

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "D": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA.No.621/Del./2015  
Assessment Year 2011-2012

Shri Jatinder Pal Singh, New Delhi – 110 057 PAN ALPPS9874G C/o. M/s. RRA TAXINDIA, D-28, South Extension, Part-I, New Delhi - 110049 (Appellant)	vs.,	The Dy. CIT, Central Circle-9, New Delhi. (Respondent)
---	------	---

For Assessee :	Dr. Shri Rakesh Gupta, And Shri Somil Agarwal, Advocates.
For Revenue :	Shri J.K. Mishra, CIT-D.R.

Date of Hearing :	16.10.2019
Date of Pronouncement :	01.11.2019

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)-XXXII, New Delhi, Dated 14.11.2014, for the A.Y. 2011-2012.

2. We have heard the Learned Representatives of both the parties and perused the material on record.

3. A search was conducted by CBI on 22.4.2010 on the premises of the assessee. The information was forwarded to the Income Tax Department. A search and seizure operation under section 132 of the Income Tax Act, 1961 was conducted by Director of Income Tax (Inv ), New Delhi at the residential and business premises of assessee on 22.04.2010, This case was centralized. The assessee filed return of income of Rs.27,24,710/-. Statutory notices were issued for completion of the assessment. The CBI had seized Rs.2 crores during their search action on 22.4.2010. Statement on oath was recorded by the DDIT (Inv.), Delhi, wherein certain questions asked relating to cash lying at the residential premises, the extract of the relevant portion of the statement are reproduced in assessment order. The assessee in answer to the questions stated that about Rs.15 Lakhs is at his residence and Rs.2 Crore is in his office which is located in the ground floor. Out of Rs.15 lacs, a sum of Rs.10 Lakhs belongs to company namely M/s Nau Nidh Overseas Pvt. Ltd. and Rs.5 Lakhs is his personal account. The assessee has received Rs.2 Crores as advance

with regard to his agricultural land at Faridabad which he intend to sell the land is small plots. He has further stated that One Mr. Sharma has given him Rs.2 Crores as advance for the said property. He came with two people whose names he will provide later on. The assessee also stated that he has met Mr. Sharma four times in Oberai Hotel and assessee do not know his exact address who is well known in Faridabad. Mr. Sharma approached the assessee for purchase of the land. The assessee has been promised final settlement within next 2-3 days. No provisional agreement was signed. However, assessee had issued a receipt for the same, for which, assessee is not possessing the receipt. The assessee further stated in his statement that agreed price of sale of land is Rs.6 Crores measuring 50 Acres which has possession dispute, for which, he has no evidence. During the course of assessment proceedings, the assessee filed a reply stating that Rs.2,01,00,000/- was received as advance against the property. No further details giving the name/ address of the person from whom this money was received were provided. The mode of payment was also not

mentioned. The A.O. asked the assessee to furnish name, complete address, mode of receipt, PAN and copy the bank statements of the person concern and confirmation in support of the same. The assessee filed reply giving the details of the cash advance received from Shri Rahul Ahuja of East of Kailash, New Delhi along with PAN through broker Mr Sharma i.e., Mr Sanjeev Kumar Sharma resident of Ranjeet Nagar, Near South Patel Nagar Metro Station, New Delhi. The A.O. issued notice under section 133(6) of the I.T. Act to Shri Rahul Ahuja asking for the following details/documents.

1. Please inform the nature of transaction that took place with the above named person.
2. Copy of agreement with the above named person.
3. Execution of the agreement
4. Present status of the transaction.
5. Copy of bank statement for the above period highlighting the transaction with the above transaction.
6. Copy of ITR for the assessment year 2011-12.

3.1. On 22.01.2013 Counsel for Assessee attended on behalf of Shri Rahul Ahuja and filed the copy of the MOU dated 12.04.2010 entered with the assessee for purchase

of agriculture land situated at District Faridabad. It was also stated that Shri Rahul Ahuja made payment of Rs.2.01 Crores to the assessee in cash. The same was withdrawn by him from his bank account, the copy of the same was filed. The copy of the ITR acknowledgment of Shri Rahui Ahuja for A.Y. 2011-12 was also furnished. The copy of the bank statement of the account with Axis Bank was also enclosed. The A.O. asked the Counsel for assessee to furnish the following details in respect of the advance money given:-

1. Cash book for the period when Rs 2.01 Crores was paid to Assessee
2. Also to produce the original MOU and receipts.
3. Inform about Shri Sharma, whether he is connected with this land deal. His full name/address.
4. Audit report with balance sheet, P & L Account for the previous year.

3.2. On 30.01.2013, the Counsel for Rahul Ahuja filed written submission stating that payment of Rs.21 Lakhs and Rs.1.80 Crores in cash were made to assessee on 12.04.2010 and 21.04.2010 respectively. It was also stated that source of these payments were the withdrawals made

from Axis Bank account during the month of January and February, 2010. The cash book of M/s Multi Trade Overseas, Proprietorship Firm of Sri Rahul Ahuja from 01.01.2010 to 30.4.2010 was filed. The original MOU and receipts were not produced for verification. The full name of Mr. Sharma i.e. Mr Sanjeev Kumar Sharma and his address was filed and it was explained that he signed as witness on the MOU. The balance sheet and Audit report of Shri Rahul Ahuja for the F.Y. 2009-2010 were also furnished. It was also stated that cash in hand of Rs.2,17,36,182/- was available on 31.03.2010 and the same was used for making the payments to assessee. It was also stated by Counsel for Rahul Ahuja verbally that Shri Rahul Ahuja has filed a court case for recovery of the advance amount given. He was required to file the copy of the court case documents. The reply from Shri Rahul Ahuja was filed at the Dak counter. The A.O. noted that verification portion of the suit for recovery was signed on 22.01.2013 i.e., the date when Counsel appeared before the Assessing Officer. The copy of the suit filed does not contain any receiving/stamping of the

Court where it is claimed to have been filed. The A.O., therefore, noted that it is an afterthought and assessee was not able to prove genuineness of the transaction. Subsequently Counsel for Assessee appeared before A.O. and he was asked to produce Shri Rahul Ahuja and Shri Sharma for examination. Counsel for Assessee filed a reply stating that assessee is out of India and shall be back after 1<sup>st</sup> week of March 2013 and that relations with Shri Rahul Ahuja and Shri Sharma are beyond repairs and even gone to the extent of litigation. It was requested that summons may be issued as they have no inputs/connect to contact these parties. The A.O. issued summons under section 131 of the I.T. Act to Shri Rahul Ahuja and Shri Sanjeev Kumar Sharma for their personal deposition. Shri Sanjeev Kumar Sharma attended the proceedings before A.O. in response to summon issued under section 131 and his statement on oath was recorded. The relevant portions of the statement are reproduced in the assessment order in which Shri Sanjeev Kumar Sharma explained that he knew the assessee and he met him in connection with sale of the

agriculture land at District-Faridabad. He has engaged Sri Rahul Ahuja of Greater Kailash, Delhi for purchase of the property. During the same period, he was working as Forwarding Agent at Tughlakabad, Delhi. He has stated that Shri Rahul Ahuja proposed to buy the land *which was 30 Acres* in single piece. He has stated to have met assessee for the deal in September/October, 2009. He has stated that agreed price of the land was Rs.4 crores. Rs.21 lakhs was paid on 12.04.2010 and Rs.1.80 crores was paid on 21.04.2010 in cash. He has stated that he along with his partner had gone to the house of assessee at Vasant Vihar to deliver cash on these dates. The agreement was signed between the parties and agreed commission was 1%. He has stated that except at Vasant Vihar residence of the assessee, he has not met at any other place. He did not confirm the statement of assessee as regards size of the land and consideration for the same because according to him the size of the land was 30 Acres and agreed price was Rs.4 crores only. He has also stated that he has not met assessee at Oberoi Hotel.

3.3. The A.O. further recorded statements of Shri Rahul Ahuja and explained about the land deal through Shri Sanjeev Kumar Sharma. He has also stated that area of the land was 30 Acres and agreed price was Rs.4 crores and he has met the assessee at his residence at Vasant Vihar, New Delhi. He has stated that Rs.21 lakhs was paid in cash on 12.04.2010 and Rs.1.80 crores was paid in cash on 21.04.2010. He has also submitted copy of the Agreement Dated 12.04.2010. He has stated that assessee has asked for payment in cash. As regards the source of the cash payment, he has stated that on 29.01.2010 he made cash withdrawal of Rs.1.75 crores from his Bank Account maintained with Axis Bank, Greater Kailash-1, Delhi and another withdrawal of Rs.20 lakhs was made on 02.02.2010 from the same account. He has also disputed the statement of assessee that land deal was for 50 Acres for agreed price of Rs.6 crores. He has also explained that he met the assessee at Vasant Vihar, Vasant Continental Hotel and Oberoi Hotel at Lodhi Road. Payment was given at the residence of the assessee. He could not explain the reason

as to why payment was made in cash. After CBI raid on assessee, the intention of assessee were not true. Therefore, he had suffered and filed a case against the assessee. The A.O. on careful examination of the material on record and considering three different statements given by assessee, Shri Sanjeev Kumar Sharma, Shri Rahul Ahuja, made the following observations :

- “1. The assessee had stated that the area of the land agreed to be sold was 50 acres and agreed price was Rs 6 Crores Whereas Shri Sanjeev Sharma and Shri Rahul Ahuja have not confirmed this, and have stated to the contrary that area of the land was 30 acres and agreed price was Rs. 4 Crores. Hence the statements differ.*
- 2. The assessee had stated in Q.No.11 in statement recorded on 22.4.2010, that no agreement was signed whereas Shri Rahul Ahuja submitted a copy of the MOU dated 12.04.2010 which also contained receipt of Rs.21 lakhs paid. Hence the version of*

*Sri Rahul Ahuja is not correct. The copy of the MOU filed seems to be an afterthought to give a genuineness to the version that Rs 2 crores was received as advance for sale of land. The original copy of the MOU has also not been produced during the course of assessment proceedings. The copy of the MOU submitted does not contain the back portion of page no. 1, which contains the stamping made by the Stamp Paper Vendor when he issues the stamp paper in which the name/address/other details are entered. These MOU or receipts were not found and seized by the CBI or Income tax department during search proceedings at his residence, offices etc. How come the MOU has surfaced now is beyond comprehension and seems to be made later.*

3. *The assessee stated in Q.No 12 on 22 4 2010 that he was not possessing the copy of the receipt issued for cash advance received. Whereas Shri Rahul Ahuja has furnished copy of the receipt*

*dated 21.04.2010 of Rs.1.80 crores. The payment of Rs.21 Lakhs in cash has been mentioned in para 7.3 of the MOU dated 12.4.2010 filed. It is surprising to note that the assessee failed to furnish the copy of the receipts of huge amounts which further indicates that this whole sequence of events have been created to mislead the Income-Tax department, and appears to be a story.*

