

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 245/JP/2017
निर्धारण वर्ष / Assessment Year : 2007-08

Sh. Tarun Goel, G-2, Vinoba Marg, C-Scheme, Jaipur-302001.	बनाम Vs.	The ITO, Ward-6(5), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABTPG 9246 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 274/JP/2017
निर्धारण वर्ष / Assessment Year : 2007-08

The ACIT, Circle-6 Jaipur.	बनाम Vs.	Sh. Tarun Goel, G-2, Vinoba Marg, C-Scheme, Jaipur-302001.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABTPG 9246 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 246/JP/2017
निर्धारण वर्ष / Assessment Year : 2007-08

Sh. Arun Goel, G-2, Vinoba Marg, C-Scheme, Jaipur-302001.	बनाम Vs.	The ITO, Ward-6(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASPG 4962 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 275/JP/2017
निर्धारण वर्ष/Assessment Year : 2007-08

The ACIT, Circle-6 Jaipur.	बनाम Vs.	Sh. Arun Goel, G-2, Vinoba Marg, C-Scheme, Jaipur-302001.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AASPG 4962 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 247/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

M/s Pinkcity Reality P. Ltd., G-2, Vinoba Marg, C-Scheme, Jaipur-302001.	बनाम Vs.	The ITO, Ward-6(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACP 2647 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 265/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

The ITO, Ward- 6(2) Jaipur.	बनाम Vs.	M/s Pinkcity Reality P. Ltd., G-2, Vinoba Marg, C-Scheme, Jaipur-302001.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACP 2647 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani (C.A.)
राजस्व की ओर से / Revenue by : Shri B.K. Gupta (CIT) &
Smt. Runi Pal (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/11/2019
उदघोषणा की तारीख / Date of Pronouncement: 03/12/2019

आदेश / ORDER

PER BENCH:

These three set of cross appeals are directed against three separate orders of the Id. CIT(A), Ajmer dated 11.01.2017 in three related assesseees for the assessment years 2007-08 & 2008-09 respectively.

2. Since, these three set of cross appeals arising are from the common and identical facts as well as involving common issue therefore, for the sake of convenience these appeals are clubbed together for the purpose of hearing and disposal. For the purpose of recording the facts the cross appeals in case of Shri Arun Goel in ITA No. 246/JP/2017 and 275/JP/2017 are taken as lead case. The assessee has raised the following grounds:-

- "1. In the facts and circumstances of the case and in law the Id. AO erred in reopening the assessment of the assessee under section 148 of the Income Tax Act, 1961. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceeding, being illegal and without any basis.*
- 2. The assessee craves his right to add, amend or alter any of the grounds on or before the hearing."*

The assessee has also filed an additional ground which reads as under:-

"In the facts and circumstances of the case and in law, Id. AO has erred in issuing notice u/s 148 of Income tax Act, 1961 without obtaining proper sanction u/s 151 of the Income Tax Act, 1961. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceeding, being illegal and without jurisdiction.

The Revenue in the cross appeal has raised the following grounds:-

*"1. Whether on the facts and circumstances of the case and the Id. CIT(A) was justified in deleting the addition u/s 69B of Rs. 4,35,26,854/- made by the AO for unexplained and undisclosed investment in purchase of immovable properties.
2. The appellant craves its rights to add, amend or alter any of the grounds on or before the hearing."*

3. First we take up the appeal of the Revenue wherein the issue of addition made by the AO U/s 69B of the Act is involved as the said addition was deleted by the Id. CIT(A) while passing the impugned order. The brief fact leading to the controversy are that the assessee is individual and filed his return of income for the year under consideration on 31.10.2007 declaring total income of Rs. 64,03,650/-. The assessment was completed U/s 143(3) of the Act on 10.08.2009 whereby the AO accepted the return of income. Thereafter, the assessment was reopened by issuing a notice U/s 148 of the Act on 20.03.2014 whereby the AO proposed to assess the on money payment

