

आयकर अपीलिय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
[Conducted through E-Court at Ahmedabad]

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

Sl. No(s)	ITA Nos./IT(ss)A Nos.	Assessment Year(s)	Appeal(s) by	
			Appellant	Respondent
1.	<u>ITA Nos.</u> 174/Rjt/2014	2005-06	Dinesh Gordhanbhai Jakasania 601&603, New Empire Building Nr.Indira Circle Rajkot PAN:AAACJ5666J	The DCIT Central Circle-2 Rajkot
2.	484/Rjt/2014	2006-07	-do-	-do-
3.	79/Rjt/2014	2007-08	-do-	-do-
4.	80/Rjt/2014	2010-11	-do-	-do-
5.	81/Rjt/2014	2011-12	-do-	-do-
6.	<u>IT(ss)A Nos.</u> 09/Rjt/2017	2005-06	-do-	-do-
7.	25/Rjt/2017	2006-07	-do-	-do-
8.	10/Rjt/2017	2007-08	-do-	-do-
9.	11/Rjt/2017	2010-11	-do-	-do-
10.	12/Rjt/2017	2011-12	-do-	-do-
11.	<u>ITA Nos.</u> 13/Rjt/2014	2006-07	Shri Ghanshyam Gordhanbhai Jakasania 601 & 603, New Empire Apartment Saurashtra University Road, Rajkot PAN: ABWPJ 1279 R	-do-
12.	14/Rjt/2014	2007-08	-do-	-do-
13.	15/Rjt/2014	2010-11	-do-	-do-
14.	16/Rjt/2014	2011-12	-do-	-do-
15.	<u>ITA Nos.</u> 175/Rjt/2014	2007-08	Shri Sanjaybhai G.Jakasania Ekta House, Ground Floor, University Road, Rajkot PAN:ABWPJ 1278 Q	-do-
16.	483/Rjt/2014	2006-07	-do-	-do-
17.	82/Rjt/2014	2010-11	-do-	-do-



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18.	83/Rjt/2014	2011-12	-do-	-do-
19.	IT(ss)A Nos. 13/Rjt/2017	2006-07	-do-	-do-
20.	14/Rjt/2017	2007-08	-do-	-do-
21.	15/Rjt/2017	2010-11	-do-	-do-
22.	16/Rjt/2017	2011-12	-do-	-do-
23.	ITA Nos. 17/Rjt/2014	2006-07	Shri Kishor Gordhanbhai Jakasania 601 & 603, New Emprie Apartment Saurashtra University Road,Rajkot PAN: ABWPJ 0593Q	-do-
24.	18/Rjt/2014	2007-08	-do-	-do-
25.	176/Rjt/2014	2008-09	-do-	-do-
26.	19/Rjt/2014	2010-11	-do-	-do-
27.	20/Rjt/2014	2011-12	-do-	-do-

Assessee by :	Shri D.M. Rindani, AR
Revenue by :	Shri Ranjeet Singh, CIT-DR

सुनवाई की तारीख/ Date of Hearing	20/11/2019
घोषणा की तारीख / Date of Pronouncement	/11/2019

ORDER

PER BENCH:

This bunch of ten appeals by the assessee (in the case of Dinesh GordhanbhaiJakasania) are directed against separate orders of the Commissioner of Income Tax(Appeals)-IV Ahmedabad ('CIT(A)' in short) dated 03-02-2014 for AY 2005-06 & 31-7-2014 for AY 2006-07 & 13-01-2014 for AYs 2007-08, 2010-11 & 2011-12 towards quantum addition and Commissioner of Income Tax(Appeals)-II Ahmedabad ('CIT(A)' in short) dated 27-10-2016 for AY 2005-06 & 23-12-2016 for AY 2006-07 & 27-10-2016 for AYs 2007-08, 2010-11 & 2011-12) towards penalty under different sections of the Act.



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Assessee's four appeals (in the case of Shri Ghanshyam Gordhanbhai Jakasania) in ITA Nos.13 to 16/Rjt/2014 are directed against the common order of the Commissioner of Income Tax(Appeals)-IV, Ahmedabad ('CIT(A)' in short) dated 02/12/2013 for AYs 2006-07, 2007-08, 2010-11 & 2011-12 respectively.

Assessee's eight appeals (Sanjaybhai Gordhanbhai Jakasania) in ITA Nos.175/Rjt/2014, 483/Rjt/2014, ITA No.82/Rjt/2014 & 83/Rjt/2014 and in IT(ss)A Nos.13 to 16/Rjt/2017 are directed against the separate common orders of the Commissioner of Income Tax (Appeals)-IV, Ahmedabad ('CIT(A)' in short) dated 14/02/2014 for AYs 2007-08, 2006-07, 2010-11 & 2011-12 and dated 14/01/2014, 30/07/2014, 13/01/2014 towards quantum addition and order dated 27/10/2016 for AYs 2006-07, 2007-08, 2010-11 & 2011-12 towards penalty order respectively.

Assessee's five appeals (in the case of Shri Kishor Gordhanbhai Jakasania) in ITA Nos.17 & 18/Rjt/2014 and ITA Nos.176, 19/Rjt/2014 & 20/Rjt/2014 are directed against the common order of the Commissioner of Income Tax(Appeals)-IV, Ahmedabad ('CIT(A)' in short) dated 02/12/2013 for AYs 2006-07, 2007-08, 2008-09, 2010-11 & 2011-12 respectively.

Since the issues (except quantum) are inter-connected, these appeals were heard together and are being disposed of by this consolidated order for the sake of convenience.



Dinesh Gordhanbhai Jakasania:

First, we take up the Assessee's appeal in ITA No.174/RJT/2014 for AY 2005-06 as a lead case, wherein assessee has raised the following grounds of appeal:

- 1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal whereby upholding addition made by the Assessing Officer of Rs.55,00,000/- on the alleged ground of unexplained cash deposits u/s.68 of the Act is unjustified, unwarranted and bad in law.*
- 2) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in imposing penalty u/s.271(1)(c) of the Act is unjustified, unwarranted and bad in law.*
- 3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in charging interest u/s.234A, 234B, 234C is unjustified, unwarranted and bad in law.*

2. The issue raised by the assessee in Ground No. 2 relates to the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") which is premature to decide. Therefore, we dismiss the same.

3. Similarly, the issue raised by the assessee in Ground No.3 is consequential and does not require any separate adjudication. Therefore, we dismiss the same.

4. The issue raised by the assessee in ground No.1 is that the learned CIT(A) erred in confirming the order of the AO by treating the deposit in the bank account as unexplained cash credit under section 68 of the Act.