4. *The assessee stated in Q.No.8 that Mr. Sharma gave him the amount of Rs.2 Crores as advance and he came with two people whose names were not furnished. Whereas Shn Sanjeev Sharma had stated that on 21.4.2010 four persons (he himself, Anil Trehan. Rahu Ahuja and his friend) went to residence of Jatinder Pal Singh to deliver the cash, and on 12.4.2010 three persons (he himself, Anil Trehan, Rahul Ahuja) went to deliver the cash. It is surprising to note that the assessee could not even give the name of the buyer of the land Shn Rahul Ahuja. at the time of his statement recorded on*

*22.4.2010, which was only a day earlier on which advance of Rs.1.80 crores was alleged to have been received.*

- 5. The assessee stated in Q.No.9 that he met Mr. Sharma four times in Oberai Hotel Whereas Mr. Sanjeev Sharma has denied to have met the assessee at any hotel or restaurant etc., he even denied to have met him at Oberai Hotel. Therefore, this version of the assessee is also not correct.*
- 6. The assessee stated that an amount of Rs.2 Crores was received as advance money whereas Shri Sanjeev Sharma and Shri Rahul Ahuja have stated that advance money paid was Rs.2.01 Crores. The figures do not match. Hence, the version of the assessee is not correct.*
- 7. Vide Q.No 12 Shri Rahul Ahuja had stated that the source of cash in hand as on 12 4.2010 Rs 21 Lakhs and on 21.4.2010 Rs.1.80 Crores, was cash withdrawal of Rs.1.75 Crores on 29.1.2010 from*

*bank account, and another withdrawal of Rs.20 Lakhs on 2.2.2010 from the same account It is surprising to note here that how Shri Rahul Ahuja could keep such heavy cash in hand from 29.1.2010 to 21.4.2010 whereas he is maintaining a regular bank account. This also seems to be a afterthought to prove the genuineness of the transaction .*

*The above facts and discussion proves beyond doubt that the transactions claimed to have been made by the assessee with Sh. Ahuja is only a sham transaction It was purportedly done to cover up the cash found and seized by the CBI at his residence which was illegal gratification mean to obtain favour from Sh. Ketan Desai, the then president of MCI for obtaining recognition of courses and grant of permission in respect of M/s Gian Sagar Medical College and Hospital, Patiala. The*

*above findings are further corroborated by the investigations carried out by the CBI and the charge-sheet (under section 173 Cr.P.C) rc.02(A)/10/CBI/ACU-IX against Dr. Ketan Desai & Ors. The copy of the charge-sheet has been obtained from the CBI and the relevant findings of the charge-sheet is discussed below in brief*

- 1. This case was named "Dr Ketan Desai and Others" Dr. Ketan Desai was President of Medical Council of India. New Delhi and it is alleged that he entered into criminal conspiracy with Shri Jatinder Pal Singh, Dr Sukhvinder Singh, Vice Chairman, Gian Sagar Educational & Charitable Trust, Mohali Punjab with the object to show favour with regard to the recognition of the courses and grant of permission pertaining to Gian Sagar Medical College*

*and Hospital Patiala as mandated by MCI Act and regulations for the admission into 4<sup>th</sup> year in MBBS Course for the year 2010-11.*

- 2. The CBI on the basis of reliable and specific information placed the mobile phones of Dr. Ketan Desai, Shri Jatinder Pal Singh and Dr. Sukhvinder Singh under telephonic surveillance and the conversation between these three persons was recorded.*
- 3. On 19.4.2010 at 19.53 hrs., the telephonic conversation reveals that Dr. Ketan Desai inquired about the illegal gratification from Shri Jatinder Pal Singh in respect of Gian Sager Medical & Hospital, to which the assessee confirmed.*
- 4. On 21.4.2010 at 13.20 hrs., the telephonic conversation between Dr.*

*Sukhvinder Singh with Shri N.S. Bhangoo in which Shri N.S. Bhangoo suggests Dr. Sukhvinder Singh to meet Shri K.A. Paul, Manager. M/s PACL India Ltd., Connought Circus. New Delhi to complete the work of "DO WALA"*

5. *On 21.4.2010 at 13.33 hrs.. the telephonic conversation, Shri K.A Paul, conformed and fixed the time for next day i.e. 22.4.2010.*
6. *On 21.4.2010 at 19.11 hrs Dr Ketan Desai inquires from Shri Jatinder Pal Singh whether he got or not, to which Shri Jatinder Pal Singh replied that it would reach by tomorrow and he (Dr Ketan Desai) would get it in the morning.*
7. *On 21.4.2010 at 13.34 hrs. Dr Sukhvinder Singh confirmed the transaction to take place on 22.4.2010.*

8. On 22.4.2010 at 12.30 hrs. the telephonic conversation reveals that Dr Kamaljeet Singh, Chief Executive Officer Gain Sagar Medical College & Hospital Patiala collected the amount, the Rs 2 Crores from Shri K.A Paul near Hanuman Mandir at Karol Bagh and delivers it to Shri Jatinder Pal Singh at his residence which was recovered by team of CBI from the residence of Shri Jatinder Pal Singh after the delivery.
9. The investigation of CBI also reveals that the above amount Rs.2 crores was brought in a vehicle, bearing registration no CH-03X8514 to the residence of Shri Jatinder Pal Singh at D-II-6/13 Vasant Vihar, New Delhi for onward delivery to Dr. Ketan Desai. The investigation has also revealed that Shri Jatinder Pal Singh and Dr. Sukhvinder Singh were in

*contact since Nov.2009 and subsequently in the month of Feb 2010, both discussed the issue of recognition for preparation of favorable inspection report by Medical Council of India during the inspection to be conducted and Shri Jatinder Pal Singh obtained Rs.2 Crores for showing this favour with the help of Dr. Ketan Desai to Gian Sagar Medical College & Hospital, Patiala.*

*In view of the discussions/observations made above, it is proved conclusively that Rs.2 crores recovered by CBI actually pertained to illegal gratification obtained for securing favour to Gian Sagar Medical College & Hospital. Charge sheet filed by CBI in this matter has also been obtained, which reveals that the assessee has entered into a conspiracy with Dr. Ketan Desai. Therefore the amount of cash recovered was not any advance money received by him for sale of so called land at Faridabad The assessee*

*only build-up a story in attempt to explain the cash recovered through a sham agreement.*

*Since the money Rs.2 crores was recovered from his possession, therefore the same is taxable in the hands of the assessee as per the provisions of Income Tax as unexplained money Considering the facts and discussion above Rs.2,00,00.000/- is added in the hands of the assessee as unexplained money found in his possession*

*Satisfaction is recorded for initiating penalty proceedings u/s 271(1 )(c) for the default of concealing the particulars of income & furnishing inaccurate particulars of income.”*

3.4. The A.O. accordingly made the addition of Rs.2 crores against the assessee.

3.5. During the course of search proceedings on 22.04.2010 cash of Rs.15,74,000/- was found from the possession of assessee. During the course of search,

statement of assessee was recorded on oath. The assessee in his statement has stated that cash belong to the companies and also includes his personal cash. However, during the course of assessment proceedings, assessee has stated that whole cash belonged to him. He has furnished cash in hand chart showing cash withdrawal from bank of Rs.1 lakh each in April, 2009, June, 2009, September, 2009, January, 2010. The A.O. noted that these withdrawals are very old prior to the date of search i.e., 22.04.2010 and same cannot be taken into account. The A.O. further noted that household withdrawals shown at Rs.7,20,000/- are also debited from the cash in hand chart which appears to be very low looking to the life style, status of the assessee. The assessee owns Mercedes Car, Range Rower Car and possesses Vertu mobiles and owns several costly watches above Rs. 1 lakh and possesses Solitaire diamonds. Looking to his social status his monthly expenses cannot be estimated below Rs.2 lakhs per month i.e.,Rs.24 lakhs per annum. The A.O. accordingly made addition of Rs.16,80,000/-. The assessee also stated to have

earned Rs.4 lakhs as agricultural income, for which, no evidence was filed. The A.O, therefore, noted that whole cash of Rs.15,74,000/- does not belong to the assessee. In the statement during the course of search, assessee had stated that cash of Rs.5 lakhs belongs to him. Since assessee has not been able to prove the source of the cash, the cash of Rs.5 lakhs was also added to the income of the assessee. Since assessee claimed during the course of assessment proceedings that cash of Rs.15,72,000/- belong to him, therefore, it was also added to the income of assessee on protective basis to protect the interests of the Revenue. These additions were challenged before the Ld. CIT(A).

4. The Ld. CIT(A) reproduced the submissions of the assessee in the impugned order in which the assessee reiterated the submissions made before the A.O. He has submitted that assessee had received Rs.2 crores from Shri Rahul Ahuja as advance against the proposed sale of agricultural land situated in District-Faridabad. The statement of assessee was recorded by the DDIT (Inv.) on

oath in which also it was explained that Rs.2 crores found and seized by the CBI had been received by him from Shri Rahul Ahuja towards sale of agricultural land. During assessment proceedings in response to notice under section 133(6) of the Act issued by A.O. to Shri Rahul Ahuja, he also stated on oath that he had paid the said amount to the assessee towards purchase of agricultural land. In principle there is no difference in both the statements and the same confirmed the entire deal without any confusion. Shri Rahul Ahuja even adduced evidence in respect of the source of the said sum of Rs.2 crores in his hands. It was also explained that total land to be sold was 50 Acres for a price of Rs.6 crores, but, at the particular point of time, only 30 Acres for a price of Rs.4 crores was decided to be sold to Shri Rahul Ahuja through broker. The receipt of cash payment received was with Shri Rahul Ahuja who has produced the same. It was submitted that no adverse inference could be drawn with regard to other points raised by the A.O. There is no much difference between the amount stated as sale consideration and there is no much significance in the

discrepancies pointed-out by the A.O. All the details were furnished to the A.O. with regard to the amount received by assessee. As regards the allegation on the basis of the telephonic conversation recorded by the CBI, nothing much have been stated by the assessee. All the documentary evidences were filed for the deal. The assessee also highlighted the conversation between him and Shri Ketan Desai, Shri Sukhvinder Singh and Shri K.A. Paul to show that nothing transpired about the alleged collection of Rs.2 crores etc., The Ld. CIT(A) considering the submissions of the assessee, call for the remand report from the A.O. and after giving opportunity to the assessee to rebut the claim of the assessee, confirmed the addition of Rs.2 crores and upheld the Order of the A.O. The findings of the Ld. CIT(A) in paras 7 to 7.1.22 is reproduced as under :

*“7. I have gone through the contents of the assessment order, finding given by the Assessing Officer, written submissions of the appellant, details filed in the paper book and also the case laws relied upon by the appellant in support of his contentions and*