made by the assessee for purchase of lands as found in the statement of Shri Madan Mohan Gupta as recorded U.s 132(2) of the Act in search and seizure proceedings carried out on 23.05.2013 and thereafter the statement of Shri Shanka Lal Saini and Shri Kanhiya Lal Saini were also recorded on 05.08.2013. The Assessing Officer while passing the reassessment order on 27.03.2015 has made an addition of Rs. 83,46,000/- on account of unexplained investment in purchase of land. The assessee challenged the action of the AO before the Id. CIT(A) and also challenged the validity of reopening of the assessment. The Id. CIT(A) deleted the addition made by the AO by recording the reasons that the AO has made the addition on the basis of the impounded material wherein nothing incriminating material is found against the assessee and not even an entry was found recorded in respect of the transaction of purchase of lands by the assessee from Shri Madho Lal Saini, Shri Shanka Lal Saini and Shri Kanhiya Lal Saini. Further, there is no allegation or reference of the transaction of the assessee or name of the assessee was made by Shri Madan Mohan Gupta in his statement recorded U/s 132(4) of the Act. Therefore, the Id. CIT(A) found that without any incriminating material the AO has made the addition only on the presumption of on money payment by the assessee. Further in

the assessment framed in case of Shri Madho Lal Saini, Shri Shanka Lal Saini and Shri Kanhiya Lal Saini the AO has assessed the capital gain from sale of land to these three assesseees on the basis of the sale considering recorded in the sale deed and therefore, the AO accepted the sale consideration as recorded in the sale deed. The Id. CIT(A) after deciding the issue on merits in favour of the assessee has not proposed to decide the issue of validity of reopening. Thus both the Department as well as assessee filed these cross appeal.

4. The Id. DR has submitted that during the course of search and seizure action U/s 132(2) of the Act in case of Madan Mohan Gupta certain record was seized containing entries of transactions of purchase of lands by Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. In the statement recorded U/s 132(4) of the Act Modan Mohan Gupta has admitted that these entries are related to the sale and purchase transaction of Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. Thus, the seized material clearly disclosed the on money payment by these saini family members for purchase of lands as recorded at page 22 to 25 of the seized documents. They have also accepted the facts that the lands were purchase from the sources of their lands sold to Shri Arun Goel, Shri

Tarun Goel and M/s Pinkcity Reality P. Ltd. the assessee in these appeals. The Id. CIT/DR has submitted that the investment that made by the owner of the land sold to these assessee from the source of sale consideration as received from these assessee then it can be reasonably inferred that the on money payment by these Saini family members is nothing but received from the assessee in these cases. The Id. DR has pointed out that the seized material clearly reveals the details of the lands purchase by Saini family members and rate is also given in the seized material. The said fact was also explained by Shri Madan Mohan Gupta in his statement therefore, once the fact of payment of the on money by these Saini brothers and family members is established from the seized material then, the source of the said payment is nothing but the cash payment by the assessee in respect of the land purchased by them from the Saini family members. The Id. DR has further contended that when all the other entries on the rest of the pages recording the name of the sellers, the amount mentioned in the cheque, area of the land involved, registration expenses are accepted by the Saini's then their denied of cash entries as recorded in the seized material is not acceptable. These entries have been made/recorded by Shri Madan Mohan Gupta and since it has been admitted by Shri

Shankar Lal Saini and Shri Kanhiya Lal Saini in the statement that they are not well educated so Shri Madan MohanGupta was working as a middle man and the entry recorded by him in the seized material is giving the correct picture of the transaction. The Id. DR has further submitted that Sani's have admitted their only source of investment in lands purchased is the sale of land at Jaisinghpur to the assessee namely Shri Arun Goel, Shri Tarun Goel and M/s Pinkcity Reality P. Ltd. Therefore, the respective amounts of on money in the hands of these three assessee total amount of Rs. 10.3 crores has escaped assessment is proved by the seized material coupled with the statement of Shri Madan Mohan Gupta, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. He has relied upon the orders of the Assessing Officer.