5. The facts in brief are that the assessee in the present case is an individual and derives his income under the head salary and other sources. There was a search conducted under section 132 of the Act at the premises of the assessee dated 24th of June 2010. The assessee in the year under consideration has deposited a sum of



₹55 lakhs in cash to his bank account in bank of Baroda bearing account No. 03840100015945 as detailed under:

<i>“SN</i>	<i>Particulars</i>	<i>Date</i>	<i>Amount</i>
<i>1</i>	<i>By Cash</i>	<i>09.03.2005</i>	<i>Rs.10,00,000/-</i>
<i>2</i>	<i>By Cash</i>	<i>11.03.2005</i>	<i>Rs.45,00,000/-</i>
		<i>Total</i>	<i>Rs.55,00,000/-”</i>

5.1. The assessee during the assessment proceedings claimed that he has received a sum of ₹35 lakhs from his father in cash dated 10 March 2005 which was returned by him on 3rd June 2005. The assessee in support of his contention filed the extracts of the cash book.

5.2. However, the AO was dissatisfied with the contention of the assessee as there was no documentary evidence suggesting the availability of cash in the hands of his father.

5.3. Similarly, the AO also observed that the assessee has not furnished any balance-sheet along with his return of income, therefore, the claim of the assessee that there was the opening cash balance of ₹ 24,43,796 was not verifiable.

5.4. In view of the above, the AO treated the deposit of cash for ₹55 lakhs in the bank of Baroda as unexplained cash credit under section 68 of the Act. Accordingly, the amount of ₹68 lakhs was added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A).



6. The assessee before the learned CIT(A) justified the availability of cash in the hands of his father, Shri Gordhanbhai Mahadevbhai Jakasania, by submitting that his father is an agriculturist and has taken loan in cash from his various friends/relatives who are also agriculturist. The assessee in support of his contention filed the confirmation of the parties along with the revenue records of 7/12 & 8A who have advanced loan to his father. The assessee also claimed that the amount of loan taken by his father was returned back by him to such parties in the later period which can be verified from the confirmations filed by such lenders.

6.1. The assessee subsequently has changed his stand by submitting that he has withdrawn sum of ₹45 lakhs from the bank account of Backbone projects Ltd bearing account number CA 16006 which was utilized to deposit the same in his saving bank account bearing No. 388556 in bank of Baroda. The assessee in support of his contention filed the copy of the bank statement of Backbone project Ltd. The assessee was also a director in Backbone projects Ltd.

6.2. The assessee regarding the availability of opening cash balance of ₹24,43,096.00 submitted that he has filed the cash book wherein such opening cash balance was reflected.

6.3. In view of the above, the assessee claimed that he has discharged his onus by explaining the source of cash deposited in the bank account as discussed above. Therefore there cannot be any addition to the total income of the assessee.



6.4. However, the learned CIT (A) observed that the assessee has not filed the details of the lenders such as confirmation letters, details of land holdings, 7/12 extracts who have advanced loan to his father in cash before the AO. Thus, these documents are in the nature of additional evidences but the assessee has not submitted any reason for not filing such additional evidences before the AO during the assessment proceedings. Moreover, there was no request made by the assessee for the admission of such additional evidences in accordance to the rule 46A of income tax rule. Accordingly, the learned CIT (A) rejected the additional evidences filed by the assessee. The learned CIT (A) further observed that -

- i. There was no book of accounts maintained by the father of the assessee to justify the availability of cash in the form of loan taken from the parties as submitted above.
- ii. There was no balance sheet available of the father of the assessee reflecting the impugned transaction of loan taken from various parties and advanced to the assessee.
- iii. Similarly, there was no evidence filed by the assessee of the lenders, who have given loan to his father, about the details of agriculture income, bills for agriculture produce, bank account etc.
- iv. There was also the assessment in the case of the father of the assessee wherein the addition for ₹5,28,329.00 was made on account of deposit of cash in his bank account.

6.5. The learned CIT(A) also observed that the assessee has taken a new stand during the appellate proceedings by submitting that he has taken cash from the company namely Backbone projects Ltd. As per the learned CIT(A) the action of the assessee itself proves that the earlier submission for the loan taken from his



father was not genuine. The learned CIT(A) further held that the assessee has not filed any documentary evidence such as cash book of Backbone projects Ltd, assessee's account in the books of Backbone Projects Ltd. Similarly, the learned CIT(A) found that the new stand taken by the assessee is additional evidence which cannot be accepted for the reasons explained earlier. In view of the above, the learned CIT (A) rejected the contention of the assessee and confirmed the order of the AO by observing as under:

“4.3.2 After considering various explanations submitted by the appellant and in view of above factual and legal matrix, it is held that appellant has been changing its stand without any plausible reason or justification which cannot be accepted. Further, appellant has not been able to explain the source of cash deposit in his bank account amounting to Rs.55,00,000/-. Therefore, it is held that addition made by the A.O. of Rs.55,00,000/- under the provisions of sec 68 of the Act is correct and is, accordingly sustained. This ground is dismissed.”

Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

7. The learned AR before us filed a combined paper book for all the assessment years under appeal which is running from pages 1 to 112 and contains pages 1 to 9 for the year under consideration. The learned AR before us submitted that the deposit of cash in the bank account of the assessee amounting to ₹55 lakhs does not arise out from the incriminating documents. Thus, the year under appeal being unabated assessment year cannot be disturbed in the search proceedings until and unless there was some incriminating documents found during the search. As per the learned AR, the year under appeal could have been disturbed/re-opened by the revenue authorities under section 147 of the Act if the authorities had reason to believe that the income of the assessee has escaped assessment. As such, the



proceedings under section 153A cannot be initiated without having discovered any incriminating document during the search proceedings.

8. On the other hand, the learned DR claimed that the impugned bank account where cash of ₹55 lakhs was deposited is nothing but an incriminating document found during the search as the same was not disclosed in the income tax return. The learned DR in support of his contention relied on the judgment of Hon'ble Kerala High Court in the case of EN Gopakumar Vs. CIT reported in 75 taxmann.com and CIT Vs. K.P. Ummer Prop. Star Rolling Mills reported in 413 ITR 251. The ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates whether the deposits made by the assessee in cash in his bank account reflects the unexplained cash credit under section 68 of the Act. The provisions under section 68 of the Act casts the onus of the assessee to justify the source of cash based on documentary evidence. In holding so we draw support and guidance from the judgment of Hon'ble Gujarat High Court in the case of CIT Vs. Pragati Co-operative Bank Ltd. reported in 149 taxman 149 wherein it was held as under:

“14. However, as section 68 of the Act denotes, once there is a credit in the books maintained by the assessee, the primary onus is on the assessee, namely, to offer an explanation as to the nature and source of the credit.”