*considered them judiciously on merits. The Assessing Officer made an addition of Rs.2,00,00,000/- mainly on the ground that the appellant conspired with Dr. Ketan Desai to receive an illegal gratification by extending favors to Gian Sagar Medical College & Hospital and that the receipt of such amount was explained to have been received against a sham agreement disguised as an advance received by the appellant against the sale of an agricultural land situated at Magrauli Village, Faridabad district Haryana. As the source of the cash was not explained by the appellant corroborating the same with concrete evidence, the Assessing Officer found the cash seized from the possession of the appellant as unexplained and undisclosed to the tax authorities. From the details filed and available on record, I find it abnormal to note that the alleged purchaser filed a suit for recovery of the advance amount of Rs.2,00,00,000/- on the same date i.e. 21.1.2013, when he was summoned by the Assessing Officer to explain the alleged purchase of agricultural*

*land with the supporting evidence. Therefore, a necessity arose to further enquire into the alleged transaction entered between the appellant and Sh. Rahul Ahuja, the purchaser/buyer of the agricultural land at Faridabad. Accordingly, vide letter dated 7.2.2014, directions were issued to the Assessing Officer to conduct further enquiry by summoning all the persons involved in the alleged transaction of sale and status of the pending suit of recovery in Faridabad Court. Vide letter dated 23.9.2014, the Assessing Officer submitted a report, the extract of which is given as under :*

*“A search & seizure action was conducted on 22.4.2010 at premises of Sh. Jatinder Pal Singh consequent to search conducted by CBI on 22.4.2010. During the search conducted by CBI Rs.2,00,00,000/- was found at the premises of Sh. Jatinder Pal Singh and the same was seized by CBI treated as a case property. Therefore, notice under section 143(2) issued and assessment*

*under section 143(3) was completed at income of Rs.2,63,76,710/- as against returned income of Rs.27,24,710/- on 28.3.2013.*

*The following additions were made in the assessment order :*

1. *Addition on account of unexplained cash found.* Rs.2,00,00,000/-
2. *Addition on account of Household expenses.* Rs. 16,80,000/-
3. *Addition on account of unexplained cash on protective basis.* Rs. 15,72,000/-
4. *Addition on account of agriculture income.* Rs. 4,00,000/-

*The assessee filed first appeal against the order u/s 143(3) before CIT(A)-XXXII, New Delhi on miscellaneous grounds.*

*During the appellate proceeding the assessee has submitted additional evidences under rule 46A before CIT(A)-XXXII, New Delhi.*

*The CIT(A)-XXXII, New Delhi has directed to conduct a detailed enquiry/investigation in respect unexplained cash found amounting to Rs.2,00,00,000/- for which assessee claims that it is a advance against the sale of property.*

*1. Report of the A.O. is as under :*

*The additional evidences are duly considered and it is found that there is nothing new in the additional evidences. The paper submitted as additional evidences are already filed in the assessment proceedings and the same were duly considered. From the perusal of documents filed during the remand proceedings as well as assessment proceedings, following facts appear as under :*

- (a) Sh. Jatinder Pal Singh is the owner of so-called land in Faridabad Haryana. Other than this fact, all things are after thought and try to camouflage the unexplained/unaccounted money found during the search.*

*His statements was recorded u/s 131 during the assessment.*

(b) *Statements of buyer of the land Sh. Rahul Ahuja and broker/witness Sh. Sanjeev Sharma was recorded in detailed u/s 131 during the assessment (copy enclosed).*

(c) *After careful examination and comparison of above three statements given by the assessee, Sh. Sanjeev Sharma and Sh. Rahul Ahuja certain observation were made and discussed in detail on page no. 9, 10 and 11 of the assessment order. Relevant portion of the above three statements was also reproduced in assessment order.*

(d) *In compliance to directions of Ld. CIT(A) statement u/s 131 of Sh. Anil Kumar Trehan, broker/witness of the said deal regarding property at Faridabad, was recorded (copy enclosed).*

*After a comparison of all the four statements following discrepancies appear:*

i. *The assessee had stated that area of the land agreed to be sold was 50 acres and agreed price was Rs. 6 crores. Whereas, Sh. Anil Kumar Trehan has stated that Sh. Jatinder Pal Singh agreed to sell 30 acres out of total land of 50 acres and land was to be purchased for Rs.4 crores.*

ii. *The assessee had categorically stated in Q. No. 11 in statement recorded on 22.4.2010, that no agreement was signed, whereas Sh. Anil Kumar Trehan stated that a MOU was signed on 12.4.2010 between Rahul Ahuja and the assessee and witnessed by Sh. Sanjeev Kumar and Sh. Anil Trehan. The said MOU seems to be an afterthought, to give a genuineness to the version that Rs. 2 crores was received as advance for sale of land. The original copy of the MOU was not produced during the course of the assessment proceedings. The copy of the MOU submitted during assessment and with paper book filed now does not contain the back portion of page no.1, which contains the stamping made by the Stamp Paper vendor when he issues the stamp paper in which the name/address/other details are entered.*

*Moreover, the said MOU or receipts were not found and seized by the CBI or Income tax Department during search proceedings at residence, and offices of the assessee.*

*iii. The assessee stated in Q.No.12 on 22.4.2010 that he was not possessing the copy of the receipt issues for cash advance received. Whereas Sh. Anil Trehan has stated that receipt was signed between RaKul Ahuja and assessee and witnessed by him and Sh. Sanjeev Kumar.*

*iv. The assessee stated in Q. No. 8 that Mr. Sharma gave him the amount of Rs. 2 crores as advance and he came with two people whose names were not furnished. Whereas Sh. Anil Trehan has stated that on 21.4.2010 four persons (he, himself, Sanjeev Kumar, Rahuj Ahuja and his friend) went to residence of Sh. Jatinder Pal Singh to deliver the cash, and on 12.4.2010 three persons (he himself, Sanjeev Kumar and Rahul Ahuja) went to deliver the cash. It is surprising to note that the assessee could not even give the name of the buyer of the*

*land Sh. Rahul Ahuja, at the time of his statement recorded on 22.4.2010, which was only a day earlier on which advance of Rs.1.80 crores was alleged to have been made.*

*The assessee stated in Q. No. 9 that he met Mr. Sanjeev Sharma four times in Oberai Hotel. Whereas, Mr. Anil Trehan has stated that he met mostly at the residence of the assessee D-Block, Vasant Vihar, and only*  
*v. once he met the assessee along with his partner Sh. Sanjeev Kumar Sharma. Whereas, the assessee in his statement never stated that he met Sh. Anil Kumar Trehan of Sh. Sanjeev Sharma was meeting him with someone.*

*Sh. Anil Trehan stated that every time he met the assessee along with his partner Sh.*  
*vi. Sanjeev Kumar Sharma. Whereas, the assessee in his statement never stated that he met Sh. Anil Kumar Trehan or Sh. Sanjeev Sharma was meeting him with someone.*

*vii. The assessee stated that an amount of Rs.2 crores was received as advance money whereas Sh. Anil Trehan has stated that advance money paid was Rs.2.01 crores. The figures do not match.*

*Further, ITI of this office was deputed to verify the suit filed by Rahul Ahuja vs. Jatinder Pal Singh in the court of Civil Judge Sr. Division, Faridabad. The case has been filed on 23.1.2013 and next date of hearing in on 10.11.2014 a certified copy of the suit is enclosed.*

*From above discussion it is clear that the story of receiving advance in cash is an afterthought and just to camouflage the unexplained/unaccounted cash found at the residence of the assessee. Filing of suit is also a colorful device to make the afterthought realistic.*

*Further, the above facts and discussion proves beyond doubt that the transactions claimed to have been made by the assessee with Sh. Ahuja is*

*only a sham transaction. It was purportedly done to cover up the cash found and seized by the CBI at his residence which was illegal gratification meant to obtain favour from S. Ketan Desai, the then president of Medical Council of India for obtaining recognition of courses and grant of permission in respect of M/s Gian Sagar Medical College and Hospital, Patiala. The above findings are further corroborated by the investigations carried out by the CBI and the charge sheet filed. The copy of the charge sheet was obtained from the CBI during the assessment and the relevant findings of the charge sheet were discussed in details in on page no. 10 & 11 of assessment order. Keeping in view of the above facts, it is submitted that additional evidences is nothing else than afterthought and needs to be rejected.*

*Without prejudice to the above it is submitted that other additional evidences may not be considered as Rule 46A of Income Tax Rules reads as under :*

*“The appellant shall not be entitled to produce before the [Deputy Commissioner [Appeal]] [or, the case may be, the Commissioner [Appeal]], any evidence, whether oral or documentary, other than the evidence produced by him during the course of proceedings before the [Assessing Officer] except in the following circumstances, namely:*

(a) *Where the [Assessing Officer] has refused to admit evidence which ought to have been admitted.*

(b) *Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the [Assessing Officer].*

(c) *Where the appellant was prevented by sufficient cause from producing before the [Assessing Officer] any evidence which is relevant to any ground of appeal.*

(d) *Where the appellant was prevented by sufficient cause from producing before giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.....”.*

*The conditions [a) [d] mentioned above are not applicable in this case. Sufficient opportunity was given to the assessee by the Assessing Officer and hence provisions of Rule 46A are not applicable in this case. The condition [b) & [c] as mentioned above are also no applicable as the assessee did not submit any evidences to substantiate the he was prevented by sufficient cause.*

*Therefore, it is a fit case for not admitting additional evidences under Rule 46A of Income Tax Rules and you are kindly requested not to admit the additional evidence filed by the assessee.”*

7.1. *The said report was provided to the AR of the appellant. Vide letter dated 14.10.2014 the AR of the appellant submitted his comments as a rebuttal which is extracted below :*

*“AO’s Report :*

*AO report can be summarized as follows :*

- The documents which the Ld. CIT(A) was referring, while remanding the matter to the AO, were available with the AO and that the assessee has not filed anything new to the AO.*
- Mr. Rahul Ahuja, Mr. Sanjeev Sharma and the assessee was already enquired during the assessment and the discrepancies were already pointed out in the Assessment Order.*
- Additionally, Mr. Anil Kumar Trehan was summoned to enquire about the sale of land.*

*The AO further listed out a number of discrepancies when comparing the statements of all the four persons [ including Mr. Anil Kumar*

*Trehan ] and came to a preconceived conclusion that the assessee is trying to camouflage the unexplained/unaccounted cash found at the assessee's residence.*

**Our Rebuttals:**

*Now, the assessee would like to rebut each and every discrepancies pointed out by the AO in its remand report in the following manner :*

**Discrepancy # 1:** *The assessee's states that the deal was for 50 acres and 6 crores whereas Mr. Anil Kumar Tehran has stated that the deal was for 30 acres and Rs. 4 Crores.*