5. On the other hand, the Id. AR has submitted that the assessee purchased the land situated at village Jaisinghpura, Bankrota, Jaipur for a purchase of consideration of Rs. 2,07,80,000/- from Shri Madho Lal Saini vide sale deed dated 01.09.2006. The return of income filed by the assessee was subjected to scrutiny assessment and the AO did not doubted any payment of one money while passing the scrutiny assessment U/s 143(3) of the Act on 10.08.2009. Subsequently, the Assessing Officer has initiated the proceedings U/s 147/148 of the Act

solely on the basis of the information received from the Investigation Wing and without any other corroborative evidence. The AO has made the addition on account of unexplained investment in purchase of land merely on the basis of assumption and presumption without any evidence to show that the assessee has paid any amount over and above the sale consideration shown in the sale deed which has been duly executed and registered. Therefore, it is relevant evidence to show the transition of purchase and sale of the agricultural land and actual sale consideration paid by the assessee. Hence, in the absence of any other contrary facts or material the contents and terms and condition as well as consideration shown in the sale deed cannot be disputed. The Id. AR has referred to the statement of Shri Madan Mohan Gupta and submitted that neither anything record in the seized material in respect of the purchase of land by the assessee nor Shri Madan Mohan Gupta alleged anything regarding the payment of on money by the assessee. Further, in their statements Shri Shankar Lal Saini and Shri Kanhiya Lal Saini have clearly stated that they purchased the land by making the payment through cheque and no payment was made in cash. Thus none of the statements recorded by the Department of Shri Mandan Mohan Gupta, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini revealed

any incriminating material against the assessee. The AO has just assumed the payment of on money on the basis of the seized material wherein some entries were found regarding the cash payment by Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. Those transaction are not related to the assesseees and therefore, once the Saini have denied any payment of cash and clearly stated in their statements that they purchased the property against the payment of cheque and no cash was paid then the addition made by the AO in respect of cash payment for purchase of land by assessee is without any basis but only on the being presumption and surmises. The Id. AR has relied upon the orders of the Id. CIT(A) on this issue and submitted that in the absence of any material disclosing any cash payment by the assesseees to the Saini for purchase of the property the addition is not sustainable. He has further pointed out that even in the assessment framed in the hand of Shri Madho Lal Sain, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini the Assessing Officer has accepted the sale consideration in their hand as recorded in the sale deeds. Therefore, when the sale consideration was not disturbed by the AO of these sellers then the presumption of the Assessing Officer for payment of cash over and above sale consideration recorded the sale deed is

contrary to the very fact which is recorded in the register sale deed and accepted the AO by Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. The Id. AR has pointed out that the assessee purchased the land in question from Shri Madho Lal Saini on 01.09.2006 wherein Shri Madho Lal Saini along with his sons purchases the land through Shri Madan Mohan Gupta on 18.12.2007 which is after more than 15 months from the date of purchase by the assessee therefore, no transaction involving the huge cash can be linked to the previous transaction which happened almost 15 months before it until and unless a direct or live link is established between two. On the one hand, the AO has relied upon the statements of Saini and at the same time he has ignored the relevant and pertinent part of the statements wherein they have denied any payment of cash. Hence, the AR has submitted that the Id. CIT(A) is justified for deleting the addition on this account.

6. We have considered the rival submissions as well as the relevant material on record. The details of the lands purchased by these three assesseees from three Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini are as under:-

S. No.	Address of property	Date of Transaction	Name of purchaser	Amount as mentioned in the sale deeds.
1.	Village- Jaisinghpura,	08.06.2007	M/s Pinkcity Reality	93,20,000/-

	Bankrota, Jaipur.		Pvt. Ltd.	
2.	Village- Jaisinghpura, Bankrota, Jaipur.	12.09.2007	M/s Pinkcity Reality Pvt. Ltd.	30,20,000/-
3.	Village- Jaisinghpura, Bankrota, Jaipur.	01.09.2006	Sh. Arun Goel, Director	2,07,80,000/-
4.	Village- Jaisinghpura, Bankrota, Jaipur.	04.11.2006	Sh. Tarun Goel, Director	80,80,000/-
5.	Village- Jaisinghpura, Bankrota, Jaipur.	04.11.2006	Sh. Tarun Goel, Director	80,80,000/-
			Total	4,92,80,000/-