9.1. However, we find that the assessee before the authorities below has taken different stands for justifying the source of cash in his hands. As such in our view the assessee being a double speaking person, his contentions cannot be relied upon.



In holding so we draw support and guidance from the judgment of Hon'ble Calcutta High Court in the case of CIT Vs. Eastern Commercial Enterprise reported in 210 ITR 103 wherein it was held as under:

“A man indulging in double-speaking cannot be said by any means a truthful man at any stage and no court can decide on which occasion he was truthful”

9.2. We also note that the learned AR for the assessee at the time of hearing has not made any arguments on the submissions made before the authorities below but has taken a legal contention that the year under consideration being unabated assessment year cannot be disturbed in the proceedings under section 153A until and unless there was some incriminating document found about the deposit of cash in the bank account. As per the learned AR, the deposit of cash in the bank account of the assessee does not refer to any incriminating document. Therefore, the year under appeal cannot be disturbed in the proceedings initiated under section 153A of the Act.

9.3. From the preceding discussion, we note that the learned AR for the assessee has not made any reference to the submissions made before the authorities below as well as there was no defect pointed out in the orders of the authorities below. Accordingly, we do not find any infirmity in the order of the authorities below so far as the merit of the case is concerned.

9.4. Now coming to the controversy, whether, the deposit of cash in the bank account of the assessee represents the incriminating document. In this connection, we note that the only source of income declared by the assessee in the return of income was from the source of salary and other sources. At the time of hearing, a



question was raised to the learned AR whether the salary received by the assessee was credited in the bank account where the impugned cash deposit was made. The learned AR submitted that the cash was not deposited in the bank account where the salary was credited.

9.5. A question also stuck to our mind at the time of hearing whether it was compulsory for the assessee to declare the bank details in the income tax return. The assessee was to file his return of income in the form specified which contains the column for furnishing the details of the bank account. But the learned AR before us has not brought anything on record suggesting that the assessee has furnished the bank details in the income tax return in which such cash was deposited. Thus, it appears that the assessee has not furnished any details of this bank account where such cash was deposited in the income tax return or statement of income. Therefore, we are of the view that the impugned bank account is in the nature of incriminating document found during the course of such.

9.6. In view of the above, it is inferred that the impugned bank account was not disclosed in the income tax return and therefore, the deposit of cash amounting to ₹55 lakhs is nothing but the incriminating document and therefore the year under appeal can certainly be disturbed in the proceedings initiated under section 153A of the Act being unabated assessment year. Hence, the ground of appeal of the assessee is dismissed.

10. In the result, the appeal of the assessee in ITA No.174/Rjt/2014 for AY 2005-06 is dismissed.



Coming to ITA 484/RJT/2014 for the AY 2006-07

The assessee has raised the following grounds of appeal:

- (1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in making addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*
- (2) *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in making addition of Rs.39,00,000/- on the alleged ground of unexplained cash deposits u/s.68 is unwarranted, unjustified and bad in law.*
- (3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unwarranted, unjustified and bad in law.*
- (4) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in initiating penalty proceedings u/s.271(1)(c) of the IT Act is unwarranted, unjustified and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

11. The issue raised by the assessee in Ground No.3 is consequential and does not require any separate adjudication. Therefore, we dismiss the same.

11.1. Similarly, the issue raised by the assessee in Ground No. 4 relates to the penalty imposed under section 271(1)(c) of the Act which is premature to decide. Therefore we dismiss the same.

11.2. The 1st issue raised by the assessee is that the learned CIT(A) erred in treating the income of ₹5 lakhs as from the unaccounted source though the same represents the agriculture income.



11.3. The assessee in the proceedings under section 153A of the Act has shown agriculture income of ₹5 lakhs which was not disclosed in the return of income filed under section 139(1) of the Act. The assessee claimed that the accountant failed to disclose such agriculture income in the income tax return. The assessee also filed the details of the agricultural land, 7/12 & 8A held by him. However, the AO disbelieved the claim of the assessee by observing that merely holding the agricultural land does not prove that the assessee had any agricultural income. As such the assessee failed to furnish the details in the form of sales bill of agriculture produce. Accordingly, the AO treated the amount of agriculture income shown by the assessee for ₹5 lakhs as income from the unaccounted source. Accordingly the same was added to the total income of the assessee.

Aggrieved assessee, preferred an appeal to the learned CIT(A) who confirmed the order of the AO.

Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

12. The learned AR before us submitted that the agriculture income declared by the assessee in the later assessment years i.e. 2010-11 and 2011-12 was accepted by the Revenue. The learned AR for the assessee also claimed that the agricultural land held by the assessee was accepted by the AO which is sufficient enough to justify the agriculture income. Therefore he pleaded that agriculture income should not be treated as income from unaccounted source.



13. On the other hand, the learned DR vehemently supported the order of the authorities below.

14. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the instant case relates whether the agriculture income disclosed by the assessee in the proceedings initiated under section 153A of the Act represents the unaccounted income. The assessee in the present case has shown agriculture income and filed the details of the agricultural land held by him along with the sales bills of the agricultural produce which are placed on pages 11 to 33 of the paper book. This fact has not been doubted by the authorities below.

14.1. Similarly, we also note that claim of the assessee for the agriculture income for the later assessment years has been accepted by the learned CIT (A). We further find that the authorities below have not brought anything on record suggesting such agricultural income is from any other particular source. Thus, in the absence of any corroborative evidence pointing out that the impugned income is not from the agricultural activity, we deem it proper to set aside the order of the Id. CIT-A. Accordingly we direct the AO delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

15. The issue raised by the assessee in ground No. 2 is that the learned CIT (A) erred in confirming the order of the AO by treating the deposit in the bank account as unexplained cash credit under section 68 of the Act.



15.1. The AO during the assessment proceedings found deposits of certain cheques in the bank account of the assessee and the source of the same was not explained. The details of the cheque deposits stand as under:

<i>SN</i>	<i>Particulars</i>	<i>Date</i>	<i>Amount</i>
1	By Cheque	29.06.2005	Rs.37,00,000/-
2	By Cheque	21,10,2005	Rs.1,00,000/-
3	By Cheque	17,12,2005	Rs.1,00,000/-
			Rs39,00,000/-

The assessee during the assessment proceedings failed to justify the source of deposits in his bank account, therefore the AO treated the same as unexplained cash credit under section 68 of the Act. Hence the AO added the sum of Rs. 39 lakhs to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A) who has also confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

16. The learned AR before us submitted that the impugned cheque deposits represent the loan taken from certain parties. However, the assessee on the earlier occasions when the matter was pending before the authorities below could not collect the confirmation from such parties. Accordingly the learned AR before us prayed to set aside the order of the learned CIT (A) to the file of the AO for fresh examination of the impugned cheque deposits.