*In this regard, we would like to submit that the assessee possesses 50 acres of land and plans to sell it for Rs. 6 Crores. However, the deal with Mr.Rahul Ahuja was finalized only for 30 acres and Rs.4 Crores.*

*The assessee has submitted all the documentary evidence before the AO to prove that the assessee owns 50 acres of land and it must be noted that the AO did not dispute genuinity of those documents.*

*In any case, discrepancy could be serious only when the price OR the total extent of impugned land and NOT when both the price AND total extent are changed and that too proportionately.*

*Furthermore, the assessee could have committed a genuine mistake in recalling the incident when being interrogated by the CBI.*

**Discrepancy # 2** : *MOU is an afterthought; the original was not filed, the photocopy does not have the details of the Stamp Vendor and the CBI does not seize it during Search.*

*It is hereby submitted that the AO never asked for the original copy of the MOU during the*

*assessment proceedings and making a baseless allegation in the Remand Report that the original was not furnished during the assessment proceedings.*

*The next allegation of the AO that the photocopy of the MOU does not have the details of the Stamp Vendor is frivolous and callous. It is a well known fact that the details of the stamp vendor will be printed in the back side of the stamp paper and the back side of the stamp paper was unknowingly missed while making photocopies of the same. It must be noted that the AO never raised this issue when the MOU was originally fled during the assessment.*

*In any case, we are now furnishing the copy of MoU which has the details of Stamp Vendors along with this Rebutals for your perusal.*

*The third allegation of the AO, in this report, shows the lack of application of mind by the AO*

*while making the Remand Report. The AO was completely oblivious to the fact that the search was conducted at the premises of the assessee and the MoU was available with the purchaser, i.e., Mr. Rahul Ahuja, who was issued summons under Section 131 of the Act by the AO. It is further brought to your notice that the AO has put the purchaser under oath and recorded his statement.*

*In view of the above submissions, it is submitted before your goodself that the MoU is a genuine document and it is only the AO who is trying to camouflage the truth by making baseless allegations. **It is brought to your kind notice that the case of the assessee was proved beyond doubt by the assessee as well as by the purchasers and brokers, who were summoned by the AO u/s 131, and it is up to the AO now to disprove the submissions of the assessee by bringing some positive***

**evidences on record. However, in this instant case, the AO is only making baseless allegations based on surmises and conjectures.**

**Discrepancy # 3 : Assessee stated that he did not possess the receipt whereas Mr. Anil Trehan is stating that the receipt was signed by Mr.Rahul Ahuja and assessee and was witnessed by him and Mr. Sanjeev Kumar**

*It is humbly submitted that there is no discrepancy here between the statement made by the assessee and Mr. Anil Trehan.*

**The assessee never stated that there is no receipt was signed by him or the purchaser but only stated that he did not possess the receipt. In fact, it goes on to prove that there is a receipt between the parties but the assessee does not have possession of it. It is also a common practice that**

*the cash recipient will issue the receipt in favour of the purchaser against the consideration received and not the other way around.*

*This discrepancy clearly postulates the complete lack of application of mind by the AO.*

***Discrepancy # 4: Assessee states that Mr. Sharma delivered the amount and there were totally three persons came to deliver the advance money whereas Mr. Anil Trehan states that there were totally four persons along with Mr. Sharma and assessee does not even know the name of the purchaser.***

*It must be noted here that the AO is inventing reasons to penalize the assessee by making false allegation. We would like to point out that Mr.Rahul Ahuja, Mr.Sanjeev Sharma and Mr.Anil Trehan have unanimously stated that there were four persons present to deliver the initial advance to the assessee and it is only the assessee who has mistakenly stated it to be three persons.*

*In any case, these facts do not have any bearing to the facts of the present case and cannot possible cause any implication to the present case.*

*Furthermore, it must be noted that the entire deal was finalized by Mr. Sanjeev Sharma who was the intermediary between the assessee and the purchasers with regard to the sale of impugned land and the AO also has not disputed it. Also, the real estate market functions through a long chain and it is not always possible for the Seller to remember the name of the purchaser since he will be meeting many prospective clients in a day. In any case, not remembering the name of the purchaser cannot be the ground for making disallowance. **We would like to highlight here that the purchaser proved his credit worthiness by appearing in person and showing a withdrawal of Rs.1.75 Crores and Rs.20 Lakhs from his Bank accounts. Hence, it is now for the AO to prove substantially***

***with evidence that the Purchaser had NOT used the said amount for the purchase of impugned land. In the absence of any evidence to suggest that the assessee has obtained from any other source, it cannot be held as unaccounted cash.***

***Discrepancy # 5 : The assessee has stated that he met Mr. Sanjeev Sharma four times in M/s. Oberai Hotel whereas the Mr. Anil Trehan has stated that he has met the assessee only once in M/s. Oberai Hotels.***

*We would like to reiterate that the AO has to conclusively prove that the assessee had obtained the money from the source other than Mr. Rahul Ahuja or that Mr. Rahul Ahuja has NOT given the money as advance towards the purchase of the property. A disallowance cannot be made on surmises and conjectures. If the AO is not satisfied with the explanation provided by the assessee, it*

*can ask the assessee to substantially prove the source of the assessee and when the assessee completed his duty to prove the genuineness of the transaction and the source of the transaction; it is for the AO to prove it otherwise conclusively and NOT by surmises.*

*Here, we would like state that the small discrepancies in the statement of the parties, like the meeting place and the number of meetings, cannot and should not have any bearing in the case, since the possibilities of the parties remembering the place of meeting and number of meetings are very less and in any case, they are irrelevant to the issue at hand.*

**Discrepancy # 6 : Mr. Anil Trehan has stated that he had met the assessee along with the partner, Mr. Sanjeev Sharma, whereas the assessee has never stated that he had met Mr. Anil Trehan.**

*We would like to state that there is no discrepancy here. It must be noted here that the assessee is supposed to answer the questions which are posted before him and moreover, Mr. Sanjeev Sharma, was the person who was instrumental in closing the deal and hence, non-mentioning of the name of a person who has accompanied Mr. Sanjeev Sharma cannot have any implication over the case.*

**Discrepancy # 7 : Assessee states that he had received Rs. 2 Crores whereas Mr.Anil Trehan has stated that it had paid Rs.2.01 Crores.**

*This is hardly a discrepancy. It must be noted that the CBI had seized the amount of Rs.2 Crores and was interrogating the assessee regarding the source of the said 2 crores. Hence, it must be understood in the context. The assessee was asked about the source of the seized amount and the assessee was explaining the same and*

*the action of the AO to misinterpret the same should not be encouraged.*

*We would again like to point out that the AO is building a case on surmises and conjectures since he could not find any discrepancy in the source explained by the assessee or the source explained by the purchaser.*

**Arguments Advanced :**

*It can be easily ascertained by looking at the discrepancies pointed out by the AO that he has proceeded with a **preconceived notion** to confirm the disallowance in any case, without adjudicating the matter afresh as pointed out by your goodself.*

*The **preconceived notion** stems from the fact that the CBI has conducted enquiry at the assessee's premises and seized money from the assessee. It is submitted by the assessee that the AO has erroneously arrived at a conclusion,*

*without appreciating the facts of the case in merits.*

***The primary point that should be noted here is that the assessee has explained its source of income beyond doubt. Moreover, the purchaser as well as the brokers had come forward on the issue of summons under Section 131 and proved their genuinity before the AO. Thirdly, the purchaser had further established his source of income for Rs.2 crores and hence the primary pre-conditions of 'Unexplained investment/unaccounted cash' has been satisfied and moreover, the AO also did not bring on anything positive to prove it otherwise.***

*In this regard, the assessee would like to rely on the following decisions:*

*Shri. Birbal Ram Meera Vs ITO (ITA No.410/JP/2011, A.Y. : 2003-04) wherein it was*

*held that the certain discrepancies in the statement of the parties with respect to the location of the property could be a mistake. But when the fact that the property was sold by the sellers and purchased by the purchasers is proved, an addition cannot be made. The relevant extracts is s follows:*

*"Statement of both the persons i.e. Shri Laxminarain and Shri Chittarmal were recorded and they have categorically admitted that they have purchased the property from Shri Rattan Lai. There are certain discrepancies i.e. one person says that the property situated at village Surajnagar and other says that property situated at village Suryanagar. It may be mistake in pronouncement but the fact is that property was sold by Shri Ratan Lai Meena and same was purchased by the purchasers. Therefore, source of fund of Rs.12,91,000/- has*

*been duly explained and which should have been accepted"*

*In our case, the discrepancy pointed out by the AO are not even as substantial as the one pointed in the above case. Hence, addition made by the AO deserved to be deleted.*

ii. **Shri. Saidan Kapoor Vs JCIT (ITA No. 1115/Del/2011)** wherein it was held that addition on account of unexplained cash deposits cannot be made on assumptions and surmises. In this case, the addition was based on a report and the same was sustained even after the assessee establishing **close nexus** between the cash deposits and withdrawals. The jurisdictional Delhi ITAT allowed the appeal of the assessee and the relevant extract is as follows:

"11. We have heard the rival contentions and perused the relevant material on record. **In our view, the**

**addition made by the lower authorities is on the basis of assumptions and surmises. If it was found by the Assessing Officer that the assessee may have earned unaccounted income, then he should have made further enquiries from purchasers and give a positive finding about such income. In the absence thereof, the observation of the lower authorities that the case deposits are attributable to income generated by the assessee from such property transactions is unfounded.** Coming to the assessee's reconciliation, in our view, the same has not been controverted on the basis of any material and has been ignored on surmises. There is no finding that the cash withdrawn by the assessee was invested elsewhere. In the absence of such finding, the availability of cash with the assessee

*remains unrefuted. The assessee's explanation is found to be reasonable that in the property business, there are times to withdraw the cash and if unutilized, the same will be re-deposited. The period of withdrawal and deposit is not inordinate to raise any other assumption. In view thereof, we are unable to uphold the orders of lower authorities on this view. The addition made is deleted. "*

*Our case is similar to that of the above case.*

*The AO had made additions merely based on assumptions and surmises and the jurisdictional Delhi ITAT rightly deleted it.*

*We further rely on the decision of jurisdictional Delhi High Court in the case of*

- a. **CIT vs., Gangeshwari Metal Pvt. Ltd.** [ (2014) 361 ITR 10 (Delhi) ] - wherein it was held that when the complete particulars are furnished to AO

*and the AO has not conducted enquiry in to the same or **has no material in his possession to show that those particulars are false and cannot be acted upon, then no addition can be made under Section 68.***

*We would also like to draw a parlance to the assessment completed based on information received by Investigation vis-a-vis assessment completed based on the CBI enquiry. In this regard, we would like to rely on the decision of jurisdictional Delhi ITAT in the case of **DCIT Vs Heminder Kumari (ITA.No.4210 to 4213/Del/2013, AY 2002-03 to 2005-06)** wherein it was held that the information received by the Investigation wing, at best, be regarded as a prima facie material, but could not be construed as conclusive for use against the assessee to fasten tax liability, because the same has to be corroborated with credible and independent evidence.*

*Similarly, the AO cannot conclude assessment based on the CBI enquiry but has to substantiate itself with credible and independent evidence which the AO had failed to do so in this instant case.*

*For the foregoing reasons, we request your goodself to kindly delete the disallowance made by the AO as unaccounted cash/investment."*

7.1.1. *From the above discussion, what is evident is that, admittedly, two government agencies i.e. the Central Bureau of Investigation and the Income Tax Department conducted the search operation u/s 132 on the appellant on 22.4.2010 and the copy of the alleged Memorandum of Understanding dated 12.4.2010 was not found at the appellant's premises during the search operation. On a plain reading, Memorandum of Understanding depicts the intentions of the parties involved, and there should have been a copy with the appellant also on the day of search. It is also not a case*

*of the appellant, where the documents were required to be filed before the authorities during the post search enquiry. It is a fact which is not in dispute that the appellant could not provide the name and address of the alleged buyer/purchaser or alleged broker at the time of search, even to the extent that he did not remember the name of the purchaser, the place of money received as an advance against the sale of agricultural land. It was stated that he received the money at Hotel Oberoi, whereas the broker and the buyer/purchaser in the statement recorded u/s 131 of the Income Tax Act, 1961 stated before the Assessing Officer in the course of the assessment proceedings, that the advance against the property amounting to Rs.2,00,00,000/- was paid at the residence of the appellant at Vasant Vihar, New Delhi. It was also stated by the buyer/purchaser in the statement recorded u/s 131 by the Assessing Officer that he paid the money to the appellant in his office made in the garage of his house in Vasant Vihar, New Delhi. In the*

*statement recorded u/s 132(4) of the Income Tax Act, 1961 in the course of the search operation, the appellant claimed that he had sold the agricultural land comprising of 50 acres for an amount of Rs.6,00,00,000/- whereas the alleged buyer/purchaser Mr. Rahul Ahuja as well as the alleged broker Mr. Sanjeev Kumar Sharma claimed that the alleged deal was for 30 acres of land and fixed for an amount of Rs.4,00,00,000/-. The alleged Memorandum of Understanding was executed on 12.4.2010 and the amount of Rs.2,00,00,000/- was received on 21.4.2010 i.e. one day prior to the search, whereas the appellant in his statement categorically stated that no provisional agreement was signed. The alleged broker Mr. Sanjeev Kumar Sharma denied to have met the appellant in Hotel Oberoi, whereas the appellant claimed that he received an amount of Rs.2,00,00,000/- from Mr. Sharma at Hotel Oberoi. It is also an important fact to bring on record that admittedly, the alleged deal for the sale of land was initiated in February, 2010 and the*

*land was not transferred till the date the alleged buyer/purchaser claimed to have filed a suit for recovery of the advance amount. It was only when the Assessing Officer asked for the copy of the suit for recovery of alleged advance, Mr. Rahul Ahuja furnished the copy of the suit on 5.2.2013. It was pertinently mentioned by the Assessing Officer in his order, that the suit for recovery of the advance was filed only on 22.1.2013, which was almost after 3 years whereas as per clause 7.5 of the Memorandum of Understanding dated 22.4.2010, the deal was to be completed on or before 15.7.2010. In these circumstances, where there is an inconsistency in the versions given, variation of facts and difference in the statements of all the related parties, there are serious doubts on the alleged transaction of the sale of land. In the normal circumstances for a normal person it is beyond comprehension to believe that the appellant would enter into a deal of huge transaction like the sale of land, just one day before the search operation and also received a*

*substantial amount of Rs.2,00,00,000/- without a formal agreement but did not know the name of the alleged buyer/purchaser and the place of receipt of the money. The facts like the size of the land, the price fixed by the appellant, his alleged buyer/purchaser and broker are not in agreement with each other. It is also unbelievable that the alleged buyer/purchaser kept silent for almost 3 years and suddenly one fine morning filed the suit on 23.1.2013, only when the Assessing Officer called for verification and examination. The contention of the AR of the appellant that the alleged buyer withdrew the cash from his bank account maintained with Axis Bank on 29.1.2010 vide cheque no. 8548 for an amount of Rs.1.75 crores for the purpose of paying the advance to the appellant is unbelievable due to the reason that no prudent person would withdraw such a huge amount in cash from his account without any purpose, and retain the same for two and a half months in his hands, waiting for the deal to materialize which was not even initiated when*

*the cash was withdrawn on 29.1.2010. As per the statements recorded of all related persons, the deal was initiated in February, 2010 and it is not understood as to why no payment as advance was made by Mr. Rahul Ahuja in February, 2010 itself, but made just a day prior to the search operations by the CBI and Income tax department on 21.4.2010 when he was having substantial cash in his possession. It is also not out of place to mention that he could have as well made the payment by cheque due to the fact that the nature of land transacted was an agricultural land which was not taxable. Reference is drawn here to the question nos. 10, 11 and 12 and replies given by Sh. Rahul Ahuja the buyer/purchaser recorded by the Assessing Officer on 12.3.2013 which is extracted below :*

*Q.No.10 Why did you make payment by way of cash.*

*I was informed that the agriculture land is bought from farmers, who prefer to take cash, and not by cheque, because they want payment in hard cash, because they want full payment before transfer of the deal.*

*Ans*

Q.No.11 *But Sh. Jatinder Pal Singh was a non-farmer maintaining bank accounts then why did you pay him cash.*

Ans. *He was ready to accept cash, I gave him choice of cash/cheque.*

Q.No.12 *Please explain your sources of cash in hand as on 12.4.2010 Rs.21 lakhs and on 21.4.2010 Rs. 1.80 crores.*

Ans *On 29.1.2010 I made cash withdrawal of Rs.1.75 crores from my bank a/c no. 049010200029078 in Axis Bank, GK-1, Delhi. There was another withdrawal of Rs. 20 lakhs on 2.2.2010 from the same account. There were other withdrawals and cash in hand as on 1.4.2010 was Rs. 2,17,36,182/-."*

7.1.2. *In view of the above discussion and reason, I find that the conduct of the appellant is against the normal probability and human behavior. It is a settled law that the conduct of the appellant is a strong evidence to determine the status of a person. For this proposition I make a reference to the judgment passed by the Hon'ble Supreme Court in the case of ITO VS*

*Mangat Ram Narota Ram Narwana and another 2011  
336 ITR 624 (SC).*

7.1.3. Subsequently during the remand proceedings, when the ITI was deputed to enquire about the status of the suit, it was informed by him that Sh. Rahul Ahuja filed a suit for recovery of Rs.2,00,00,000/- from the appellant in the Court of Civil Judge, Faridabad on 23.1.2013 and the date of hearing was 10.11.2014. The appellant did not inform the status of the pending suit whether it was admitted or not. No details pertaining to the said suit was given by the appellant from the date of filing the suit till the date of hearing on 10.11.2014, which is almost a time period of one year nine months. It is also a point to bring on record, that the appellant claimed to have sold the land in April 2010, when the real estate market was on slump, and it has not picked up even today. It is a rare case where the purchaser was willing to close the transaction by paying the balance so fixed in MOU, and the seller is ignoring to execute the final document. It is

*also not understood as to how the purchaser Sh. Rahul Ahuja entered into the deal without proper documents in his possession like registered document of the land, title deed, conveyance deed, mutation of the land on appellant's name in the revenue records on the basis of the so called will/testament and advanced an huge amount of Rs.2,00,00,000/- that too in cash to the appellant. Mr. Rahul Ahuja was examined twice by the Assessing Officer, once to furnish information u/s 133(6) and other u/s 131 of the I T Act to record the statement. On these two occasions other than a copy of an unregistered MOU, none of the above documents were submitted by him in support of the transaction to prove it as genuine. Therefore, the intention behind the transaction is not genuine, and the entire transaction was undertaken to disguise the actual nature of receipt, after the seizure of Rs.2,00,00,000/- from the appellant. In the course of the appeal proceedings, it was only when the appellant was asked to produce the ownership document, these facts saw the light that the*

*grandfather of the appellant Sh. Sawan Singh was not the absolute and sole owner of the survey numbers mentioned in the sale document but was a co-purchaser to the extent of 30/130 share in revised survey numbers, and the extent of the land holding was approximately 4 acres of land. Therefore, the contents of the will/testament is also doubtful as one of the witness to the will was the father of the appellant Dr. S. S. Giani Singh.*

7.1.4. *In the course of the appeal proceedings, the AR of the appellant was asked to file the ownership document of the agricultural land. In response to the same, the AR of the appellant filed the following documents –*

*Will/testament executed by Sh. Sawan Singh S/o*

a) *Late Sh. Arjan Singh in favour of Sh. Jatinder Pal Singh S/o Dr. S.S. Giani, IFS dated 5.2.1997.*

b) *Bai namah document for an amount of Rs.35,000/- and stamp duty of Rs.4,375/- and two other sale deeds.*

c) *Submission titled “Annexure of justification of cash in hand (Sh. Jatinder Pal Singh)”.*

7.1.5. *In the document of will/testament, executed by Sh. Sawan Singh S/o Late Sh. Arjan Singh in favor of his grandson Sh. Jatinder Pal Singh, the appellant the following property mentioned at A has been bequeathed. An extract of the same is reproduced below:*

*“Agricultural land : Total share area 60/ 130 Bhag of Khasra Nos. 36(18-18-0), 37(20-23-0), 38(28-2-0), 39(24-4-0), 40(33-1-0), 44(23-0-0), 45(20-0-0), 46(3-15-0), .. 08 MIN (17-0-0+,109(9-14-0), 110(44-17-0), 111(16-2-0), 119(83-3-0), 120(15-0-0), 41(7-15-0), 42(24-0-0 + and 43(17-17-0) in village Magrauli Khadar, Pargana, Dadri, Tehsil Sikanderabad, Distt. Bulandshahr, U.P. The said land was purchased by me on 15.6.83, 17.6.83 and 20.6.83 vide Sale Deed Registration Nos. 3938, 4058 and 4/06 in the Revenue record of Sub-Registrar, Ballabhgarh [Haryana].”*

7.1.6. *In India, there is a well defined and developed system of succession laws that governs a person's property after his death. The 'India Succession Act, 1925' applies to wills and codicils made by Hindus, Buddhists, Sikhs, Jains, Parsis and Christians but did not to mohammedans as they are largely covered by Muslim Personal Law. A will or a testament is a legal declaration by which a person, the testator, names one or more persons to manage his/her estate and provides for transfer of his/her property at the time of death. Such will/testament would take effect only after the death of the testator.*

*In the instant case, the father of the appellant and Dr. S.S. Giani Singh was one of the witnesses to the will. The father's name of Dr. S.S. Giani Singh was not mentioned but his residential address of Vasnat Vihar, New Delhi was mentioned. Therefore, this witness is not "independent" as required Jn law. The death certificate of the appellant's grandfather i.e. Sh. Sawan Singh was*

*not submitted by the appellant. The appellant did not submit a Probate granted by the Court. A "Probate" is a copy of the will, certified by the Court and is a conclusive evidence of the genuineness of a will. Therefore, according to the law of land, there are several deficiencies in the so called will/testament submitted by the appellant to doubt it. On perusal of the document titled "Bai namah for an amount of Rs. 35,000/- with stamp duty of Rs. 4,375/-", the survey numbers of the extent of the land which was a subject matter of sale was owned by four different groups of persons is as under :-*

*"36(18-18-0), 37(20-1-38], 38(28-2-0], 39(24-4-0], 40(33-1-0], 44(22-0-0], 45(20-0-0], 46(3-15-0] 108 MIN (17-0-0), 109(9-14-0), 110(44-17-0), 111(15-2-0), 119(83-3-0), 120 (15-0-0), 41(7-15-0), 42(24-0-0), 43(17-17-0)."*

*7.1.7. The above said land admeasuring 252 bigha and 7 biswa was owned by the following persons with the respective share holding given as under :*

1. Harish Chand S/o Hari Singh 2/28 share  
Shamsheer Singh, Iqbal Singh, Bimal Singh, Yudhvir Singh S/o Hari Chand.
2. Dheer Singh S/o Hari Singh Bhanu 2/28 share  
Pratap Singh, Shashi Pratap Singh, Arun Pratap Singh S/o Dheer Singh
3. Nekiram s/o. Gheesa Ram 2/28 share
4. Bhanu Pratap Singh, Gajadhar Singh 2/28 share.

7.1.8. According to the Bainamah document by which the grandfather of the appellant purchased the land was initially located in Dospur, Magrauli Khadar, Pargana Dadri, Tehsil Sikanderabad, District Bulandshahr. Subsequently, due to the diversion of the river Yamuna the above survey nos. falling in the district of Bulandshahr were shifted to Village Vidavalli, Tehsil Ballabgarh, District Faridabad and the following khasra nos. were allotted in the revenue record >2(95-14), 1/3(9-0), 1/6(229-11), 3(77-12), 4(55-14) of 477 bigha,  $\frac{1}{2}$  bhagdar, 238 10 biswa pukta in this total land  $\frac{7}{28}$  share i.e.  $\frac{1}{4}$ <sup>th</sup> share bhagdar is 59 bigha 12 biswa in the ownership and possession of the above

mentioned persons. Therefore initially the lands which were situated in District Bulandshahr Uttar Pradesh, were shifted to District Faridabad, Haryana due to the change of the course of the river Yamuna. In the said sale deed it was mentioned that there are many share holders and that the owners were not in a position to cultivate the land and in the interest of everybody mentioned above the land admeasuring 59 bighas 12 biswa pakka with all the rights in the land were sold in lieu of an amount of Rs. 35,000/- and  $\frac{1}{2}$  of this is Rs.17,500/- to the following persons :

- |    |  |               |
|----|--|---------------|
|    | <i>Jaswant Singh Bhullar S/o Sardar</i>        | <i>60/130</i> |
| 1. | <i>Pratap Singh, H. No. 5-1, Vasant Vihar,</i> | <i>share</i>  |
|    | <i>New Delhi.</i>                              |               |
|    | <i>Sardar Sawan Singh S/o Arjan Singh,</i>     | <i>30/130</i> |
| 2. | <i>R/o 3105, Ranjeet Nagar, New Delhi.</i>     | <i>share</i>  |
|    | <i>Prem S/o Sardar Attar Singh R/o.</i>        | <i>10/130</i> |
| 3. | <i>External Affairs Ministry, New Delhi.</i>   | <i>share</i>  |
|    | <i>Dr. Inderjeet Singh S/o Sardar Sant</i>     | <i>5/130</i>  |
| 4. | <i>Singh R/o 59, Market Spare, New</i>         | <i>share</i>  |
|    | <i>Delhi.</i>                                  |               |

- |    |   |                     |
|----|---|---------------------|
|    | <i>Smt. Gurmag Kaur W/o Muktar Singh</i>                          | <i>10/130</i>       |
| 5. | <i>R/o 7/22/2 Safdarjung Enclave, New Delhi.</i>                  | <i>share</i>        |
| 6. | <i>Smt. Krishna/Sh. Pratap Singh, R/o. Vijay Kharad.</i>          | <i>10/130 share</i> |
| 7. | <i>Smt. Agar Kaur/Sh. Tej Singh, R/o. Kirti Nagar, New Delhi.</i> | <i>5/130 share</i>  |

7.1.9. *The said land admeasuring 59 bighas 12 biswa was sold on 15.6.1983. From the above details culled out from the document, it is evident that Sh. Sawan Singh S/o Late Sh. Arjan Singh grandfather of the appellant was a co-purchaser to the extent of 30/130 share out of 59 bighas 12 biswa that was sold by the above mentioned parties. In Haryana land is measured in the units of bighas and biswas. Accordingly, applying the karam which is 57.157 standard, 4 bighas and 16 biswas approximately measures 4033.24 sq. yards, and 806.72 sq. yards, which is 4839.885 sq. yards (that is a hair's breadth from 4840). Therefore, applying the same calculation 59*

*bighas and 12 biswas admeasured 12.416 acres of land. The calculation of 12.416 acres converted from 59 bighas and 12 biswas is worked out as under :*

			Bigha
			20
	Biswas		400
Biswani	20		
2.52 sq. yds	50.42 sq. yd	1008.31 sq. yds	
2.11 sq. m.	42.15 sq. m	843.08 sq. m	

*Land is measured using karam or gatha which is equal to 57.157 inches and area of 1 karam by 1 karam is a biswani. So 1 bigha is 1008.31 if multiplied from the dimensions of a biswani, 1008.33 is a third of 3025 sq. yds pakka bigha. An acre is then defined as 4 bigha + 16 biswas (4033.24 sq. yds. + 806.72 = 4839.885 sq. yds., a hair's breadth from 4840) therefore 59 bighas is equivalent to*

$$59 \text{ bighas} = 59 \times 4033.24 / 4 = 59490.29 \text{ sq. yds.}$$

$$12 \text{ biswas} = 12 \times 806.72 / 16 = 605.04$$

$$= 59490.29 + 605.04$$

$$= 60095.33 \text{ sq.yds.}$$

$$\text{One acre} = 4840 \text{ sq. yds}$$

7.1.10. Therefore, the land which was sold by the above mentioned persons was only 12.416 acres and out of the seven persons that purchased the above land, Sh. Sawan Singh S/o Late Sh. Arjan Singh grandfather of the appellant was only a copurchaser to the extent of 30/130 share. The survey nos. mentioned in the sale document and that on the will/testament executed by Sh. Sawan Singh are same but the will did not contain the survey nos. that were changed when the land was shifted to Faridabad. It is also pertinently mentioned here that Sh. Sawan Singh was not the absolute owner of 59 bighas 12 biswas but was only a co-owner to the extent of 30/130 share out of 59 bighas 12 biswas along with the others. Therefore the actual extent of the land mentioned in the MOU dated 12.4.2010, and the share of his grandfather that was inherited and sold by the appellant to Sh. Rahul Ahuja is found to be incorrect.

7.1.11. The above calculations were only worked out to establish that the grandfather of the appellant bequeathed only his share to the extent of the land

*owned by him mentioned in the sale document which is less than 30 acres and approximately 4 acres (3.723). It is also pertinently mentioned that the total share of Sh. Sawan Singh in the will was mentioned as 60/130 whereas the actual share is only 30/130. From this it is evident that the appellant attempted to build-up a story around these agricultural lands to show that these lands were inherited by him and that he received an amount of Rs.2,00,00,000/- against the sale of this land which he tried to explain with documentary evidence wherein the facts are entirely different and not in agreement with the submissions put forth by the appellant. Therefore, the veracity of the contents of the will/testament is also in doubt.*

*7.1.12. On perusal of the contents of the Memorandum of Understanding dated 12.4.2010, I thought it is necessary and appropriate to throw some on the alleged document called "Memorandum of Understanding" entered between the appellant and the alleged purchaser Sh. Rahul Ahuja to whom the*

*appellant sold the agricultural lands inherited from his grandfather mentioned in the above paragraphs.*

7.1.13. *A Memorandum of Understanding (MOU) is a legal document describing a bilateral agreement between the parties. It expresses a convergence of will between the parties indicating an intended common line of action, rather than a legal commitment. It is a more formal alternative to a gentleman's agreement, but generally lack the binding power of a contract. It is used to gauge the intention of the transacting parties before a deal is officially signed between them and does not grant either of them any rights. An MOU is non-binding and has no legal enforceability in a court of law and is only a precursor to a more definitive agreement. It is only a mutual consent or understanding over an issue that was reached between the parties and reduced into writing.*

7.1.14. *In the instant case, there is no agreement entered between the appellant and Sh. Rahul Ahuja on*

*the basis of the MOU dated 12.4.2010. No agreement to sell pertaining to the sale of agricultural land was found in the course of search by the CBI or by the income tax department. No agreement to sell based on MOU dated 12.4.2010 was submitted by the appellant or Sh. Rahul Ahuja in the post search period or in the course of subsequent assessment proceedings or while on remand as per the directions u/s 250(4) of the I T Act. An agreement/deed entered between the parties on the basis of the MOU can only be enforceable and can be adduced as evidence before a court of law. The MOU dated 12.4.2010, in my opinion did not grant substantial rights but captured the intentions of the appellant and the purchaser/buyer. This MOU was unregistered and it does not have any sanctity pertaining to the transaction of land i.e. real estate due to the reason why an agreement usually is drawn even to lease out a residential house that mandates the so called agreement to be notarized. Time is the essence of this MOU, and on the basis of this MOU, and within the*

*said time frame a definite agreement was to be entered between them for any legal enforceability. Another predominant and important factor is that the “termination” of the MOU. There is no “termination clause” in the MOU dated 12.4.2010, as to how the same would be annulled after the completion of the sale transaction. In the back drop of these facts pertaining to the MOU dated 12.4.2010, it is not understood as to how this MOU which is nonbinding, unregistered was enforceable in the Court of Faridabad where the purchaser/buyer of the alleged land filed a suit for recovery of alleged advance of Rs.2,00,00,000/- on distorted facts, as found in the documents submitted by appellant, defects, gaps, deficiencies in these so called evidentiary pieces. It is evident that the event of alleged sale transaction is only an afterthought, and not a genuine transaction binding the appellant and the purchaser for any legal recourse subsequently created to cover up the cash found and seized from the appellant’s premises. Therefore, the appellant was unable to explain*