These transactions were duly recorded in the books of accounts and also declared in the return of income filed by these assessee. In case of Shri Arun Goel he has purchased the land in question from Shri Madho Lal Saini vide registered sale dated 01.09.2006 for a consideration of Rs. 2,07,80,000/- The Assessing Officer accepted the return income while passing the original assessment U/s 143(3) of the Act on 10.08.2009. Subsequently, there was search and seizure action in the case of Shri Madan Mohan Gupta Under section 132 of the Act on 23.05.2013. A diary was seized from the possession of the Shri Madan Mohan Gupta containing certain transactions regarding the purchase of lands by Shri Madho Lal Saini along with his two sons Shri Shankar Lal Saini and Shri Kanhiya Lal Saini. The details recorded in the seized diary found from Shri Madan Mohan Gupta reveal the payment of cash in respect of the land purchase by Saini family members i.e. father and sons. The statement of Shri Madan Mohan Gupta was recorded by

Investigation Wing in which he has explained the transactions of land purchased by Saini family members. The department also recorded the statements of Shri Shankar Lal Saini and Shri Kanhiya Lal Saini and in their statement they have accepted the said transaction of purchased of land as it was through registered sale deeds but they have specifically denied any payment of cash over and above the purchase consideration shown in the respective sale deeds through cheques. On specific query by the Department they said that they have paid purchase consideration through cheque and the sources of the said payment is the sale of land by them to Shri Arun Goel , Shri Tarun Goeal and Pinkcity Reality Pvt. Ltd. Therefore, in the search and seizure proceedings and in the subsequent investigation what was detected by the Department is the seized material containing the transaction of land purchased by Shri Madho Lan Saini, Shri Shankar Lal Saini and Shri Kanhiya Lal Saini all family members. Since, some cash payment was recorded in the seized material therefore, the Assessing Officer of the assessee before us took a view that the alleged cash payment by these Saini family members is sourced from the cash payment made by the assessee for purchase of land vide sale deed dated 01.09.2006 in case of Shri Argun Goel sale deed dated 04.11.2006 in case of Shri Tarun Goel sale deed

dated 08.06.2007 and 12.09.2007 in case of M/s Pinkcity Reality Pvt. Ltd. The AO has assumed the payment of cash only on the basis of some transactions recorded in the seized material regarding the payment of cash by Saini brothers and father in respect of purchase of land and the source of which is assumed as sale consideration received from the assessee. It is pertinent to note that the alleged seized material contains nothing regarding any transaction between the assessee's and Saini family members and the entries found in the seized material are confined only to the purchase of land by Saini family members. Therefore, the seized material itself does not reveals any transaction of payment of cash by the assessee's brothers in respect of purchase of land from two brothers and father. Further, in the statement of Shri Madan Mohan Gupta nothing incriminating was disclosed against the assessee but he has explained the nature of transactions recorded in the seized material regarding the purchase of land by the Saini family members. The department then also conducted further inquiry by recording statements of Shri Shankar Lal Saini and Shri Kanhiya Lal Saini and specifically asked the question regarding the payment of cash but both these brothers have denied the payment of cash in respect of the land purchased by them. However the inquiry

conducted by Department from Saini brothers is directed toward the cash payment by them and has nothing to do with the cash received by them from the assessee before us. The Ld. CIT(A) has considered this issue in the light of the material, evidence and other relevant facts as under:-

"I have gone through the assessment order, written submission, impounded material and statements relied upon by the AO carefully. Nowhere at page no.25 of the impound material, on which the AO has relied upon, for making the addition of Rs.4,35,26,854/-, any mention of the property purchased by the appellant or the name of the appellant is found. Shri Madan Mohan Gupta in his statement has nowhere stated that any amount of cash was paid by the appellant to Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Khaniya Lal Saini over and above the consideration mentioned in the registered sale deed in respect of the properties purchased by the appellant from these persons. In their statements recorded on oath, neither Shri Shankar Lal Saini nor Shri Khaniya Lal Saini has stated that they have received any cash from the appellant, over and above the consideration recorded in the sale deed in respect of the properties sold by them to the appellant. They, in an unambiguous manner have denied having received any cash from the appellant. After going through the impounded material, and statements of Shri Madan Mohan Gupta, Shri Shankar Lal Saini and Shri Khaniya Lal Saini. I am of the considered view that the AO has made the addition on the basis of reply of Shri Shankar Lal Saini and Khaniya Lal Saini to question No.7 in their statements recorded on 05.08.2013. In their reply to question No.7 (कृपया आप द्वारा खरीदी गयी इन सम्पत्तियों को स्रोत स्पष्ट कीजिए) both of them had replied as under:

“महोदय, हमने जो जमीन आदि खरीदी है वह हमारे द्वारा जयसिंपुरा में बेची गई जमीन से प्राप्त राशि में से खरीदी गई थी इन सभी व्यवहारों को हमने हमारी आयकर विवरणियों में दिखा रखा है जिसके समर्थन में मैं अपनी निर्धारण वर्ष 2007-2008 से 2012-2013 तक की आयकर विवरणियों की प्रति मैं आपके कार्यालय में दिनांक 08.08.2013 तक प्रस्तुत कर दूंगा।”

The AO has completely ignored the answer of Shri Khaniya Lal Saini and Shankar Lal Saini, given in reply to question No.11 wherein, at the last sentence of the reply, they have stated that श्री मदनमोहन गुप्ता ने यह विवरण (पृष्ठ संख्या 21 से 25) क्यों दर्ज किया है मुझे इस बारे में कोई जानकारी नहीं है हमने तो जो भी जमीने खरीदी है उसका सम्पूर्ण भुगतान बैंक द्वारा ही किया है। तथा कोई भुगतान नगद में नहीं किया है।

In reply to question No.12 again both of them stated that महोदय जैसा की मैंने पूर्व में भी बताया है कि मैं एक कम पढ़ा लिखा व्यक्ति हूँ और जयादा कुछ जानता नहीं हूँ मैं तो इतना कहना चाहता हूँ कि हमने जो भी जमीने खरीदी है वो केवल बैंक द्वारा भुगतान कर के ही खरीदी है। मुझे नहीं पता की श्री मदनमोहन गुप्ता जी ने यह सब क्यों और कैसे लिख कर रखा है। इस बारे में मुझे कोई जानकारी नहीं है। वे ही इस बारे में बता सकते हैं।

The AO has made the addition drawing the conclusion that since at page No. 25 of the impound material amount of Rs.10,32,24,417/- (cash) has been mentioned against the properties purchased by Shri Madho Lal Saini, Shri Khaniya Lal Saini and Shri Shankar Lal Saini, therefore, the amount of Rs.10,32,24,417/- has been paid by Shri Tarun Goyal (Rs.3,38,49,566/-), Shri Arun Goyal (Rs.4,35,26,854/-) and M/s Pinkcity Realty Pvt. Ltd. (Rs.2,58,47,997/-) to Shri Madho Lal Saini, Shri Khaniya Lal Saini and Shri Shankar Lal Saini towards the purchase of land from these persons, over and above the consideration recorded in the sale deed. However, it

is seen from the copy of the assessment orders of Shri Shankar Lal Saini, Shri Khaniya Lal Saini and Shri Madholal Saini for the assessment year 2007-08, filed by the appellant, that the AO of these persons have assessed the capital gain on sale of land to Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. in the hands of Shri Shankar Lal Saini and Khaniya Lal Saini only on the basis of sales consideration recorded in the sales deed:No sales consideration, which according to the AO was paid in cash over and above, the sale consideration recorded in the sales deed has been taken into account by the AO of Shri Shankar Lal Saini and Khaniya Lal Saini for the purpose of computing capital gain in their hands on sale of land to Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. Further, the appellant has also filed copies of the assessment order in the case of Shri Shankar Lal Saini (A.Y. 2008-09 & 2009-10) and Shri Khaniya Lal Saini (A.Y. 2007-08) and Shri Madho Lal Saini (A.Y. 2007-08) from which it can be seen that the AO of these persons have treated the amount of cash claimed to have been paid by these persons towards purchase of properties at Amer and Choumu as unexplained investment. Thus, the AOs of these three persons have assessed their income accepting the sales consideration recorded in the sales deed in respect of the properties sold by these persons to Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. as true and correct. The AO of these persons have also not accepted sales consideration of the land sold by these persons to Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. as the source of cash payment (Rs.10,32,24,417/-) claimed to have been made by these persons, rather it has been treated as unexplained cash payment.

After going through the assessment order, impounded material, statement of Shri Madan Mohan Gupta, Shri Shankar Lal Saini and Shri Khaniya Lal Saini and assessment orders of Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Khaniya

Lal Saini, I have no hesitation in holding that the AO did not have any evidence to show that any cash, over and above the sales consideration recorded in the sale deed, was paid by Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. towards purchase of lands to Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Khaniya Lal Saini. The conclusion of the AO that since Shri Shri Madho Lal Saini, Shri Shankar Lal Saini and Shri Khaniya Lal Saini have paid cash (Rs.10,32,24,417/-) towards the purchase of land at Amer and Choumu Tehsil, therefore, this cash must have been paid by Shri Tarun Goyal, Shri Arun Goyal and M/s Pinkcity Realty Pvt. Ltd. to these persons towards the purchase of their land is farfetched and not based on any documentary or oral evidence. An addition made without any basis cannot be sustained. Therefore, the addition of Rs.4,35,26,854/- made by the AO in the hands of the appellant under the head "undisclosed investments in purchases of properties under section 69B" is hereby deleted. The ground of appeal is allowed."

7. We have also carefully perused the statements of Shri Madan Mohan Gupta as produced before us as per directions of the Bench to the Department as well as statements of Shri Shankar Lal Saini and Shri Kanhiya Lal Saini and found that nothing incriminating has been stated in the statement of Shri Madan Mohan Gupta as well as in the statement of Saini brothers about the cash payment by the assesseees in respect of the land purchased by them. Therefore, even if the seized material along with the statements of Shri Madan Mohan Gupta and

Saini brothers are taken into consideration nothing has come out to be regarded as any incriminating material or fact to reveal any cash payments by the assessees for purchase of lands in question. The addition made by the AO is solely on his own presumption of payment of cash without any tangible material or evidence in support of his decision. When the seized material found from Shri Madan Mohan Gupta as well as other material gathered during post search inquiry has not established any direct or proxy connection with the transaction of purchase of land by the assessees then the assumption and presumption of the AO that the assessee might have paid cash over and above the consideration shown in the sale deeds is only surmises and conjectures. We note that the Assessing Officer of the Saini brothers and father while framing the assessment U/s 144 r.w.s. 147 of the Act dated 18.03.2015 accepted the sale consideration as recorded in the sale deeds for the purpose of the assessing the capital gain. The AO however, made additions on account of unexplained investment by them on account of cash payment reflected in the seized material. Therefore, the AO has not disturbed the sale consideration received by Saini brothers and father in respect of sale of land to the assessees before us. The said finding of the Assessing Officer in case of Saini

brothers and father demolished the case of the AO presuming the payment of cash by the assessee before us for purchase the land from Saini family members. Accordingly, when the transaction of sale of land and sale consideration is accepted by the AO of the Saini family members as recorded in the sale deeds then the addition made by the AO on account of cash payment by the assessee U/s 69B of the Act has no legs to stand in the absence of any incriminating material but the said addition is merely based on assumption of the AO. Accordingly, we do not find any error or illegality in the impugned order of the Id. CIT(A) qua this issue.

8. The identical issue has been raised by the Revenue in the other two appeals and therefore, in view of our findings on this issue the appeals of the Revenue in case of Shri Tarun Goel and M/s Pinkcity Reality Pvt. Ltd. also deserves to be dismissed.

9. In the assessee's appeal the assessee has raised the issue of validity of reopening of assessment though all three assessee have raised the additional ground and validity of reopening however, at the time of hearing, the Id. AR of the assessee has stated at bar that the assessee in case of Shri Tarun Goel and M/s Pinkcity Reality Pvt. Ltd. does not press the issue of validity of reopening. Accordingly, the cross

appeals in case of Shri Tarun Goel and M/s Pinkcity Reality Pvt. Ltd. in ITA No. 245/JP/2017 & ITA No. 247/JP/2017 are dismissed being not pressed.