17. On the contrary, the learned DR vehemently supported the order of the authorities below.

18. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the onus lies on the assessee to justify the source of deposits in the bank account. The authorities below have given enough opportunity to the assessee to justify the source of deposits during the proceedings. But the assessee failed to do so.

18.1. However, in the interest of justice and fair play, we are inclined to give one more opportunity to the assessee to make necessary contentions before the AO in support of his claim. Accordingly, we are inclined to set aside the issue to the file of the AO for de-novo assessment. Hence, the ground of appeal of the assessee is allowed for statistical purposes.

19. In the result, the appeal of the Assessee in ITA No.484/Rjt/2014 for AY 2006-07 is allowed for statistical purposes.

Coming to ITA No. 79/RJT/2014 for the AY 2007-08

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*



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2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

20. At the outset, we note that the issue raised in ground no. 1 by the assessee is identical to the ground No. 1 in ITA 484/RJT/2014 which has been decided by us in favour of the assessee vide paragraph No. 14 of this order. For detailed discussion, please refer the relevant paragraph. Hence, respectfully, following the same, the ground of appeal of the assessee is allowed.

21. The issue raised by the assessee in ground No. 2 relates to the penalty imposed under section 271(1)(c)/271AAA of the Act which is premature to decide. Therefore, we dismiss the same.

21.1. Similarly, the issue raised by the assessee in ground no.3 is consequential and does not require any separate adjudication. Therefore, we dismiss the same.

22. In the result, the appeal of the assessee in ITA No.79/Rjt/2014 for AY 2007-08 is partly allowed.

Coming to ITA No.80/RJT/2014 for AY 2010-11

The assessee has raised the following grounds of appeal:



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- 1. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.55,00,000/- on the ground of unaccounted income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
- 2. The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
- 3. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

23. The 1st issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by sustaining the addition of ₹55 lakhs based on the statement recorded during the search which was subsequently retracted.

23.1. The assessee during the search has admitted undisclosed income of ₹55 lakhs in the statement furnished under section 132(4) of the Act but the same was not disclosed in the income tax return filed under section 153A of the Act. The contention of the assessee was that the income was admitted during search proceedings on account of mental pressure mounted by the search team. As such there was no incriminating document found during the search. Accordingly, the income admitted during the search proceedings was retracted vide letter dated 31 January 2013.

23.2. However, the AO disagreed with the contention of the assessee by observing that the retraction was filed after 29 months approximately. Accordingly, he added the same to the total income of the assessee.



Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO.

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

24. The learned AR before us submitted that the tribunal in the group case i.e. Backbone construction private Ltd in ITA No.709/RJT/2014 vide order dated 29th of May 2015, which was also subject matter of search proceedings and involving identical facts and circumstances, has deleted the addition made by the authorities below on the reasoning that there was no incriminating document found during the search proceedings.

25. On the other hand, the learned DR vehemently supported the order of the authorities below.

26. We have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the Tribunal in the group case (*supra*) as submitted by the ld. AR for the assessee, in the identical facts and circumstances has deleted the addition made by the authorities below. The relevant extract of the order is reproduced as under:

“36. Further, we find that the statement recorded under section 132(4) does not show how the above undisclosed income of Rs.1,78,00,000/- of the assessee stands utilized on the date of search, it was represented by which assets, or was utilized for which expenditure. Still further, we find that DR could not controvert the submission of the



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assessee that no incriminating material relating to the assessee-company was found during the course of search, and even the lower authorities could not bring any corroborative material, which was found during the course of search, which could support the disclosure of income of Rs.1,78,00,000/- for the year under consideration, or which could point that the assessee actually earned any income either of Rs.1,78,00,000/- or any part thereof, which was not disclosed prior to date of search.

37. *We find that the Hon'ble jurisdictional High Court in the case of Kailashben Manharlal Chokshi Vs. CIT (supra) held as under:*

"The assessee was a partner of a firm and during the search conducted under section 132 of the Income-tax Act, 1961 at the premises of the firm and the partners a statement of the assessee' under section 132(4) was recorded. The assessee disclosed an unaccounted investment in house property at Rs. 4 lakhs, unaccounted cash of Rs. 1 lakh, unaccounted investment in furniture of Rs. 1 lakh, unaccounted investment in gold ornaments of Rs. 1 lakh. After a lapse of two months the assessee retracted the statement made and stated that the disclosure of Rs. 7 lakhs was made under pressure and coercion. However, the assessee accepted the addition of Rs. 1 lakh on account of unaccounted cash found during the search. The Assessing Officer holding that the assessee did not have any reasons to retract the statement made under section 132, added Rs. 7 lakhs to the income declared by the assessee. The Commissioner (Appeals) as well as the Tribunal upheld the order of the Assessing Officer. On a reference :

Held, that the statement of the assessee was recorded under section 132(4) of the Act at midnight. In normal circumstances, it was too much to give any credit to the statement recorded at such odd hours. The person would not be in a position to make any correct or conscious disclosure in a statement if such statement was recorded at such odd hours. The assessee had given proper explanation for all the items under which disclosure was sought to be obtained from the assessee. With regard to the investment in house property he had stated that he took the plot in 1964 from the housing society which was constructing the bungalow for which the assessee made contribution from time to time and took possession in 1974 when only one ground floor was constructed. He had been living there and during 1986 to 1988 he had constructed the first floor and had incurred expenses of Rs. 2,03,185.65 and this amount had been withdrawn from the account of the firm, which he was a partner. The Departmental Valuer had accepted the cost of construction and there was no reason to make addition of Rs. 4 lakhs on the basis of the disclosure made by the assessee. The Revenue had not brought any evidence to establish that the assessee had in fact incurred Rs. 4 lakhs and that amount was invested out of undisclosed income. The addition on account of gold ornaments could not be sustained since looking into the quantum of holding and the assessee's explanation this was a normal holding which could be found in any middle class Indian family. The furniture on



the ground floor was 15 years old and the assessee had spent Rs. 25,000 for renovation after making withdrawal from the firm's account. With respect to furniture in the first floor a detailed source of investment of furniture purchased with due confirmation from the party concerned had been filed by the assessee before the Assessing Officer. Since no payment for this additional furniture was made by the assessee till the date of search, no addition could be made on this count. The explanation of the assessee was convincing but not been considered by the authorities below. Merely on the basis of the admission of the assessee the additions could not be made unless and until some corroborative evidence was found in support of such admission. The statement recorded at such odd hours could not be considered to be a voluntary statement, if it was subsequently retracted and necessary evidence was led contrary to such admission. The Tribunal was not justified in making addition of Rs.6 lakhs.”

38. Thus, we find that the Hon'ble jurisdictional High Court has categorically held that merely on the basis of admission of the assessee, the additions cannot be made unless and until some corroborative evidence was found in support of such admission. Therefore, in our considered view, in the absence of any corroborative material to support the admission made during the course of search under section 132(4) of the Act addition cannot be sustained, especially when such admission was later on retracted by the assessee by filing the return of income as well as by filing a separate retraction letter also. We, therefore, delete the addition of Rs.1,78,00,000/- and allow this ground of the appeal of the assessee.”

26.1. The facts of the case on hand are identical to the facts of the case as discussed above. The learned DR has also not brought anything on record contrary to the arguments advanced by the learned AR for the assessee. Accordingly, respectfully following the order of this tribunal as discussed above, we set-aside the order of the Id. CIT(A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

27. The issue raised by the assessee in ground No. 2 relates to the penalty imposed under section 271(1)(c)/271AAA of the Act which is premature to decide. Therefore we dismiss the same.



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27.1. Similarly, the issue raised by the assessee in ground no. 3 is consequential and does not require any separate adjudication. Therefore, we dismiss the same.

28. In the result, the appeal of the assessee in ITA No. 80/Rjt/2014 for AY 2010-11 is partly allowed.

Coming to ITA No. 81/RJT/2014 for the assessment year 2011-12

The assessee has raised the following grounds of appeal:

- (1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.55,00,000/- on the alleged ground of unaccounted income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
- (2) *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.24,63,118/- on the alleged ground of unexplained investment in jewellery u/s.69 is unwarranted, unjustified and bad in law.*
- (3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
- (4) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

29. The 1st issue raised by the assessee is that the learned CIT(A) erred in confirming the order of the AO by sustaining the addition of ₹55 lakhs based on the statement recorded during the search which was subsequently retracted.



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29.1. At the outset, we note that the identical issue has been decided ground No. 1 in ITA 80/RJT/2014 by us in favour of the assessee vide paragraph No. 26 of this order. For detailed discussion, please refer the relevant paragraph. Hence, the ground of appeal of the assessee is allowed.

30. The issue raised by the assessee in ground No. 2 is that the learned CIT (A) erred in upholding the addition of Rs. 24,63,118 on account of unexplained investment in jewellery under section 69 of the Act.

31. During the course of search, the jewellery weighing 7183.24 grams were discovered. The assessee reconciled the jewellery in the manner as detailed below:

<i>Particulars</i>	<i>Weight (gms)</i>
<i>Total Gold ornaments found from above three places</i>	<i>781.24</i>
<i><u>Less:</u> Gold ornaments belonging to Smt. Shardaben Borania, sister of the appellant (statement given at the time of search proceedings)</i>	<i>944.58</i>
<i>Net gold ornaments</i>	<i>6238.66</i>
<i><u>Less:</u> Gold ornaments belonging to Shri Gordhanbhai Jakasania all family members</i>	<i>4750.00</i>
<i>Balance gold ornaments</i>	<i>1488.66</i>
<i>Less: Purchased by various family members and company. (Bills of purchase and proof of payment is enclosed herewith)</i>	<i>1836.340</i>
<i>Net Balance</i>	<i>(-)347.68</i>

31.1. In view of the above the assessee claimed that the jewellery is found during the search stands explained and as such there was no unaccounted jewellery found during the course of search.



31.2. The AO after considering the submission of the assessee allowed the benefit of the jewellery belonging to sister of the assessee and on the basis of circular No. 1916 issued by CBDT. However, the AO disagreed with the submission of the assessee for the jewellery having weight of 1836.340 grams which was justified as purchases. As per the AO, the benefit of the jewellery in the manner specified in the CBDT circular No. 1916 has already been given. Accordingly, he was of the view that no further benefit can be given merely on the basis of purchases as no individual books of accounts of the family members was produced explaining that the jewellery was shown therein. Thus the AO valued such jewellery at rupees 2463118.00 and added the same, as unexplained investment under section 69 of the Act, to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO by observing as under:

“.....In case of the appellant, the appellant has been able to produce bills of purchase of jewellery only to the extent of 1836.340 gms. It is not a case where the bills produced by the appellant were more than the jewellery allowable as per CBDT’s Instruction. If appellant could produce purchase bills and explain sources of expenses in case of jewellery over and above 4750 grams, then appellant would have been entitled to claim further credit to the extent the bills produced for jewellery were over and above 4750 grams. Thus, the AO was correct in holding that once credit has been given to the appellant for jewellery belong to 19 family members weighing 4750 grams, then no further credit should be given for the bills produced for the jewellery weighing only 1836.340 gms. Therefore, the addition made by the AO of Rs.24,63,118/- is justified. This ground of appeal is dismissed.”

Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.



32. The learned AR before us submitted that the jewellery supported on the basis of purchase bills cannot be treated as unexplained investment under section 69 of the Act. It is because the assessee has not only produced the bills for the purchases of the jewellery but also justified the source of payment for such jewellery.

33. On the other hand, the learned DR vehemently supported the order of the authorities below.

34. We have heard the rival contentions of both the parties and perused the materials available on record. The issue in the present case relates to the jewellery purchased by the assessee for which the necessary details of purchase bills and proof of payment was submitted whether the same can be treated as unexplained investment under section 69 of the Act. Admittedly total jewellery found in the search is 6238.66 grams (after excluding the jewellery belonging to the sister) only. Indeed, the onus lies on the assessee to justify the source of such jewellery found during the course of search proceedings. The assessee has claimed/justified the source of such jewellery on account of 2 reasons namely:

- i. The benefit of circular issued by the CBDT circular bearing No. 1916 for the jewellery of 4750 grams which is not disputed.
- ii. The jewellery found during the search but supported on the basis of the purchase bills along with the payment for 1863.340 grams.

34.1. Regarding the purchases of the jewellery for 1863.340 grams, we note that the AO has given very clear-cut finding that such jewellery was not accounted for



in the individual books of accounts. The relevant extract of the AO order is reproduced as under:

“... It is significant to note that the assessee has only produced copies of bills and no individual books of accounts in the form of cash book and ledger were produced. In absence of the same the genuineness of the investment in gold jewellery and its source cannot be verified.”

34.2. Thus, in the absence of the necessary documents as observed by the AO, the impugned jewellery for 1863.340 cannot be treated as explain under the provisions of the income tax Act. At this juncture, we are inclined to refer the provisions of section 69 of the Act which reads as under:

Unexplained investments.

⁴⁶ **69.** *Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the ⁴⁷[Assessing] Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year.*

34.3. A perusal of the above provision clearly reveals that the investment not recorded in the books of accounts would be treated as unexplained investment.

34.4. In addition to the above, we also note that the assessee has already taken the benefit of the circular issued by the CBDT as discussed above. Furthermore, the learned AR for the assessee has not brought anything on record suggesting that the impugned jewellery purchased is not part of the jewellery as explained in terms of the CBDT circular. Thus it is inferred that if any benefit is extended to the assessee on account of purchase of the jewellery would lead to double benefit to the assessee which is unwanted under the provisions of the Act.



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34.5. However, before parting we note that even it is assumed that the jewellery for 1836.340 grams is part of the jewellery explained by the assessee in terms of the CBDT circular as discussed above, then also unexplained jewellery cannot exceed more than 1488.66 grams. It is because the net difference which the assessee failed to explain is of only 1488.66 grams. Thus, we hold that an amount under section 69 of the Act on account of unexplained investment can be made to the extent of 1488.66 grams of jewellery. Accordingly, we direct the AO to limit the addition to the extent of 1488.66 grammes as unexplained investment under section 69 of the Act. Hence the ground of appeal of the assessee is partly allowed.

35. The issue raised by the assessee in ground No. 3 relates to the penalty imposed under section 271(1)(c)/271AAA of the Act which is premature to decide. Therefore, we dismiss the same.

35.1. Similarly, the issue raised by the assessee in ground no.4 is consequential and does not require any separate adjudication. Therefore we dismiss the same.

36. In the result, the appeal of the assessee in ITA No.81/Rjt/2014 for AY 2011-12 is partly allowed.

37. Now coming to the Assessee's appeals in IT(ss)A Nos.09, 25, 10, 11 & 12/Rjt/2017 for AYs 2005-06, 2006-07, 2007-08, 2010-11 & 2011-12 pertaining to penalties.



38. We have heard both the counsels appearing for both the parties and perused the documents filed before us. We have gone through the *ex parte* order passed by Id. CIT(A). It appears from the impugned order that none appeared on behalf of the assessee as well as on behalf of the revenue before Id. CIT(A) while disposing of these appeals in all the cases discussed above.

38.1. On perusal of the order of CIT(A) we find that the Id. CIT(A) confirmed the action of the AO without mentioning any reason for confirming the same on merit. Though the opportunity of hearing was extended by the Id. CIT(A) but the assessee did not make any compliance for the same. Thus, the Id. CIT(A) passed his order on the basis of the material available before him and without any proper assistance from assessee.

38.2 It is settled law that the penalty proceedings are distinct from the assessment proceedings. Therefore, the addition made during the assessment proceedings does not authorize the AO ipso facto to levy the penalty under section 271(1)(c) of the Act. As such the AO is under the obligation to carry out the necessary verification before reaching to the conclusion that the assessee has furnished any inaccurate particular of income or concealed the particulars of income. In this regard we draw support and guidance from the order of the Hon'ble Gujarat High Court in the case of National Textiles reported 249 ITR 125. The relevant extract of the judgment is extracted below:

“In the instant case, the cash credits were not satisfactorily explained by evidence and documents. The parties who had advanced the alleged temporary loans were neither disclosed with their particulars nor any supporting documents were on record. Only two entries were explained. The accountant who had arranged the loan was not produced stating that he had left the service and relations with him



were strained. On this state of accounts and evidence in the quantum proceedings, the department was justified in treating the cash credits as income of the assessee but merely on that basis by recourse to Explanation 1, penalty under section 271(1)(c) could not have been imposed without the department making any other effort to come to a conclusion that the cash credits could in no circumstances had been amounts received as temporary loans from various parties. The assessee in the quantum proceedings failed to produce the accountant but the department also in penalty proceedings made no effort to summon him. Applying the test (ii) discussed above, therefore, it was a case where there was no circumstance to lead to a reasonable and positive inference that the assessee's case, that the cash credits were arranged as temporary loans, was false. The facts and circumstances were equally consistent with the hypothesis that it could have been sundry loans in small amounts obtained from different parties. Therefore, even taking recourse to Explanation 1, the circumstance or state of evidence on which the cash credits were treated as income, could not by themselves justify imposition of penalty without anything more on record produced by the assessee or the department.

It was, accordingly, held that the Tribunal was not justified in law in confirming the penalty levied under section 271(1)(c).”

38.3 In view of the above, we find that in the interest of justice and fair play the assessee should be given one more opportunity to appear before the Id. CIT(A) to explain his points of contentions. In that view of the matter, we are inclined to set aside the order of Ld. CIT(A) and remit the matter back to the file of Id. CIT(A) with the direction to decide the issue raised by the assessee on merit *de novo* after giving reasonable and proper opportunity of being heard to the assessee. It is needless to mention that the assessee should cooperate in the penalty proceedings and attend the hearing as and when called by the Id. CIT(A). Hence, this ground of appeal of the assessee stands allowed for statistical purposes.

39. In the result, for statistical purposes, all the appeals of assessee stand allowed in terms of above.



Shri Ghanshyam Gordhanbhai Jakasania :

First, we take up the Assessee's appeal in ITA No. 13/RJT/2014 for AY 2006-07, wherein the assessee has raised the following grounds of appeal:

- 1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal whereby upholding addition made by the Assessing Officer of Rs.5,00,000/- on the alleged ground of unaccounted income from other sources brought in the guise of agricultural income is unwarranted, unjustified and bad in law.*
- 2) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
- 3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in charging interest u/s.234A, 234B, 234C is unjustified, unwarranted and bad in law.*

40. These issues, we have dealt with in ITA No.484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in Para No. 11 & 14 of this order. Since the captioned appeal of the assessee in ITA No.13/Rjt/2014 for AY 2006-07 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.14/Rjt/2014 for AY 2007-08

The assessee has raised the following grounds of appeal:

- (1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in making addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*



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(2) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*

(3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unwarranted, unjustified and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

41. These issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in Para No. 11 & 14 of this order. Since the captioned appeal of the assessee in ITA No.14/Rjt/2014 for AY 2007-08 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/RJT/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.15/Rjt/2014 for AY 2010-11

The assessee raised the following grounds of appeal:

- 1. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the alleged ground of income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
- 2. The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
- 3. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*



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Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

42. These issues we have dealt with in ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in Para No. 26 to 27 of this order. Since the captioned appeal of the assessee in ITA No.15/Rjt/2014 for AY 2010-11 is identical to the facts of the ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No.80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.16/Rjt/2014 for AY 2011-12

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the ground of unaccounted income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c) is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

43. These issues we have dealt with in ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in Para No. 26 & 27 of this order. Since



the captioned appeal of the assessee in ITA No. 16/Rjt/2014 for AY 2011-12 is identical to the facts of the ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

Shri Sanjaybhai Gordhanbhai Jakasania :

First, we take up the Assessee's appeal in ITA No.175/Rjt/2014 for AY 2007-08, wherein assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal whereby upholding addition made by the Assessing Officer of Rs.500,000/- on the alleged ground of unaccounted income from other sources brought in the guise of agriculture income is unjustified, unwarranted and bad in law.*
2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c) is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

Your applicant reserves the right in addition or alteration in the grounds of appeal at the time of hearing.