*the source of cash giving the identity of the person from whom it was received, nor was able to establish the genuineness of the so called sale transaction. Therefore, the MOU is a sham document to camouflage the cash receipt as a genuine one.*

*7.1.15. In the rebuttal to the report of the Assessing Officer, the AR of the appellant also relied on various judicial pronouncements in support of his contentions. At this juncture, I find it appropriate to rely on few judgments of Supreme Court and High Court applicable to the facts of the appellant's case.*

*7.1.16. The Hon'ble High Court of Delhi in the case of CIT Vs. NR Portfolio (P) Ltd. reported in (2013) 96 DTR (Del) held as under :*

*"The Assessing Officer is both an investigator and an adjudicator. When a fact is alleged and stated before the Assessing Officer by an assessee, he must and should examine and verify, when in doubt or when the assertion is debatable.*

*Normally a factual assertion made should be accepted by the Assessing Officer unless for justification and reasons the Assessing Officer feels that he needs/requires a deeper and detailed verification of the facts alleged. The assessee in such circumstances should cooperate and furnish papers, details and particulars. This may entail issue of notices to third parties to furnish and supply information or confirm facts or even attend as witnesses. The Assessing Officer can also refer to incriminating material or evidence available with him and call upon the assessee to file their, response. We cannot lay down or state a general or universal procedure or method which should be adopted by the Assessing Officer when verification of facts is required. The manner and mode of conducting assessment proceedings has to be left to the discretion of the Assessing Officer, and the same should be just, fair and should not cause any harassment to the assessee or third*

*persons from whom confirmation or verification is required. The verification and investigation should be done with the least amount of intrusion, inconvenience or harassment especially to third parties, who may have entered into transactions with the assessee. The ultimate finding of the Assessing Officer should reflect due application of mind on the relevant facts and the decision should take into consideration the entire material, which is germane and which should not be ignored and exclude that which is irrelevant. Certain facts or aspects may be neutral and should be noted. These should not be ignored but they cannot become the bedrock or substratum of the conclusion. The provisions of Evidence Act are not applicable, but the Assessing Officer being a quasi-judicial authority, must take care and caution to ensure that the decision is reasonable and satisfies the canons of equity, fairness and justice. The evidence should be impartially and objectively*

*analyzed and ensure that the adverse findings against the assessee when recorded are adequately and duly supported by material and evidence and can withstand the challenge in appellate proceedings. Principle of preponderance of probabilities applies. What is stated and the said standard, equally apply to the Tribunal and indeed this Court. The reasoning and the grounds given in any decision or pronouncement while dealing with the contentions and issues should reflect application of mind on the relevant aspects."*

*Further, in paragraph 23, the Lordship in the case of N R Portfolio (P) Ltd., supra had held as under :*

*"The contention that the Revenue must have evidence to show circulation of money from the assessee to the third party is fallacious and has been repeatedly rejected, even when Section 68 of the Act was not in the statute. In **A.***

**Govindarajulu Mudaliar v. CIT** [1958] 34 ITR 807, Supreme Court observed that it was not the duty of the Revenue to adduce evidence to show for what source, income was derived and why it should be treated as concealed income. The assessee must prove satisfactorily the source and nature of cash received during the accounting year. Similarly observations were made in **CIT vs., KSM. Ganapathi Mudaliar** [1964] 53 ITR 623 [SC], inter alia holding that it was not necessary for the Revenue to locate the exact source. This principle was reiterated in **CIT VS. Devi Prasad Vishwanath Prasad** [1969] 72 ITR 194 [SC], wherein the contention that the Assessing Officer should indicate the source of income before it was taxable, was described as an incorrect legal position. Thus when there is an unexplained cash credit, it is open to the Assessing Officer to hold that it was income of the assessee and no further burden lies on him to show the source. In **Yadu**

***Hari Dalmia vs. CIT*** [1980] 126 ITR 48, a Division Bench of Delhi High Court has observed:

*“It is well known that the whole catena of sections starting from s. 68 have been introduced into the taxing enactments step by step in order to plug loopholes and in order to place certain situations beyond doubt even though there were judicial decisions covering some of the aspects. For example, even long prior to the introduction of s. 68 in the statute book, courts had held that -*

*Where any amounts were found credited in the books of the assessee in the previous year and the assessee offered no explanation about the nature and source thereof or the explanation offered was, in the opinion of the ITO, not satisfactory, the sums so credited could be charged to income tax as income of*

*the assessee of a relevant previous year. Section 68 was inserted in the I. T. Act, 1961, only to provide statutory recognition to a principle which has been clearly adumbrated in judicial decisions."*

7.1.17. *The Hon'ble Supreme Court in the case of CIT Vs Mussadilal Ram Bharose (1987) 165 ITR 14 (SC) held as under :*

*"The burden placed upon the assessee is not discharged by any fantastic explanation. Nor it is the law that any and every narration by the assessee must be accepted. It must be an explanation acceptable to the fact finding body."*

7.1.18. *The Hon'ble Supreme Court of India in the case of Chuharmal Vs CIT (1988) 172 ITR 250 (SC) held as under:*

*"What was meant by saying that the Evidence Act did not apply to proceedings under Income Tax*

*Act, 1961, was that the rigour of the rules of evidence contained in the Evidence Act was not applicable, but that did not mean that when the taxing authorities were desirous of invoking the principles of Evidence Act in the proceedings before them, they were prevented from doing so. The Supreme Court further held that all that section 110 of the Evidence Act, 1972 did say was to embody a salutary principle of common law jurisprudence, viz., where a person was found possession of anything, the onus of proving that he was not its owner was on that person. This principle could be attracted to a set of circumstances that satisfy the conditions and was applicable to taxation proceedings."*

7.1.19. *The Hon'ble Supreme Court of India in the case of Me Dowell & Co. Ltd. vs. Commercial Tax Officer (1985) 154 ITR 148 (SC) held as under:*

*“Tax planning may be legitimate provided it is within the framework of law. Colorable devices cannot be part of tax planning and it is wrong to encourage or entertain the belief that it is honourable to avoid the payment of tax by resorting to dubious methods. It is the obligation of every citizen to pay the taxes honestly without resorting to subterfuges.”*

7.1.20. *The Hon’ble Supreme Court of India in the case of CIT VS Raman & Co. (1968)67 ITR 11 (SC) held as under :*

*"Avoidance of tax liability by so arranging commercial affairs that charge of tax is distributed is not prohibited. A taxpayer may resort to a device to divert the income before it accrues or arises to him. Effectiveness of the device depends not upon consideration of morality, but on the operation of the I T Act. Legislative in taxing*

*statutes may not, except on peril of penalty, be violated, but it may lawfully be circumvented."*

7.1.21. The Hon'ble High Court of Gujarat in the case of *CIT VS Sakarlal Balabhai (1968) 69 ITR 186 (Guj.)* held as under:

*"Tax avoidance postulates that the assessee is in receipt of amount which is really and in truth his income liable to tax but on which he avoids payment of tax by some artifice or device. Such artifice or device may apparently show the income as accruing to another person, at the same time making it available for use and enjoyment to the assessee as in a case falling within s. 44D or mask the true character of the income by disguising it as a capital receipt as in a case falling within s. 44E or assume diverse other forms....But there must be some artifice or device enabling the assessee to avoid payment of tax on what is really and in truth his income. If the*

*assessee parts with his income producing asset, so that the right to receive income arising from the asset which, therefore, belonged to the assessee is transferred to and vested in some other person, there is no avoidance of tax liability: no part of the income from the asset goes into the hands of the assessee in the shape of income or under any guise...”*

7.1.22. *In view of the above discussion, in my opinion the entire alleged transaction of the sale of land against which the appellant received an amount of Rs.2,00,00,000/- but a sham transaction and an afterthought event, as there are several lapses, lacunae, gaps, inconsistent version, variation in the statement and facts and also after relying on the various judicial pronouncements cited above, I find no reason to interfere and disturb the addition made by the Assessing Officer as the same is based on evidence, proper appreciation of facts and circumstances of the*

*case. The argument of the AR of the appellant that the Assessing Officer did not appreciate the facts in a proper prospective and did not bring any material on record though seems attractive but is not believable. The Assessing Officer conducted an in-depth enquiry and indeed has determined the true and the legal relation resulting from alleged transactions and established that the alleged transaction is an afterthought and a make to believe story. The decisions referred and relied upon by the AR of the appellant are not applicable to the facts of this case. The facts of the present case as noticed above speak for themselves and are obvious. What is unmistakably visible and apparent, cannot be spurred by formal but unreliable pale evidences ignoring the patent and what is plain and writ. In view of the aforesaid discussion the addition of Rs.2,00,00,000/- made by the Assessing Officer is upheld and confirmed.”*

5. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and

submitted that assessee received Rs.2 crores from Shri Rahul Ahuja as advance against the sale of agricultural land which was also stated before DDIT (Inv.). Shri Rahul Ahuja has confirmed giving the amount to the assessee in his statement recorded on oath. The statement of Shri Sanjeev Kumar Sharma was also recorded under section 131 in which he has admitted that he got Shri Rahul Ahuja connected with the assessee in connection with sale of agricultural land for Rs.4 crores, out of which, Rs.2 crores was given in cash. Thus, the transaction is confirmed by the assessee. The assessee also confirmed the ownership of the land in question by filing the Girdwari details etc., Copy of the MOU was produced before A.O. The assessee filed details of agricultural income. The parties have also confirmed the transaction under section 133 (6) of the I.T. Act and source of giving cash to the assessee was also explained. The assessee also filed copies of the Will and GPA showing ownership of the agricultural land. Copy of the bank statement along with ledger account of Shri Rahul Ahuja was also filed. The assessee explained each and every

discrepancy in the statements recorded by the A.O. Since MOU was kept by Shri Rahul Ahuja who paid the advance to the assessee, therefore, documents were not found at the premises of the assessee at the time of seizure by the CBI or the Income Tax Department. Shri Rahul Ahuja was having sufficient amount in his bank account and cash was withdrawn from his Bank account for making payment to the assessee, therefore, no adverse inference should be drawn. Learned Counsel for the Assessee also submitted that when deal was in its earlier stages, there were probably several options that may be under discussion between the two parties. Initially, the deal was for 50 Acres of land, but, later on it was meant for 30 Acres of land. Such facts are mentioned in the MOU. There is no formal agreement executed between the parties for sale of the agricultural land. Since the parties confirmed the transaction with the assessee, therefore, the authorities below should not have denied the claim of assessee. Learned Counsel for the Assessee referred to the Order of the Hon'ble Supreme Court in which proceedings before Criminal Court have

been stayed. He has submitted that since receipt was with the purchaser who has produced the receipt later on, therefore, claim of assessee should not be denied. The conversation recorded by the CBI was not with regard to any payment of Rs.2 crores. Since CBI has filed the charge sheet against Shri Ketan Desai which is yet pending for decision and no conviction have been made, therefore, charge sheet pending in Criminal Court cannot be used against the assessee.

6. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and submitted that amount was recovered by CBI who were recording telephone calls and all the conversation was intercepted by the CBI. The recovery of the amount was made from the assessee. the original of the MOU was never produced before the authorities below. The original of cash receipt was also not produced. As per provisions of Sections 63 and 64 of Indian Evidence Act, photo copy being secondary evidence could be proved by primary evidence i.e., by production of the original documents for inspection of the Court. Since no

original MOU or cash receipts were produced before the authorities below, therefore, photo copies are not admissible in evidence. There are contradictions in the statement of assessee, Shri Sanjeev Kumar Sharma and Shri Rahul Ahuja in respect of month of first meeting, place of meeting, area of land to be purchased/sold and purchase/sale consideration. Therefore, none of the statements are reliable. In this matter, the CBI received a source information, on the basis of which, inquiry was conducted during which, mobile phones were intercepted. The team was deployed at the residence of the assessee who was coming to deliver the bribe amount of Rs.2 crores. The CBI apprehended Dr. Kamaljeet Singh while coming out of the residence of the assessee on 22.04.2010 at about 12:50 hours. On his disclosure, Rs.2 crore was recovered from the office located at the ground floor of the residential premises of the assessee at Vasant Vihar, New Delhi. All these facts are mentioned in the bail order of the assessee. The assessee has not explained as to how Dr. Kamaljeet Singh was apprehended coming out of his residence and an

amount of Rs.2 crore was recovered from his residence by CBI. The transcript of the conversations between Dr. Ketan Desai, Sukhvinder Singh and assessee, Shri Kamaljeet Singh, Shri K.A. Paul and Shri NS Bhango reveal that conversations were co- relatable to the dates on which the event took place. The conversation clearly reveal that it was a bribe amount to be paid. The mobile calls of the assessee was being intercepted by CBI. Had Shri Rahul Ahuja or Shri Sharma actually met the assessee on 21.04.2010, they must have called the assessee on 20.04.2010 or 21.04.2010 to confirm the place, date and time of the meeting before alleged delivery of cash. The transcript of the mobile conversation of the assessee was obtained by the assessee from the CBI Court. The assessee never produced any details before the authorities below to prove its case. The Ld. CIT(A) has gone in detail regarding land inherited by the assessee from his grand father which was about 4 Acres only. However, in the MOU, there is mention of land of 30 Acres. Therefore, contents of the land documents are also not reliable. The MOU is also a sham transaction. The

matter was also examined at appellate stage and nothing in favour of assessee was found. It was noted by the Ld. CIT(A) that Shri Rahul Ahuja filed a suit against the assessee on 21.01.2013 itself, the date on which, he was summoned by the A.O. to explain the alleged purchase of agricultural land. The issue has to be appreciated in the light of preponderance of probability and surrounding circumstances. The surrounding circumstances lead to the conclusion that the alleged sale of agricultural land and MOU was an afterthought of assessee to save himself from criminal proceedings and also income tax liability. The Ld. D.R, therefore, submitted that addition may be confirmed.

7. We have considered the rival submissions and perused the material available on record. The A.O. on examination and comparison of the three statements given by Assessee, Shri Sanjeev Kumar Sharma and Shri Rahul Ahuja has made certain observations against the assessee in the assessment order which have been reproduced above. There is a discrepancy with regard to land agreed to be sold was whether for 50 Acres or 30 Acres. The

consideration also differ whether it was for 6 Acre or 4 Acre. Nothing have been explained by the assessee to the satisfaction of the authorities below. The assessee has stated in his statement that no agreement was signed. However, Shri Rahul Ahuja submitted copy of MOU Dated 12.04.2010. Therefore, the statement of Shri Rahul Ahuja was not reliable. It would not prove any genuine transaction entered into between the assessee and Shri Rahul Ahuja. The assessee never produced original of the MOU or receipt before the authorities below. The photo copies of the MOU produced was not having back side to show stamping done by the Stamp Vendor as to when the said papers were purchased for preparing the MOU. It is also a fact that no copy of MOU or receipt of amount were found from the possession of the assessee during the course of search by the CBI or Income Tax Department. Though the assessee claimed to have agreed to sale 50 Acres of land for a consideration of Rs.6 crores, but, the MOU allegedly signed by Shri Rahul Ahuja and assessee clearly mentioned the land under sale to be 30 Acres and was sold for a

consideration of Rs.4 crores only. The Ld. CIT(A) on examination of the documents on record has given a specific finding that share of the assessee comes to 30/130 share i.e., approximately 4 Acres of land. Learned Counsel for the Assessee during the course of arguments did not explain any of the discrepancy found in the statement of these persons and the calculation made by the Ld. CIT(A) regarding area of the land to be approximately 4 Acres. There are contradictions in the statements of assessee and others with regard to month of the first meeting, place of meeting, area of land to be sold and sale consideration which is not explained by the assessee through any reliable and cogent evidence. The figure of the sale consideration is also differed as assessee has stated it to be Rs.2 crores received as advance, but, other 02 persons stated it to be Rs.2.01 crores. Shri Rahul Ahuja while explaining the source has stated in his statement that he has withdrawn the cash from his Bank account in January and February, 2010, but, did not explain why huge cash was kept when he was having banking facility. There is a significant gap

between cash withdrawn from the Bank account of Shri Rahul Ahuja in January and February, 2010 and allegedly paid to the assessee in April, 2010. The assessee failed to explain this discrepancy as well. Shri Rahul Ahuja filed suit against the assessee on 23.01.2013 after lapse of several years when the matter was going on at assessment stage. The inconsistencies in the statements of these persons have not been explained by assessee. Thus, there are serious doubts about the alleged transaction of sale of land. It is highly unbelievable that a person who is having banking facility kept substantial amount of Rs.2 crores in cash with him for more than two months. The assessee at the time of making statement has clearly agreed that no Agreement to Sell pertaining to the sale of agricultural land was executed between the parties. When there was a substantial difference between the area of the land to be sold and consideration, there was no reason to record lesser amount or lesser area in MOU signed by the assessee. The assessee at the time of search by CBI did not explain the details of persons who has given the amount in question to the

assessee. No mode of payment was also explained. It, therefore, appears that entire story have been cooked-up by the assessee later on and is clearly an afterthought. According to Section 110 of Evidence Act when assessee was found in possession of Rs.2 crores at the time of search by CBI and assessee denied the ownership of the same, the burden would be upon the assessee to prove as to who was the owner of the cash found from his residence and possession. However, the assessee failed to discharge onus upon him to prove as to who is the lawful owner of the cash found during the course of search. Therefore, it is the liability of the assessee to explain the possession of the cash found during the course of search by CBI. It may also be noted here that during the course of arguments, Learned Counsel for the Assessee did not made any allegation against CBI who have recovered Rs.2 crores from the residence of the assessee during the course of search. The CBI is a premier investigating agency and had been intercepting calls of assessee, Shri Kamaljeet Singh and others and only after getting sufficient evidence against the

assessee and others, searched the premises of the assessee and found unaccounted cash of Rs.2 crores from the possession of the assessee. Therefore, there is no reason to disbelieve the case set-up by the CBI and the Income Tax Department against the assessee. The Assessing Officer has reproduced certain material based on charge sheet filed by the CBI against the assessee and others, in which the CBI has clearly mentioned that there was a criminal conspiracy between assessee, Dr. Sukhvinder Singh and others to get a favour from Shri Ketan Desai for approval of MBBS Course. There was specific information received by CBI and conversation of all the persons have been recorded by the CBI. Nothing have been explained in this regard with regard to allegations made against the assessee and others in the charge-sheet submitted by the CBI and reproduced by the Assessing Officer in the assessment order. Considering the totality of the facts and circumstances of the case and that there was substantial gap between withdrawal of cash by Shri Rahul Ahuja and alleged payment to the assessee. Therefore, assessee has failed to explain source of the cash

of Rs.2 crores found from his possession during the course of search by the CBI. The entire case set-up by the assessee is clearly an afterthought. The MOU and receipt are sham documents and fabricated by the assessee and others later on which fact is further strengthened by the fact that no original of MOU and receipt have been produced before the authorities below. Otherwise, the same could have been subjected to verification by CFSL. Copy of the MOU was produced, but, it was not having the back side which could have throw light on the fact as to when the said stamp paper were purchased and whether stamp papers were genuine or not. All these facts and circumstances clearly prove that assessee has no explanation whatsoever of the cash found from his possession during the course of search by the CBI. The Hon'ble Supreme Court in the case of Durga Prasad More 82 ITR 540 (SC) and in the case of Sumati Dayal 214 ITR 80 (SC) has held that "*the Courts and Tribunals have to judge the evidence before them by applying the test of human probability*". If the said test is applied in this matter, it is clearly established that the

assessee has failed to prove source of Rs.2 crores found during the course of search by the CBI at his residence. Thus, appeal of assessee has no merit and the same is accordingly on this ground. Ground Nos. 1 and 2 of appeal of Assessee are accordingly dismissed.

8. On Ground Nos.3 and 4, assessee challenged the Order of Ld. CIT(A) in confirming the addition of Rs.15,74,000/- and Rs.5 lakhs.

9. The Ld. CIT(A) on this issue while giving his findings recorded that assessee either in the course of assessment proceedings or in the course of appellate proceedings did not specify the source of the balance amount of Rs.5 lakhs with satisfactory corroborative evidence. He has also recorded in the absence of such evidence, the source of cash found in possession of assessee at the time of search remain unexplained. In view of this, the cash of Rs.5 lakhs shown as cash in hand were taxed in the hands of assessee. The Ld. CIT(A) further noted that addition of Rs.15,74,000/- made by the A.O. has been

segregated and adjudicated upon by confirming the addition in the hands of two companies mentioned in the impugned order. Therefore, addition of Rs.5 lakhs was confirmed. The Ld. CIT(A), therefore, did not interfere with the Order of the A.O.

10. During the course of arguments, the Learned Counsel for the Assessee did not argue these grounds. In the absence of any statement or documents on record in relation to these issues, no interference is called for in the matter. Ground Nos. 3 and 4 of the appeal of assessee are also dismissed.

11. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-  
(B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 01<sup>st</sup> November, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT "D" Bench
6.	Guard File

// BY Order //

Asst. Registrar : ITAT Delhi Benches :  
Delhi.