10. In case of Shri Arun Goel, the Id. AR of the assessee has contended that once the original assessment was completed U/s 143(3) of the Act and the reopening is after 4 years then in the absence of failure on the part of the assessee to disclose fully and truly all relevant material facts necessary for the assessment the reopening is invalid in view of the proviso to Section 147 of the Income Tax Act. The Id. AR has further contended that even the approval U/s 151 of the Act granted by the Id. CIT(A) is not valid as it is of subsequent date i.e. 14.04.2014 whereas the notice U/s 148 issued by the AO on 20.03.2014 before us, the Id. AR has submitted that in absence of any valid sanction the notice issued U/s 148 of the Act is void ab initio and therefore, the reassessment is liable to be quashed. In support of his contention, he has relied upon the following decisions:-

- Dhadda Exports vs. ITO 58 taxmann.com 176.
- The decision of Coordinate Benches dated 13.12.2017 in case of Shri Navrattan Kothari vs. ACIT in ITA No. 425/JP/2017.

- Sunita Dhadda vs. DCIT 148 TTJ 719 (upheld by the Hon'ble jurisdictional High Court vide judgment dated 31.07.2017 along with DB. Income Tax Appeal no. 197 to 199/201.)

Accordingly, the Id. AR has submitted that the reopening is invalid and liable to be quashed.

11. On the other hand, the Id. DR has submitted that as regards the approval U/s 151 of the Act it is only a mistake in writing the date as the correct date is 14.03.2014 which is written as 14.04.2014. He has filed another copy of sanction wherein the correct date is written as 14.03.2014. The Id. DR has further submitted that even as per the proceedings sheet of the Id. CIT the correct date is reflected as on 14.03.2014. Thus a mere mistake in writing the date will not vitiate the proceedings.

12. As regards the reasons recorded by the AO, the Id. DR has submitted that when the Assessing Officer has received the information regarding the cash payment by the Saini family members as per the seized material and statement of Shri Madan Mohan Gupta along with the statement of the Saini brothers then, it constitute a tangible material for formation of belief that the income assessable to tax in the hands of the assesseees has escaped assessment. He has further

submitted that the reasons recoded itself speaks and manifest the satisfaction of the AO that there is failure on the part of the assessee to disclose fully and truly the relevant facts necessary for assessment.

13. We have considered the rival submissions as well as relevant material on record. The Assessing Officer while reopening the assessment has recorded reasons as under:-

"Assessment u/s 148/143(3) was completed in the case on 08.09.2011 and assessed income was Rs. 1,47,49,650/-. Later, a search and seizure operation u/s 132 of the I.T. Act, 1961 was carried out by Income Tax Department, Investigation Wing, Jaipur on 23.05.2013 at the residential premises of Shri Madan Mohan Gupta, A-30, Saraswati Colony, Sanaganer in the case of Rajendra Jain, Rajendra Bardiya & Others Group, Jaipur and certain incriminating documents were found and seized. The above incriminating documents include documents related to sale/purchase transactions made by Shri Kanhai Lal, Shri Shankar Lal and Shri Madho Lal Saini, R/o Patel nager, 22 Godown, Jaiapur. In these documents, it was mentioned that by Shri Kanhaiya Lal, Shri Shankar Lal and Shri Madho Lal Saini, R/o Patel Nagar, 22 Godown, Jaipur a cash payment of Rs. 10, 32, 24,417/- has been made for the purchases of properties and as per their statements they admitted that the source of their investment for purchase of various lands and some offices at Jaipur is from the sale consideration of their land at Bhankrota which has been sold to the assessee i.e. Shri Tarun Goel.

b) Taking note of the above fact statements Shri Kanhaiya Lal, Shri Shankar Lal and Shri Madho Lal Saini were recorded wherein all of them categorically denied for having any cash

receipts/payments in respect of the properties sold and purchased by them. They have stated that the transactions in respect of all sales and purchases have been made only through banking channels. However all other details related to the purchases of the properties i.e. cheque amount, registry amount, area of the property, addresses etc. are the same as it were in documents found at the house of Shri Madan Mohan Gupta.. As such, in view of the above fact their denial for having cash transaactions has got no force. The other details duly substantiate the fact that Shri Kanhaiya Lal, Shri Shankar Lal and Shri Madho Lal Saini, R/o Patel Nagar, 22 Godown, Jaipur made cash payments for their purchases and as their sole source of these purchases is land sale at Bhankrota to Shri Arun Goyal in A.Y. 2007-08 and A.y.2008-09, so this cash amount must have been received by them from Shri Arun Goyal. As sources and reason of such a huge cash payment of Rs. 10,32,24,417/- by Shri Arun Goyal is not known.

c) As the said cash amount of Rs. 10,32,24,417/- pertains to the year under consideration. Therefore, in view of the above mentioned facts I have reasons to believe that the income of the assessee for the year under consideration has escaped assessment to the extent of Rs. 10,32,24,417/-within the meaning of section 147/148 of the IT Act, 1961. As such, it is a fit case to issue notice u/s 148 of the IT Act, 1961. Therefore, approval of CIT -II, Jaipur is requested to initiate proceedings u/s 147 in the instance case."

Thus, it is clear from the reasons recorded by the AO that he has proceeded on the basis of the seized material in the case of Shri Madan Mohan Gupta as well as statements of Saini brothers and father. The AO has clearly mentioned in the reasons that the Saini Brothers have

especially denied in statement as cash payment in respect of purchase of land payment is made only through banking channel. Since the transaction of purchase and sale of the properties are not in dispute and were also found in the seized material therefore, the AO has formed the belief as per the details recorded in the seized material in respect of the land purchase and payment by the Saini family members and extrapolated the same to presume that the said cash payment of the Saini brothers and father is sourced from the payment made by the assessee in respect of the land purchases from Saini family members. Despite all these facts recorded in the reasons the Assessing Officer nowhere alleged that the income assessable to tax has escaped assessment due to the reasons of failure of the assessee to disclose fully and truly all material facts necessary for his assessment. There is no dispute that reopening of the assessment is after 4 years from the end of the relevant assessment year and therefore, for initiation of the proceedings U/s 147/148 of the Act it is a pre condition that when the original assessment is framed U/s 143(3) of the Act no action shall be taken U/s 147 of the Act unless the income chargeable to tax has escaped assessment for the reason of failure on the part of the assessee to disclose fully and truly all material facts necessary for

assessment. When the Assessing Officer has no even alleged the failure on the part of the assessee to disclose fully and truly all material facts necessary for assessment then, reopening after 4 years is not sustainable as hit by the proviso to Section 147 of the IT Act.

14. Further, we note that as per the approval of the CIT he has signed with date 14.04.2014 which is not in dispute. The another set of approval filed by the Id. DR itself reveals that the date is mentioned as 14.03.2014 therefore, it appears that the Id. CIT has granted approval twice and the first approval bears date as 14.04.2014 where as the second set filed by the Id. DR bears the date 14.03.2014. The signature on both these sets are not in dispute being by the same authority and persons Shri D.D. Goel CIT-II Range 6, Jaipur. Thus therefore, cannot be two approvals of the same reasons recorded by the AO issuing the notice U/s 148 of the Act. Even otherwise when the reopening is after 4 years from the end of the assessment and original assessment was completed U/s 143(3) of the Act then in the absence of any allegation by the AO of failure of the assessee to disclose fully and truly all material facts relevant for the assessment the reopening is not valid and the same is quashed.

In the result, the appeals of the Revenue are dismissed and the Cross appeal of the assessee in ITA No. 245/JP/2017 and 247/JP/2017 are dismissed and Cross appeal in ITA No. 246/JP/2017 is allowed.

Order pronounced in the open court on 03/12/2019.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 03/12/2019.

*Santosh.

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

1. अपीलार्थी / The Appellant- 1- Sh. Tarun Goel, Jaipur.
2- Sh. Arun Goel, Jaipur.
3- M/s Pinkcity Reality P. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(5), Jaipur.
ACIT, Circle-6, Jaipur.
ITO, Ward, 6(3), Jaipur.
ITO, Ward-6(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 245 to 247/JP/2017 & 265, 274 & 275/JP/2017 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar