transferred in their favour and consequently, could not transfer the same in favour of Deepti Arora and Ramesh Arora; that the Id. CIT (A) has brought on record the facts in the form of copy of share certificates that aforesaid 3,500 shares were transferred on 05.11.2008 in favour of Aroras by the Gargs for a total consideration of Rs.2,18,00,000/-; that the Id. CIT (A) also thrashed the facts from the bank accounts of M/s. Lambada Microwave Technologies of which Aroras are partners; that cheques of Rs.8,84,00,000/- handed over by Aroras as part of the deal to Mehta have never been encashed nor there is any evidence on record that any payment has been made in lieu of

unencashed cheques amounting to Rs.8,84,00,000/-; that it is also a fact thrashed by Id. CIT (A) that transfer of shares by the Gargs in favour of Aroras have took place on 05.11.008 much prior to agreement dated 21.04.2009 and as such, transaction was not completed through the assesseees; that on the other hand, it is proved fact on record that the assesseees have received Rs.9,26,00,000/- as consideration from the aforesaid transfer from the Aroras for which Aroras have served a legal notice on the assesseees but has not initiated legal proceedings for recovery of the disputed amount; that it is also proved on record that assessee had paid Rs.5,18,00,000/- to Rakesh Kumar Garg and Santosh Kumar Garg, we are of the considered view that profit from the transaction in question has been rightly assessed at Rs.4,08,00,000/- by the Id. CIT (A) i.e. Rs.9,26,00,000/- minus Rs.5,18,00,000/-.

22. Aforesaid findings returned by the Id. CIT (A) on facts primarily based on undisputed facts cannot be unsettled merely on the contention of the Id. AR for the assessee that the draft agreement dated 22.02.2008 is merely a dumb document because the same has been categorically admitted by assesseees in their statements as well as Kunjam Arora recorded during search proceedings, though retracted subsequently. But retraction cannot be relied upon on the ground that it was not spontaneous rather made in the well-orchestrated manner by preparing second agreement dated 21.04.2009 to camouflage the actual transaction. Even Mahesh Mehta during recording

of his statement u/s 132 (4) recorded on 01.07.2009 has not disclosed the existence of agreement dated 21.04.2009. Had there been any such agreement in question, Mahesh Mehta would have relied upon the same in support of his case. So, it is a document prepared anti-dated to evade the taxes. Moreover, terms and conditions of the agreement dated 21.04.2009 are against the settled convention followed in such transactions. Moreover, the second agreement was given in the post-search proceedings.

23. Consequently, we are of the considered view that Id. CIT (A) has rightly reached the conclusion that since the assesseees have not become owner of the shares of RRFSL, profit of Rs.4,08,00,000/- cannot be treated as their capital gain but it is certainly income from their business or from their sources as broker of the transaction as till today it is not brought on record if on the basis of legal notice issued to assessee for refund of that amount, any legal proceedings have been initiated or any order has been passed by the Civil Court and accordingly, made addition of Rs.2,04,00,000/- made each in the name of Mahesh Mehta and Kusum Mehta, the assesseees, is sustainable.

24. No doubt, assesseees are not in the business of sale and purchase of shares/property but it is proved on record that they have been benefited to the tune of Rs.4.08 crores and it has to be treated income in the year when they have received the same and not when the sale deed was executed. Because after a period of about 11 years no civil proceedings for recovery

have been initiated and by now, limitation to recover the amount has since been expired. In other words, we can say that the amount of Rs.4,08,00,000/- has been forfeited by the assesseees which is their undue enrichment and has been rightly treated as their income during the year of receipt.

25. The contention of the assessee that at the most, amount of Rs.4,08,00,000/- can be treated as capital receipt in the hands of assesseees is not sustainable because the assesseees have not come up with clean hands rather suppressed one fact after the other even by relying upon anti-dated document/agreement dated 21.04.2009 which was not in existence at the time of statement of Mahesh Mehta, cosigned by his wife, Kusum Mehta on 01.07.2009 u/s 132(4). Rather the entire transactions between the parties have been frustrated and then executed as per well-orchestrated plan and in these circumstances, the amount of Rs.4,08,00,000/- has been rightly treated as income of the assesseees from business or other sources by the Id. CIT (A).

26. So far as question of applicability of provisions contained u/s 51 of the Act as contended by the Id. AR for the assesseees qua the forfeiture of the amount of Rs.4,08,00,000/- being not taxable is concerned, at no point of time, the assesseees have come up with the fact that they are in possession of amount of Rs.4,08,00,000/- by way of forfeiture by virtue of the agreement dated 22.02.2008 and 21.04.2009 but continued to suppress one fact after

the other from the Revenue authorities as well as the Tribunal and have treated the agreement dated 22.02.2008 as a dumb document. Even no notice is proved to have been served by the assesseees to forfeit the amount of Rs.4,08,00,000/- The assesseees have also failed to clarify as to how and under what circumstances, the second agreement dated 21.04.2009 came into existence and in these circumstances is not entitled for protection under section 51 of the Act.

27. So far as question of deletion of addition of Rs.9,20,00,000/- (correct amount is Rs.7,16,00,000/-) each in case of Mahesh Mehta and Kusum Mehta by the Ld. CIT (A) is concerned, the AO has merely made addition by relying upon the statement of Mahesh Mehta, co-signed by Kusum Mehta u/s 132(4) of the Act. The ld. CIT (A) has deleted this addition to the extent of Rs.7,16,00,000/- by returning following findings :-

“4.5 I have carefully considered the assessment order, the submissions made and the rival claims relating to the matter in dispute. It is undisputed that the entire consideration for the transfer of the shares of RRFSL was Rs.25 crore. This stands admitted by Shri Mehta as well as Shri Arora, and is part of both agreements dated 22.02.2008 and 21.04.2009 between Shri Mehta and Shri Arora. It is undisputed that the Mehtas never received NOC and PTC from HSIDC in their favour and, as a result, the shares of RRFSL were never transferred in their favour and they, in turn, could not transfer the said shares in favour of the Aroras. In fact, copies of the shares certificates and share transfer forms obtained during these proceedings reveals that the said 3,500 shares were transferred on 05.11.2008 itself in favour of the Aroras by the Gargs for registered consideration of Rs.2.18 crore (1,750 shares by Shri Rakesh Kumar Garg in favour of Smt Deepti Arora for Rs.1,10,00,000/- & 1,750 shares by Shri Santosh Kumar Garg in favour of Shri Ramesh Kumar for Rs.1,08,00,000/-).

4.6 Perusal of bank statement of Mis Lambada Microwave Technologies, of which the Aroras are partners, with ING Vaishya Bank Ltd, NIT Faridabad, during and subsequent to their date of issue, reveals that cheques of Rs.8.84 crores given by the Aroras to the Mehtas

remain unencashed. There is no evidence that the Mehtas received payment in lieu of unencashed cheques of Rs.8.84 crore, or further payment of Rs.6.50 crore I Rs.5.08 crore. In view of the actual transfer of shares by the Gargs to the Aroras taking place on 05.11.2008, much before the agreements dated 22.02.2008 & 21.04.2009 could be executed and the related payments during FYs 2007-08, 2008-09 and 2009-10 could be completed, it appears that the transaction was not completed through the Mehtas, who got ousted from the transaction at some stage. In any event, if there is collusion among the parties, which party finally paid or received what amount is not clear from the facts on record.

4.7 Yet, it is clear that the Mehtas have received Rs.9.26 crore as consideration for the said transfer from the Aroras and the Aroras, having served a legal notice on the Mehtas, have not yet initiated any legal action for the recovery of the disputed amount from the Mehtas. The conduct of the parties to the transaction has not been above board and, therefore, the transactions and disputes created therein appear to be collusive and directed mainly towards frustrating the revenue. The Mehtas had paid Rs.5.18 crore to the Gargs the original shareholders of RRFSL and, thus, their profit in the transaction was Rs.4.08 crore (Rs.9.26 crore minus Rs.5.18 crore). As the Mehtas could never become legal owners of the shares of RRFSL, this profit cannot be treated as their capital gain relating to those shares, but can only be treated as income from 'business' or from 'other sources' as broker to the transaction. As the Mehtas have not claimed any business income from this transaction or any other brokerage, and as the profit cannot be treated as capital gain, it can only be treated as income from 'other sources'. The amount is to be allocated equally at Rs.2.04 crore between the appellant and her husband Shri Mahesh Mehta. I hold accordingly.

4.8 In view of the above, out of the addition of Rs.9,20,00,000/- the amount of Rs.2,04,00,000/- is upheld as income of the appellant from other sources and directed to be charged to tax. Appellant gets relief of Rs.7,16,00,000/-. This ground of appeal is decided in these terms.”

28. Ld. CIT (A) has extensively dealt with the issue as to the deletion of addition of Rs.9,20,00,000/- (correct amount is Rs.7,16,00,000/-) in para 2.2.13 to 2.2.16 by explaining the facts that this addition has been made merely on the basis of presumption that both the assesseees have received Rs.18,40,00,000/- against the proposed sale deed for transfer of HSIIDC plot but there is no evidence on record to prove that assesseees have actually received the aforesaid amount.

29. It is settled principle of law that addition cannot be made on the basis of sole statement recorded u/s 132(4) of the Act. Moreover when the transaction of sale of plot has been frustrated by the original owner and the buyer by bye-passing the assesseees, there is no question of making addition of Rs.9,20,00,000/- each. Furthermore, when ample evidence is there on record and has been scanned by the Id. CIT (A) that both the assesseees have refunded the entire amount received in the deal except an amount of Rs.4,08,00,000/-, this addition is not sustainable. So the Id. CIT (A) has rightly deleted the addition of Rs.9,20,00,000/- each made in the hands of Mahesh Mehta and Kusum Mehta.

30. AO has also made addition of Rs.1,48,51,840/- in case of Mahesh Mehta on account of undisclosed sales of Katha manufactured from Khair wood, a forest product. It is the case of the assessee, Mahesh Mehta that the stock in question was old stock of liquid Katha and due to suspension of production work in the factory due to some legal problem, the stock in question got spoiled/damaged in the factory because of flood on account of heavy rains.

31. Ld. CIT (A) deleted the addition of Rs.1,48,51,840/- in case of Mahesh Mehta on account of undisclosed sales of katha, a forest product, by returning following findings :-

“4.2 I have considered the assessment order and the submissions made. From the available information I documents, the facts that emerge are that the appellant was carrying on proprietorship business of manufacturing kattha from kair-wood in the name & style of M/s M M

Products at its factory premises located in Una District of Himachal Pradesh. The said business is regulated by the forest department and permitted only for the licensees. It appears that there was heavy rain due to which some stock of the appellant was destroyed. From the inspection report of the forest department, filed by the appellant before the AO and also during these proceedings, it is seen that the report covers the period 1.4.2008 to 15.05.2008 (although it is supposed to be fortnightly), wherein no opening stock of different products / raw material was found. What was found by the forest department, was 549 units of semi-finished / liquid katha (unit not specified - whether kgs. / litres / any other unit). It also transpires from the said report that entire 549 units was found to be spoilt and ordered to be destroyed. The appellant has, in its accounts, written off the entire value of closing stock of goods valued at Rs.1,48,51,840/- as destroyed and claimed as loss. As against the said loss, the appellant had also written back all related liabilities amounting to Rs.30,97,268/- and offered it to tax. The revenue, disbelieving the said report, or assuming that the said report did not establish the loss claimed, disallowed the loss of stock at Rs.1,48,51,840/- claimed by the appellant. The assessment order is however, silent on the related liabilities amounting to Rs.30,97,268/- written back and offered to tax by the appellant.

4.3 The claim of the appellant, on the other hand, is that during the year there was no production and after sales, whatever stock remained, was spoilt in the rain, destroyed and accordingly claimed as a loss. The appellant has also objected that the AO disbelieved the certification of another government department and made the disallowance without any further enquiry I verification. The details regarding the opening and closing stock filed by the appellant are reproduced as under:

Sl.	Partiulars	Opening Stock		Production		Sales		Closing Stock	
		Qty (Kg.)	Amount	Qty (Kg.)	Amount	Qty (Kg.)	Amount	Qty (Kg.)	Amount
1	Katha Dessi Bhatti	25400	4572000	-	-	-	-	25400	4572000
2	Finished Goods Katha	29925	11072250	-	-	3040	1261600	26885	10119228
3	Cutch (By Product)	3800	32300	-	-	3800	38000	-	-
4	Kattha Paste	3895	244160	-	-	1333	92001	2562	160612
		63020	15920710	-	-	8173	1391601	54847	14851840

From the above details, it is observed that out of opening stock of 630.20 quintals of various raw materials, finished 1 semi-finished goods and by products, 81.73 quintals was sold leaving 548.47 quintals of finished I semi-finished goods. Here I have converted kilograms into quintals to make sense of the units (549) mentioned in the report of the forest department. This interpretation appears correct as 548.47 quintals approximates 549 units of goods remaining and found factory of the appellant by the forest department officials. The description of the goods

in the said report of the forest department is mentioned as 'semi-finished katha' which also more or less approximates the description of the goods mentioned by the appellant in the table above. Most importantly, the reports specifically mentions that cutch (by-product) found was 'NIL', which tallies with information filed by the appellant in the table above that the entire stock of 38 quintals of cutch was sold. It is clear from the above that the claim of the appellant, that the entire remaining stock was spoilt and ordered to be destroyed by the forest department, appears correct. There was no credible basis to reject the claim of the appellant without further enquiry I verification. I hold accordingly. The disallowance made is not legally sustainable and is deleted. This ground of appeal is allowed."

32. Ld. CIT (A) verified all these facts and it has come on record that the stock in question has been physically verified by the officials of the Forest Department and declared the same actually destroyed and given the report that stock in question is as good as of 'nil value'. Report of the Forest Department declaring the stock in question as spoiled/destroyed with nil value and correspondence with the Forest Department is available at pages 10 and 11 of the paper book. On the basis of report that 549 quintals liquid Katha was unfit for sale, it was ordered to be destroyed and the ld. CIT (A) after verifying the opening and closing stock extracted in para 4.3 of the impugned order rightly reached the conclusion that this addition is not sustainable in the eyes of law and the report given by the Forest Department tallies with stock register maintained with the assessee. So, we are of the considered view that the ld. CIT (A) has rightly deleted the addition of Rs.1,48,51,840/- made by AO on account of undisclosed sales of katha.

33. In these circumstances, judgments relied upon by the ld. AR for the assessees cited as *Travencore Rubber & Tea Co. Ltd. vs. CIT 243 ITR 158*,

it VS. Saurashtra Cement Ltd. 325 ITR 422 and CIT vs. Meera Goyal ITA No.1263/2011 are not applicable to the facts and circumstances of the case. So, the amount of Rs.4,08,00,000/- has been rightly treated as income of the assessee in the year of receipt i.e. AY 2009-10 and not in the AY 2014-15 as contended by the ld. AR for the assesseees because as on date no dispute qua the said amount is pending between the parties.

34. Consequently, we find no illegality or perversity in the findings returned by the ld. CIT (A), hence appeals bearing ITA Nos.2503/Del./2014 and 2504/Del./2014 filed by Mahesh Mehta and Kusum Mehta and appeals bearing ITA Nos.2773/Del/2014 & 3347/Del/2014 filed by the Revenue are hereby dismissed.

Order pronounced in open court on this 31st day of October, 2019.

**Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 31st day of October, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**