44. These issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in para No. 11 & 14 of this order. Since the captioned appeal of the assessee in ITA No. 175/Rjt/2014 for AY 2007-08 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07



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in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.483/Rjt/2014 for AY 2006-07

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in making addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of agriculture income is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of Income Tax, (Appeals)-IV, Ahmedabad has erred in making addition of Rs.30,00,000/- on the alleged ground of unexplained investment in FDR is unwarranted, unjustified and bad in law.*
3. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in initiating penalty u/s.271(1)(c) is unwarranted, unjustified and bad in law.*
4. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

45. So far as Ground Nos.1,3 & 4 are concerned, these issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in para No. 11 & 14 of this order. Since the captioned appeal of the assessee in ITA No. 483/Rjt/2014 for AY 2006-07 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014 shall apply *mutatis*



mutandis to captioned appeal of the assessee. Hence, the these grounds appeal of the assessee are partly allowed.

45.1. The issue raised by the assessee in ground No. 2 is that the learned CIT (A) erred in confirming the addition in part for Rs. 30 Lacs under section 69 of the Act on account of unexplained investments.

45.2. The assessee in the year under consideration has made FDR, bearing No. 0327189, for Rs. 50 Lacs dated 11 March 2006 with the State bank of Saurashtra. The assessee explained the source of money for making such FDR by submitting as under:

- i. He has received back the sum of ₹30 lakhs from Shri Rasik L. Fultaria dated 7.3.2006 which was given to him dated 29 April 2005.
- ii. He has received back the sum of ₹20 Lacs from M/s Cosmos Builders & Promoters which was given to it dated 29 April 2005.

45.3. However, the assessee has not produced any document during the assessment proceedings evidencing that he has provided loan to the aforesaid parties as discussed above. In view of the above, the AO treated such FDR as unexplained investment under section 69 of the Act and added to the total income of the assessee.

Aggrieved assessee preferred an appeal to the learned CIT (A) who has deleted the addition for the amount received from M/s Cosmos Builders & Promoters of



Rs. 20 lacs. However, the learned CIT (A) sustained the addition of Rs. 30 Lacs by observing as under:

“5.6.4. In case of credit from Shri rasik L. Fultaria, firstly appellant has claimed that he has given Rs.30,00,000/- to Shri Rasik L. Fultaria on 29-04-2005 which were received back. For proving this contention, the appellant has not given copy of his bank account showing the relevant entries on 29-04-2005. Now the copy of bank account of Shri Rasik L. Fultaria has also not been submitted to show that he has received Rs.30,00,000/- from the appellant on 29-04-2005 which were given back to the appellant on 07-03-2006. Further, as per the Inquiry conducted by the AO from the AO of Shri Rasik L. Fultaria, this person was nto having any taxable income and has not filed any return of income. In absence of these crucial details, it cannot be accepted that Shri Rasik L. Fultaria has given Rs.30,00,000/- to the appellant from his explained sources of income. As stated above in the order, vide ordersheet noting dtd. 08-01-2014, appellant was directed to give the sources of income in the hands of Shri Rasik L. Fultaria. No details have been submitted by the appellant in this regard. As apparent from the assessment order he was working as cashier with one of the companies of the group M/s Backbone Construction Pvt.Ltd. As against this, in the confirmation letter of Shri Rasik L. Fultaria, he has submitted that he has taken temporary loan from his cousin brother Shri Sanjay G. Jakasania, appellant. These contradictory facts coupled with non-furnishing of any evidence regarding earlier loan by the appellant to Shri Rasik L. Fultaria or his sources of income, the explanation given by the appellant cannot be accepted. The appellant has failed to prove the creditworthiness of creditor and genuiness of loan transaction. All these details prove that there was a credit entry of Rs.30,00,000/- in the bank account of the appellant which could nto be explained by the appellant either during assessment proceedings or during appeal proceedings despite giving sufficient opportunities. Therefore, the action of the AO of treating Rs.30,00,000/- appearing as credit in the name of Shri Rasik L. Fultaria as unexplained credit in the hands of the appellant is justified. Therefore, the addition made by the AO of Rs.30,00,000/- is sustained.”



Being aggrieved by the order of the learned CIT (A), the assessee is in appeal before us.

45.4. The learned AR before us filed a paper book running from pages 1 to 14 and submitted that the amount of ₹30 Lacs was received from Shri Rasik L. Fultaria dated 7.3.2006 which was given to him dated 29 April 2005. The learned AR in support of his contention drew our attention on the copy of the bank statement of the assessee and the confirmation from Shri Rasik L. Fultaria which is placed on pages 5 and 6 of the paper book.

45.5. On the other hand, the learned DR vehemently supported the order of the authorities below.

46. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the learned CIT (A) confirmed the addition of ₹30 Lacs for the amount received from Shri Rasik L. Fultaria as the assessee has not produced the bank statement of the party. However, the learned AR before us prayed to set aside the matter to the file of the AO for fresh adjudication and assured that he will furnish the necessary supporting documents. The learned DR raised no objection if the matter is set aside to the file of the AO for fresh adjudication as per the provisions of law. Accordingly, in the interest of justice and fair play we set aside the impugned issue to the file of the AO for fresh/de novo adjudication as per the provisions of law. It is also pertinent to note that the assessee will furnish the requisite documents explaining the source of ₹30 Lacs used for making the impugned FDR as desired



by the AO. Hence, the ground of appeal of the assessee is allowed for the statistical purposes.

ITA No.82/Rjt/2014 for AY 2010-11

The assessee raised the following grounds of appeal:

- 1) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the alleged ground of income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
- 2) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in imposing penalty u/s.271(1)(c)/271AAA of the Act is unjustified, unwarranted and bad in law.*
- 3) *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the AO in charging interest u/s.234A, 234B, 234C is unjustified, unwarranted and bad in law.*

47. These issues we have dealt with in ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in para No. 26 to 27.1 of this order. Since the captioned appeal of the assessee in ITA No.82/Rjt/2014 for AY 2010-11 is identical to the facts of the ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No.80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is allowed.

ITA No.83/Rjt/2014 for AY 2011-12



The assessee raised the following grounds of appeal:

- 1) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the alleged ground of income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.
- 2) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the Assessing Officer in imposing penalty u/s.271(1)(c)/271AAA of the Act is unjustified, unwarranted and bad in law.
- 3) The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding decision of the AO in charging interest u/s.234A, 234B, 234C is unjustified, unwarranted and bad in law.

48. These issues we have dealt with in ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in para No.26 to 27.1 of this order. Since the captioned appeal of the assessee in ITA No.83/Rjt/2014 for AY 2011-12 is identical to the facts of the ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No.80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

Shri Sanjaybhai G.Jakasania Cases (penalty)

49. Now coming to the Assessee's appeals in IT(SS)A Nos.13, 14, 15, 16 & 17/Rjt/2017 for AYs 2006-07, 2007-08, 2010-11 & 2011-12 pertaining to penalties.

50. At the outset we note that in the identical facts and circumstances in the case of Shri Dineshbhai G.Jakasania(supra) in IT(ss)A Nos.09, 25, 10, 11 &



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12/Rjt/2017 for AYs 2005-06, 2006-07, 2007-08, 2010-11 & 2011-12 pertaining to penalties, the issue was set aside to the Id. CIT-A for fresh adjudication as per the law. Respectfully, following the same, we are inclined to set aside the order of Ld. CIT and remit the matter back to the file of Id. CIT(A) with the direction to decide the issue raised by the assessee on merit *de novo* after giving reasonable and proper opportunity of being heard to the assessee. It is needless to mention that the assessee should cooperate in the penalty proceedings and attend the hearing as and when called by the Id. CIT(A). Hence, this ground of appeal of the assessee stands allowed for statistical purposes.

51. In the result, for statistical purposes, all the four appeals of assessee stand allowed in terms of above.

Shri Kishor Gordhanbhai Jakasania Group Cases:

ITA Nos.17/Rjt/2014 for AY 2006-07

The assessee has raised the following grounds of appeal:

- 1. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*
- 2. The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
- 3. The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*



52. These issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in Para No. 11 to 14 of this order. Since the captioned appeal of the assessee in ITA No. 17/Rjt/2014 for AY 2006-07 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.18/Rjt/2014 for AY 2007-08

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs.5,00,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

53. These issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in Para No. 11 to 14 of this order. Since the captioned appeal of the assessee in ITA No.18/Rjt/2014 for AY 2007-08 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014



shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.176/Rjt/2014 for AY 2008-09

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in dismissing the appeal of the assessee whereby upholding the addition of Rs.500,000/- on the ground of unaccounted income from other sources brought in the guise of Agriculture Income is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

54. These issues we have dealt with in ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania in Para No. 11 & 14 of this order. Since the captioned appeal of the assessee in ITA No.176/Rjt/2014 for AY 2008-09 is identical to the facts of the ITA No. 484/Rjt/2014 for AY 2006-07 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No. 484/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.19/Rjt/2014 for AY 2010-11

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the alleged ground*



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of income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.

2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c)/271AAA is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*

55. These issues we have dealt with in ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in Para No. 26 to 27 of this order. Since the captioned appeal of the assessee in ITA No.19/Rjt/2014 for AY 2010-11 is identical to the facts of the ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No.80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

ITA No.20/Rjt/2014 for AY 2011-12

The assessee has raised the following grounds of appeal:

1. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of Assessing Officer in making addition of Rs.15,00,000/- on the alleged ground of income admitted during the search but subsequently retracted is unwarranted, unjustified and bad in law.*
2. *The learned Commissioner of income Tax (Appeals)-IV, Ahmedabad has erred in upholding the decision of AO in initiating penalty u/s.271(1)(c) is unjustified, unwarranted and bad in law.*
3. *The learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in charging interest u/s.234A, 234B & 234C is unjustified, unwarranted and bad in law.*



56. These issues we have dealt with in ITA No.80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania in Para No. 26 to 27 of this order. Since the captioned appeal of the assessee in ITA No. 20/Rjt/2014 for AY 2011-12 is identical to the facts of the ITA No. 80/Rjt/2014 for AY 2010-11 in the case of Shri Dineshbhai G.Jakasania(supra) and in view of the *pari materia* facts concerning the identical issues, our decision in ITA No.80/Rjt/2014 shall apply *mutatis mutandis* to captioned appeal of the assessee. Hence, the appeal of the assessee is partly allowed.

57. In the combined result, we summarize as under:

Dineshbhai Gordhanbhai Jokasania Group cases (Assessee's appeals) in -

1. ITA No.174/Rjt/2014 for AY 2005-06 is dismissed.
2. ITA No.484/Rjt/2014 for AY 2006-07 is partly allowed for statistical purposes.
3. ITA No.79/Rjt/2014 for AY 2007-08 is partly allowed.
4. ITA No.80/Rjt/2014 for AY 2010-11 is partly allowed.
5. ITA No.81/Rjt/2014 for AY 2011-12 is partly allowed.
- 6-10. IT(ss)A Nos.9, 25,10,11 & 12/Rjt/2017 for AYs 2005-06 2006-07, 2007-08, 2010-11 & 2011-12 are allowed for statistical purposes.

Ghanshyam Gordhanbhai Jokasania Group cases (Assessee's appeals) in -

11. ITA No.13/Rjt/2014 for AY 2006-07 is partly allowed.
12. ITA No.14/Rjt/2014 for AY 2007-08 is partly allowed.
13. ITA No.15/Rjt/2014 for AY 2010-11 is partly allowed.
14. ITA No.16/Rjt/2014 for AY 2011-12 is partly allowed.

Sanjaybhai Gordhanbhai Jakasania Group cases (Assessee's appeals) in -



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15. ITA No.175/Rjt/2014 for AY 2007-08 is partly allowed.
16. ITA No.483/Rjt/2014 for AY 2006-07 is partly allowed for the statistical purposes.
17. ITA No.82/Rjt/2014 for AY 2010-11 is partly allowed.
18. ITA No.83/Rjt/2014 for AY 2011-12 is partly allowed.
- 19 to 22. IT(ss)A Nos. 13 to 16/Rjt/2017 for AYs 2006-07, 2007-08, 2010-11 & 2011-12 are allowed for statistical purposes.

Kishor ordhanbhai Jakasania Group cases (Assessee's appeals) in -

23. ITA No.17/Rjt/2014 for AY 2006-07 is partly allowed.
24. ITA No.18/Rjt/2014 for AY 2007-08 is partly allowed.
25. ITA No.176./Rjt/2014 for AY 2008-09 is partly allowed.
26. ITA No.19/Rjt/2014 for AY 2010-11 is partly allowed.
27. ITA No.20/Rjt/2014 for AY 2010-11 is partly allowed.

This Order pronounced in Open Court on 28 / 11 /2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/ 11 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-11 and IV, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot