

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' 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. 109/JP/2017
निर्धारण वर्ष /Assessment Year :2007-08

M/s Rajasthan Land Developers Pvt. Ltd., Jaipur	बनाम Vs.	DCIT, Circle-02, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCR5397N		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mohit Khandelwal (Adv.)
राजस्व की ओर से / Revenue by : Sh. Varindar Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 18/12/2019
उदघोषणा की तारीख / Date of Pronouncement: 17/03/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-1, Jaipur dated 30.12.2016.

2. At the outset, it is noted that the appeal of the assessee was heard by the Co-ordinate Bench and vide common order dated 07.02.2018 in ITA No. 418/JP/2016 for A.Y 2006-07 and 109/JP/2017 for the impugned assessment year, the Co-ordinate Bench has upheld the respective orders passed by the Id. CIT(A). Thereafter, the assessee moved a misc. application requesting for recall of the order for the impugned assessment year for the reason that Ground No. 3 of the assessee's appeal was not decided by the Tribunal while passing the order dated 07.02.2018. Thereafter, the misc. application was disposed off by the Coordinate Bench vide order dated 03.06.2019 and the

earlier order of the Tribunal was recalled for the limited purpose of adjudication of Ground No. 3 of the assessee's appeal and the findings of the Coordinate Bench while recalling the order reads as under:

"5. We have considered the rival submissions as well as the relevant material on record. On careful perusal of the impugned order, we find that the Tribunal in para 3.4 of the impugned order has decided the ground no. 1 of the assessee's appeal for assessment year 2007-08. For ready reference, we reproduce para 3.4 and 3.5 as under :-

3.4 We have heard the rival contentions and perused the materials available on record. We find that the Id. CIT(A) vide its judgement dated 30-12-2016 for the Assessment Year 2007-08 had taken into consideration the judgement dated 20-11-2015 of Hon'ble Upper District Judge, Room No. 19, Jaipur Mahanagar and rejected the contention of the assessee by observing as under (Page 20) of Id. CIT(A)'s order):-

"(v) Further vide above referred order, the Hon'ble ADJ has held as under:-

"फलतः वादी कम्पनी का यह वाद विरुद्ध प्रतिवादीगण एकपक्षीय सव्यय डिक्री कर आदेश दिया जाता है कि वादी कम्पनी व प्रतिवादी कम्पनी के मध्य निष्पादित एम.ओ.यू. दिनांक 14.07.2007 के तहत ही वादी कम्पनी वर्णित शर्तों व प्राप्त राशि के अनुसार ही प्रतिवादी कम्पनी को भूमि उपलब्ध करवाने का दायित्व रखती है। जिसके फलस्वरूप यह स्थाई निषेधाज्ञा प्रदान की जाती है कि प्रतिवादीगण कम्पनी एम.ओ.यू. दिनांक 14.07.2007 में वर्णित शर्तों के विरुद्ध किसी प्रकार की कोई कार्यवाही नहीं करें।"

"(vi) Thus it is evident from the above that the issue of genuineness or otherwise of the MOU dated 14-07-2007 was not before the Court of Hon'ble ADJ and the MOU dated 22-03-2006 was not placed before the Hon'ble Court, according to which balance payment of Rs. 13.10 crore was required to be paid to before 04-06-2006, out of the sale consideration of Rs.

15,87,50,000/- . Moreover, the above order was passed ex-parte in the absence of the respondents U Turn and Shri Nikhil Tripathi. Thus the contention of the A.R. is not correct and thus hereby rejected.

(vii) It may be mentioned that the appellant has failed to controvert the findings of the AO as stated in the assessment order and the remand report. Therefore, in view of the above discussion and looking to the totality of facts and circumstances of the case, it is held that the AO was justified in making addition of Rs. 3.26 crores u/s 68 of the Act and hence the same is hereby sustained.”

It is noted that filing of additional evidence by the Id.AR of the assessee has no relevance as the same has already been taken into consideration in the case of the assessee for the Assessment Year 2007-08. In this view of the matter and facts and circumstances of the case, we concur with the findings of the Id. CIT(A) for the Assessment Year 2007-08 and do not find merit in admitting the additional evidence filed by the assessee. Hence, the additional evidence filed by the assessee for the Assessment Year 2007-08 is not admitted. Thus Ground No. 1 of the assessee is dismissed.

3.5 As regards Ground No. 2, 3 and 4, we have heard the rival contentions and perused the materials available on record. It is not imperative to repeat the same facts as similar issue has been decided against the assessee in assessee's own case for the Assessment Year 2006-07. We further noted that in this case the Id. CIT(A) has rightly confirmed the action of the AO as the assessee could not advance any contrary material/ evidence as to the addition confirmed by the Id. CIT(A). In view of the similar facts and circumstances of the case as narrated in the case of the assessee for the Assessment Year 2006-07, the decision taken therein shall apply mutatis mutandis in

assessee's case for the Assessment Year 2007-08. Thus the appeal of the assessee is dismissed."

As it is clear that ground no. 2, 3 & 4 have been disposed off being common to the assessment year 2006-07. We find that the ground no. 3 for the assessment year 2007-08 is not common to any of the grounds for the assessment year 2006-07. Though the Tribunal while deciding ground no. 1 for the assessment year 2007-08 in para 3.4 has reproduced the finding of the Id. CIT (A) which also covers the issue involved in ground no. 3, however, the said reproduction of finding of Id. CIT (A) for deciding ground no. 1 does not lead to the conclusion that the said ground was independently decided by the Tribunal when it was not common to the assessment year 2006-07. Accordingly, we are of the considered opinion that there is a mistake crept in the impugned order so far as the ground no. 3 for the assessment year 2007-08 is not adjudicated by a speaking order. Accordingly, we recall the impugned order to the extent of non-adjudication of ground no. 3 for the assessment year 2007-08 and direct that the appeal of the assessee in ITA No. 109/JP/2017 for the assessment year 2007-08 be fixed for fresh hearing and adjudication of ground no. 3 of the assessee's appeal."

3. The present appeal has, therefore, come up for adjudication before us wherein the limited issue under consideration relates to Ground No. 3 of the assessee's appeal which reads as under:

"On the facts and circumstances of the case learned CIT Appeals was not justified while confirming addition of Rs. 3,26,00,000/- u/s 68 as unexplained cash credit of Income Tax Act, 1961."

4. Briefly stated, the facts of the case are that the assessee company is engaged in the business of real estate and has filed its return of income declaring total income of Rs. 1,90,08,880/- on 31.10.2007. The return was processed u/s 143(1) on 30.10.2008. Thereafter, basis certain information received by the Assessing officer, the case of the assessee was reopened after seeking requisite approval and notice u/s 148 was issued on 14.03.2014. In response to the notice, the assessee filed its return of income and also requested for copy of the reasons which were duly supplied to the assessee.

5. As per the Assessing officer, the assessee has entered into a memorandum of understanding (MOU) dated 22.03.2006 with M/s U- Turn Housing Pvt. Ltd. for sale of its land situated at Sanganer – Diggi, Malpura Road in the revenue villages of Panwalia, Manpur Tillawala, Jaisinghpura, Roopwas falling in Sanganer Tehsil of Jaipur. Further, as per copy of account furnished by M/s U-Turn Housing Pvt. Ltd., it was found that cash payment of Rs. 3,26,00,000/- was made to assessee against purchase of land on the following dates:

S.No.	Date	Amount (Rs.)
1.	01.04.2006	25,00,000
2.	10.04.2006	1,00,00,000
3.	15.04.2006	50,00,000
4.	24.04.2006	37,00,000
5.	30.04.2006	16,00,000
7.	17.05.2006	40,00,000
8.	28.05.2006	40,00,000
9.	14.08.2006	8,00,000
Total		3,26,00,000

6. The Assessing officer, however, found that no such receipts have been declared by the assessee in its books of accounts. In order to examine M/s U-Turn Housing Pvt. Ltd., commission u/s 131(1)(d) was issued to ADIT (Inv.), Special Cell, New Delhi wherein Shri Nikhil Tripathi, Director of M/s U-Turn Housing Pvt. Ltd. was examined on 13.03.2014 and his statement was recorded. The Assessing officer noted that in his statement, Shri Nikhil Tripathi has confirmed the cash payment of Rs. 4.09 crore in F.Y 2005-06 and F.Y 2006-07 to the assessee company and out of which, an amount of Rs. 3,26,00,000/- was stated to be paid in cash during the year under consideration. The assessee company was accordingly asked to show cause as to why these receipts should not be included in its total income.

7. In response to the show cause notice, the assessee company, in its submission filed before the Assessing officer on 23.02.2015, submitted that the MOU dated 22.03.2006 for sale and purchase of land measuring 125000 Sq. Yards @ Rs. 1270.00 Per Sq. Yard was cancelled due to non-fulfillment of certain conditions stated in the said MOU vide cancellation agreement dated 14.10.2007 which was duly signed by directors of both the companies, notarized and registered with the Notary public vide registration entry No. 426 dated 19.07.2007. It was further submitted that a fresh MOU was entered into between the two companies on 14.07.2007 for sale and purchase of 72,000 Sq. Yard land @ Rs. 1270.00 per Sq. Yard and the said MOU was duly signed by directors of both the companies, notarized and registered with the notary public vide registration entry No. 427 dated 19.07.2007. It was further submitted that during the F.Y 2006-07, the assessee has received a sum of Rs. 3,89,00,000/- which is duly supported by confirmation receipt from M/s U-Turn Housing Pvt. Ltd. and basis the same, the assessee has sold the land as per MOU dated 14.07.2007 and issued the

possession and allotment letter along with site plan to the allottee /nominee names provided by U-Turn Housing Pvt. Ltd.

8. The submission so filed was considered by the Assessing officer but not found acceptable to him. As per the Assessing Officer, Sh. Nikhil Tripathi in his statement has categorically denied to have signed any such Cancellation agreement/Ikrarnama dated 14.07.2007 wherein in response to question No. 4, he has denied the said document has been executed by him on behalf of U-Turn Housing Pvt. Ltd. as his signatures were forged. Further, the AO stated that in the books of accounts of M/s U-Turn Housing Pvt. Ltd, it has shown cash payment of Rs. 3,26,00,000/- to the assessee and the assessee has not accounted for said payment in its books of accounts. Therefore, cash payment of Rs. 3,26,00,000/- was treated as assessee's unexplained cash credit, by invoking provisions of section 68 of the Act, which is not shown in the books of accounts and the same was added to income of the assessee for the impugned assessment year. The assessment was accordingly completed at an income of Rs. 5,16,08,880/- vide order passed u/s 147 read with 143(3) dated 20.03.2015.

9. Being aggrieved, the assessee carried the matter in appeal before the Id CIT(A) who has since sustained the said additions and against the said findings, the assessee company is in appeal before us.

10. During the course of hearing, the Id. AR submitted that the impugned order passed by the Assessing Officer and further confirmed by the learned CIT(A) vide its impugned order dated 30.12.2016 is ex-facie illegal, unjust and is against the settled preposition of law. The Id. AR submitted that the said assessment order has been passed under Section 68 of the Act which deals with the unexplained cash credit in the books of the accounts of the

assessee. It is submitted that in the instant case, the essential condition stipulated under Section 68 of the Act have not been fulfilled. It is submitted that as per Section 68 of the Act, it is integral that the following conditions are duly satisfied before making any assessment/ re-assessment:

- The existence of the Books of Account maintained by the Assessee himself;
- The credit entry in the Books of Account; and
- The absence of the satisfactory explanation by the Assessee about the nature and source of the sum credited.

It was submitted that in the instant case, none of the aforementioned conditions are said to have been fulfilled due to which the impugned order is liable to be set and aside.

11. It was submitted by the Id AR that there exist no books of accounts of the assessee wherein any entry pertaining to cash received from M/s. U-Turn Housing Pvt. Ltd. is present. It is submitted that the assessee has merely received an amount of Rs. 5.69 Crores from the M/s. U-Turn Housing Pvt. Ltd. and Rs.5 Lakh from Mr. Nikhil Tripathi in the assessment year 2007-08 through banking channel and no cash amount has been received by the assessee company from M/s. U-Turn Housing Pvt. Ltd.

12. The Id. AR further submitted that in Paragraph No. 4 of the impugned assessment order, the Assessing Officer has provided the computation of the purported unexplained cash credit totaling Rs. 3,26,00,000/- which is as under:

S. No.	Date	Amount (Rs.)
1.	01.04.2006	25,00,000/-

2.	10.04.2006	1,00,00,000/-
3.	15.04.2006	50,00,000/-
4.	24.04.2006	37,00,000/-
5.	30.04.2006	16,00,000/-
6.	17.05.2006	40,00,000/-
7.	28.05.2006	40,00,000/-
8.	14.08.2006	8,00,000/-
	Total	3,26,00,000/-

In this regard, it was submitted that the aforementioned entries do not even match with the Books of Accounts of M/s. U-Turn Housing Pvt. Ltd. as no such entries are mentioned in the Ledger Account of M/s U-Turn Housing Pvt. Ltd. In such circumstances, the Department has failed to mention the source of such computation which is mentioned in the impugned assessment order. It is submitted that such assessment order has been passed solely on the basis of the statement of Shri Nikhil Tripathi and not on the basis of any entry in the books of accounts. It was also submitted that the aforementioned table also suffers from an arithmetic error as the cumulative total of the aforementioned amount would be Rs.3,16,00,000/- and not Rs.3,26,00,000/- as mentioned in the table.

13. It was further submitted that even from the perusal of the Ledger Account of M/s U-Turn Housing Pvt. Ltd. for the assessment year 2007-08, it is evident that the cash entries mentioned in such ledger have not been actually paid to the assessee but to some other person and the entry itself state that the payment was been made to "*Chandra Mohan for advance payment of Bharatpur Land*" dated 19.05.2006 for the payment of Rs. 4,00,000/-, Entry dated 25.05.2006 for the payment of Rs. 40,00,000/-, Entry dated 09.06.2006 for the payment of Rs. 10,00,000/-, Entry Dated

16.06.2006 for the payment of Rs. 10,00,000/- and Entry dated 24.07.2006 for the payment of Rs. 4,00,000/-). It is submitted that the assessee has no link with any person named as Mr. Chandra Mohan and further, no project was undertaken by the Assessee in Bharatpur. Thus, it is evident that the said entries have been wrongly made by M/s U-Turn Housing Pvt. Ltd. in its ledger account pertaining to the assessee and the same cannot be added in the income of the assessee.

14. The Id. AR further submitted that the income of the assessee cannot be re-assessed merely on the basis of some entries in the accounts of M/s U-Turn Housing Pvt. Ltd., if any, unless the same are proven to be correct on the basis of the available evidence. It is submitted that the Assessing Officer has failed to consider the confirmation of accounts for the assessment year 2007-08 which duly carries the signature of Shri Nikhil Tripathi and mentions that only amount of Rs.5.69 Crores has been paid by the M/s. U-Turn Housing Pvt. Ltd. to the assessee during the assessment year 2007-08. The confirmation of accounts and credit notes were authentic documents bearing the signature of the Director of M/s. U-Turn Housing Pvt. Ltd. and there existed no reason for non-consideration of the same. The same cannot be permitted to be disregarded merely on the basis of denial of the same by Shri Nikhil Tripathi in his statement.

15. The Id. AR further submitted that the Assessing Officer has failed to consider the revised MOU dated 14.07.2007 and the cancellation agreement dated 14.07.2007 which were recovered in original from possession of Mr. Nikhil Tripathi during police investigations. It was submitted that these documents were duly signed by both the parties and there existed no reason for denying the same by any of the parties. In this regard, it was submitted that it is evident from the aforementioned documents that M/s. U-Turn

Housing Pvt. Ltd. had merely paid a sum of Rs.5.69 Crores to the assessee in the financial year 2006-07 and no further amount has been paid. However, the Assessing Officer ignored these original documents and relied on the testimony of Shri Nikhil Tripathi. It was further submitted that Shri Nikhil Tripathi has himself accepted the existence of the MOU dated 14.07.2007 in its application filed before the learned C.M.M, Patiala House Court, New Delhi on 05.12.2013 and the said MOU also finds its mention in the order dated 11.05.2015 passed by the Learned C.M.M in deciding such application. It was further submitted that the existence of MOU dated 14.07.2007 also find mention in the suit filed by the assessee company before the ADJ-19, Jaipur and decree has been issued by Id. ADJ, Jaipur vide order dated 20.11.2015

16. The Id. AR further submitted that the learned Assessing Officer has not collected or examined the bank statement of M/s. U-Turn Housing Pvt. Ltd. to check the availability of the amount claim to have been paid to the assessee. Further, M/s. U-Turn Housing Pvt. Ltd. has claimed that it has withdrew the amount from its Bank Account on several occasions in order to pay cash to the assessee Company. However, they have not produced any Bank Statement to show such withdrawal made by them. It was submitted that in compliance of the directions of the Bench dated 22.03.2019, the Department has presented the Petty Cash Book Register of M/s. U-Turn Housing Pvt. Ltd. during the period between 01.04.2006 to 30.04.2006 as per which only the cash amount of Rs.37,10,000/- has been received by M/s. U-Turn Housing Pvt. Ltd. in that month. However, it has been claimed by M/s. U-Turn Housing Pvt. Ltd. that they have paid an amount of Rs. 2,28,00,000/- to the assessee Company during that month. Thus, M/s. U-Turn Housing Pvt. Ltd. was not having such huge amount with it in that month and has merely made the false claim of paying the same to the assessee Company. It is also pertinent to mention here that the Department

was duty bound to file the Bank Statement of M/s. U-Turn Housing Pvt. Ltd. during the period between 01.04.2006 to 30.04.2006 in order to establish the inflow and outflow of such huge amount from M/s. U-Turn Housing Pvt. Ltd. However, the Department has failed to produce any such documents and has merely filed an Account Statement between 20.04.2006 to 22.04.2006 and such account statement does not prove any payment being made in cash to the assessee Company.

17. It was further submitted that in the instant case the assessee company has duly discharged its burden by providing adequate documentation before the Assessing Officer to establish that it has not received the said cash amount of Rs.2.28 Crore from M/s. U-Turn Housing Pvt. Ltd. However, the Assessing Officer has neither considered these documents nor has provided any reason for disregarding the same.

18. It was further submitted that the Hon'ble Tribunal while hearing the Misc. Application for recalling of order filed by the assessee vide its order dated 22.03.2019 asked the Department to file the detailed report supported by relevant documents relying on which the assessment has been done by the Assessing Officer for the assessment year 2007-08. It is submitted that in response, the Department has filed a report dated 05.04.2019 before the Hon'ble Tribunal. It is evident from the said report that the entire assessment has been done merely on the basis of the statement given by Shri Nikhil Tripathi under Section 131 of the Act. Further, the Report itself mentions that the entire re-assessment has been done on the basis of the presumptions. It has been stated that "*Further, a specific modus operandi is in circulation amongst the real state sector entities that part payment is paid in cash and part in cheques. Further, the transactions cannot be void itself. One has made payment to the other, then it is ought to be understood that*

the other has received it. Also, whatever is paid according to the intention of the party paying: whatever is received is received according to the intention of the party receiving." It was submitted that the Hon'ble Supreme Court in the case of Central Bureau of Investigation vs. V.C. Shukla & Ors (SC)-1998-3-63 referring to section 34 of the India Evidence Act 1871 observed that "*the statement made therein shall not along be sufficient evidence to charge any person with liability*".

19. The Id. AR further submitted that it is settled proposition of law that while considering the explanation of the assessee, it is incumbent on the Assessing authority to enquire into the same. It cannot overlook one or the other materials or it cannot undertake a half-hearted enquiry. When looking at the facts, the Court has every right to scrutinize the situation and find out as to whether enquiry was made reasonably with the prudence of a reasonable man. Reliance is placed on the case of Hindustan Tea Trading Co Ltd vs. CIT, 263 ITR 289. However in the instant case, the learned Assessing Officer acted contrary to the said principle.

20. The Id. AR further placed reliance on the case of Commissioner of Income Tax vs. S.C. Sethi, 2006 SCC Online Raj. 329, wherein in the similar set of circumstances, the Hon'ble Rajasthan High Court has held the assessment cannot be done solely on the basis of the loose papers received from the premise of third party. It was submitted that the assessee has also sought for cross examination of Shri Nikhil Tripathi but the same was rejected.

21. The Id. AR further submitted that the only document on which the department has relied to justify the said assessment is the list of cash payments given by Shri Nikhil Tripathi to the Department during his

statement. It is submitted that the said list can neither be called as books of accounts nor can it be the basis of assessment being done under Section 68 of the Act. In support, reliance was placed on the decision of the Tribunal in the case of Prarthana Construction (P) Ltd. vs. Deputy Commissioner of Income Tax (2001) 70 TTJ Ahd 122 in which the Tribunal stated that "If we consider the evidentiary value of these documents as per section 34 of the Evidence Act, 1872 it is amply clear that these loose papers and documents cannot possibly be construed as books of accounts regularly kept in the course of business".

22. The AR further submitted that the Assessing Officer had failed to consider that Nikhil Tripathi had every reason to make false statement regarding the payment of the cash amount to the assessee in order to create his defense in the FIRs/ complaint filed against Nikhil Tripathi by the persons who have booked their flats/properties in "Silver City Project" of M/s. U-Turn Housing Pvt. Ltd. It was submitted that it is unfair to the assessee that the entire re-assessment has been done on the un-challenged testimony of the person who has been an accused in several cases and has been declared as absconder by the Court of law.

23. It was further submitted that in order to assess a person u/s 68 of the Act, there must be running books of account available on record. However, in the instant case, no return has been filed by M/s. U-Turn Housing Pvt. Ltd. after the Assessment Year 2007-08 and the name of the company has been strike off by the ROC and a certified copy of the company master data of M/s. U-Turn Housing Pvt. Ltd. is annexed.

24. It was further submitted that the addition of Rs.3.26,00,000/- is based on conjunction, surmises and presumption and the addition is bound to be

deleted as per the decision of the Hon'ble Tribunal in the case of Jaya S. Shetty vs. ACIT 1999 69 ITD 336 Mum. It was further submitted that Shri Nikhil Tripathi is a third party and list given by him cannot be relied upon. The Hon'ble Bombay High Court in the case of Astit. Cit vs Omprakash & Co. (2004) 87 TTJ Mumbai 183 stated that "the Department is not empowered to make any addition on the basis of seized papers found from the residence of the third party unless such papers are made available to be assessee".

25. The Id. AR finally submitted that the income of the assessee company has been wrongly reassessed in contradiction of the documents available on record. It is submitted that the assessee company cannot be made to suffer for the wrong committed by any other person and the impugned order passed by the Assessing officer deserve to be quashed and set aside.

26. Per contra, the Id. CIT DR submitted that statement of Sh. Nikhil Tripathi, Director of M/s U-Turn Housing Pvt. Ltd. was recorded on oath u/s 131 wherein he has confirmed the cash payment of Rs. 3.26 crores to the assessee company. It was further submitted that in the ledger account of the assessee in the books of M/s U-Turn Housing Pvt. Ltd., payment of Rs. 3.26 crores in cash to the assessee company is appearing and the assessee company has not brought on record any reasons as to why M/s U-Turn Housing Pvt. Ltd. would show cash payment of Rs. 3.26 crores in its audited books of accounts if no such payments were actually made by it.

27. Regarding the contention of the Id AR that MOU dated 14.07.2007 and cancellation agreement whereby the earlier MOU dated 22.03.2006 was cancelled were recovered in original from possession of Shri Nikhil Tripathi, referring to the order of the Id CIT(A), the Id CIT DR submitted that the assessee company has taken a similar plea before the Id CIT(A) that a

charge-sheet has been filed by the police against M/s U-Turn Housing Pvt. Ltd. and its directors emphasizing that the cancellation agreement dated 14.07.2007 was recovered in original by the police from the possession of Sh. Nikhil Tripathi. It was submitted that the Id. CIT(A) has gone through the charge-sheet and it was noticed by him that the Investigation Officer did not mention anything about the genuineness or otherwise of the cancellation agreement dated 14.07.2007. Therefore, the said charge-sheet is of no help to the assessee company.

28. Further, regarding the suit filed by the assessee company against Sh. Nikhil Tripathi before the ADJ-19, Jaipur, it was submitted that the Id. CIT(A) has gone through the order passed by the ADJ-19, Jaipur dated 20.11.2015 and the Id CIT(A) has recorded a finding that the issue of genuineness or otherwise of the MOU dated 14.07.2007 was not before the Court of Hon'ble ADJ and the MOU dated 22.03.2006 was not placed before the Hon'ble Court and the said order has been passed ex-parte in the absence of respondents. Therefore, the contention of the assessee company cannot be accepted. It was accordingly submitted that the AO was justified in making the addition of Rs. 3.26 crores u/s 68 of the Act and the findings so recorded by the AO should be confirmed. He accordingly supported order of the lower authorities.

29. We have heard the rival contentions and perused the material available on record. The case of the Revenue is that the assessee company has received a sum of Rs. 3.26 crores in cash from M/s U-Turn Housing Pvt. Ltd. during the F.Y 2006-07 relevant to impugned assessment year and the same is not shown in its books of accounts, accordingly, by invoking provisions of section 68 of the Act, the said amount has been brought to tax as unexplained cash credit in the hands of the assessee company. Firstly, we

refer to the provisions of section 68 of the Act which has been invoked by the Assessing officer and the same reads as under:-

"68. Where any sum is found credited in the books of an assessee maintained for any previous year, and the assessee offers no explanation about the nature and source thereof or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the sum so credited may be charged to income-tax as the income of the assessee of that previous year:

Provided that where the assessee is a company (not being a company in which the public are substantially interested), and the sum so credited consists of share application money, share capital, share premium or any such amount by whatever name called, any explanation offered by such assessee-company shall be deemed to be not satisfactory, unless—

- (a) the person, being a resident in whose name such credit is recorded in the books of such company also offers an explanation about the nature and source of such sum so credited; and*
- (b) such explanation in the opinion of the Assessing Officer aforesaid has been found to be satisfactory:*

Provided further that nothing contained in the first proviso shall apply if the person, in whose name the sum referred to therein is recorded, is a venture capital fund or a venture capital company as referred to in clause (23FB) of [section 10](#)."

30. As apparent from a reading of the aforesaid provisions, where a sum is found credited in the books of accounts of the assessee maintained for any previous year and the assessee offers either no explanation about the nature

and source thereof or the explanation offered by him is not satisfactory in the opinion of the Assessing Officer, the sum so credited may be charged to tax as income of the assessee of that previous year. Therefore, what is relevant to determine is whether any sum is found credited in the books of accounts of the assessee or not and then, once the said factual position is established, an explanation should be sought from the assessee regarding the nature and source of such sum and where such explanation is either not furnished or the explanation so furnished is not found satisfactory, the sum so credited in the books of accounts of the assessee may be charged to income tax as the income of the assessee. In the instant case, the case of the Revenue is that the assessee has received a sum of Rs. 3.26 crores in cash from M/s U-Turn Housing Pvt. Ltd. and the same is not shown in its books of accounts. The assessee has disputed the receipt of such sum of money (which we shall be dealing subsequently) and therefore, said sum of money is neither shown by the assessee in its books of accounts nor found credited by the Assessing officer in the books of accounts of the assessee. In such a scenario, it may be treated as unaccounted receipts in the hands of the assessee, however, as far as the provisions of section 68 of the Act are concerned, the same can be invoked only where such receipts are accounted for in the books of accounts and explanation regarding nature and source of such receipts is either not forthcoming or not found satisfactory. Therefore, as far as invoking the provisions of section 68 is concerned, in absence of the requisite requirements so specified therein, the said provisions cannot be invoked to bring such unaccounted receipts to tax as income in the hands of the assessee.

31. Having said that, let's look at the basis and the evidence on record on the basis of which the Assessing officer has arrived at the finding that sum of Rs 3.26 Crores has been received by the assessee during the financial year

2006-07 and has not been accounted for in its books of accounts and therefore is in nature of unaccounted receipts which are not disclosed to the Revenue authorities and consequentially, it should be subject to taxation.

32. Firstly, we find that the Assessing officer has relied on the statement of Sh. Nikhil Tripathi, Director of M/s U-Turn Housing Pvt. Ltd. which was recorded u/s 131 of the Act by the ADIT (Investigation) Special Cell, New Delhi. Even during the course of hearing, our reference was drawn by the Id CIT DR to question no. 7 and his response thereto, which has also been referred to by the Id CIT(A) in his order, accordingly, we deem it appropriate to reproduce the same as under:-

"Q. No. 7: I am also showing you a copy of document titled 'Detail of payments made to Rajasthan Land Developers Pvt. Ltd. Jaipur during the period wef 01/03/2006 to 31/03/2007' which has been filed by your company before the ITO, Ward-2(2), Jaipur u/s 133(6) of the I.T. Act, 1961. Please state whether you accept that this document has been filed by your company and if so why it does not match with your books of accounts?"

Ans: I confirm that the said document has been filed by UTHPL before the ITO, Ward-2(2), Jaipur u/s 133(6) of the I.T. Act, 1961. The total payment of Rs. 9.83 Crore made to M/s RLDPL matches with our books of accounts. However, the dates as per book of accounts and the said statement differs because UTHPL has accounted for the entire cash and part payment by bearer cheque paid to RLDPL in the FY 2006-07. We again confirm that payment by cash/ bearer cheque during the FY 2005-06 to RLDPL amounts to Rs. 67,50,000/- and during FY 2006-07 the same amount to Rs. 3.42 Crores against which Rs. 10,00,000/- is accounted in our books in the FY 2005-06 and the balance 3.99 crores is accounted for in our books in the FY 2006-07."

33. In his statement, Shri Nikhil Tripathi has stated that M/s U-Turn Housing Pvt. Ltd. has made payment of Rs. 9.83 crores to the assessee company as per details filed before the AO in response to notice u/s 133(6) of the Act. He has further stated in his statement that the said payment matches with the entries in the books of accounts of M/s U-Turn Housing Pvt. Ltd.

34. Further, the Assessing Officer has also relied upon copy of account of the assessee in the books of accounts of M/s U-Turn Housing Pvt. Ltd. as furnished by the latter during the course of assessment proceedings and held that as per such copy of account, it is found that cash payment of Rs 3.26 crores was made to assessee company on various dates as we have noted in para 4 above.

35. Therefore, we find that the statement of Shri Nikhil Tripathi and the copy of account of the assessee in the books of accounts of M/s U-Turn Housing Pvt. Ltd are the two pieces of document which have been relied upon by the Assessing officer while arriving at the finding that sum of Rs 3.26 Crores has been received by the assessee during the financial year 2006-07 and which has not been accounted for in its books of accounts.

36. At the same time, we find that the Assessing officer has not accepted the submission of the assessee company that the earlier MOU dated 22.03.2006 was cancelled due to non-fulfillment of certain conditions as evidenced by the cancellation agreement dated 14.10.2007 and a fresh MOU was entered into between the two companies on 14.07.2007 which talks about receipt of Rs 5.69 crores by the assessee company as part of the earlier MOU and which shall be adjusted against the total consideration of Rs 9.14 crores as agreed between the parties as per fresh MOU. It was

further submitted that out of Rs 5.69 crores, the assessee has received a sum of Rs. 3,89,00,000/- during the F.Y 2006-07, which was accounted for in its books of accounts and is duly supported by confirmation signed by Shri Nikhil Tripathi on behalf of M/s U-Turn Housing Pvt. Ltd. and basis the same, the assessee has sold the land as per MOU dated 14.07.2007 and issued the possession and allotment letter along with site plan to the allottee /nominee names provided by U-Turn Housing Pvt. Ltd., which was again not taken into consideration by the Assessing officer for the reason that Sh. Nikhil Tripathi in his statement has categorically denied to have signed any such cancellation agreement dated 14.07.2007 wherein in response to question No. 4, he has denied the said document has been executed by him on behalf of U-Turn Housing Pvt. Ltd. as his signatures were forged.

37. Firstly, if we look at the copy of account/ledger account of the assessee in the books of M/s U-Turn Housing Pvt. Ltd. for the period 1.4.2006 to 31.03.2007 which is available as part of assessment records, it shows opening balance of Rs. 2.45 crores and closing balance of Rs. 9.83 crores. Therefore, mere looking at the closing balance of Rs 9.83 crores in the assessee's ledger account, one may tend to believe that the same corroborates the statement made by Sh. Nikhil Tripathi wherein he has stated that M/s U-Turn Housing Pvt. Ltd. has paid a sum of Rs 9.83 crores to the assessee company. However, on a closer reading of the various payment entries reflected in the said ledger account, we find that it reflects various discrepancies and inconsistency as we have noted in subsequent paragraphs.

38. Firstly, we find that there are number of entries showing payments totaling to Rs 68 lacs which are reflected in the assessee's ledger account in the books of M/s U-Turn Housing Pvt. Ltd. wherein the cheques have been

issued to Shri Chandra Mohan for advance towards Bharatpur Land. As we have noted above and as per material available on record, the assessee's land is situated at Sanganer, Jaipur which is subject matter of two MOUs and there is nothing on record to suggest that the assessee has any dealing with M/s U-Turn Housing Pvt. Ltd. regarding any land situated at Bharatpur. Further, there is nothing on record to show any linkage or connection of Shri Chandra Mohan with the assessee company. In this regard, apparently, no question has been asked from Sh. Nikhil Tripathi by the ADIT (Investigation) Special Cell, New Delhi during the course of his statement recorded u/s 131 of the Act. Further, no enquiry or investigation has been carried by the Assessing officer even though these entries are apparent on the face of assessee's ledger account. Therefore, as far as these payments relating to Bharatpur land are concerned, the same cannot be related to the assessee company and have been wrongly debited in the accounts of the assessee company in the books of M/s U-Turn Housing Pvt. Ltd. for the reasons best known to such company and which have not been enquired or investigated by the Assessing officer. Therefore, the statement of Shri Nikhil Tripathi that the said payments made to the assessee company matches with the entries in the books of accounts of M/s U-Turn Housing Pvt. Ltd. doesn't stand the test of corroboration to the extent of aforesaid payments.

39. Further, we find that there are various entries totaling to Rs 1.49 crores as reflected in the assessee's aforesaid ledger account wherein the common thread is the narration against each of these entries stating that "the cheque no. encashed through Sh. R. K. Gupta and paid to Rajasthan Land Developers Pvt Ltd." In its submission dated 19.03.2014 filed before the Assessing Officer, the assessee has denied knowing or having any linkage with Sh. R. K. Gupta or having authorized him to act on its behalf. Therefore, where the Revenue is relying on the statement of

Sh. Nikhil Tripathi and in turn, entries in the books of accounts of M/s U-Turn Housing Pvt. Ltd. and the entries on the face of it suggest that certain cheques have been encashed through Sh. R. K. Gupta and there is denial by the assessee company regarding knowing or have authorised Sh R. K Gupta, than it was incumbent on the part of the Assessing Officer to have enquired the matter further from Sh. Nikhil Tripathi about such transaction and Sh. R. K. Gupta and his linkage/relationship with M/s U-Turn Housing Pvt. Ltd. or the assessee company and should have recorded his statement as well as statement of Sh R.K. Gupta in order to build chain of events as to the involvement of Sh. R. K Gupta, on whose behalf he has encashed the cheques and how the payment have been made to the assessee company. However, we again find that there is nothing on record in terms of any question asked in this regard from Sh. Nikhil Tripathi while recording his statement or any summons issued and statement of Sh. R K Gupta being recorded by the Assessing officer or any separate inquiry or investigation so carried out by the AO either directly or through issue of summons to the concern parties. Therefore, as far as these payments totaling to Rs 1.49 crores are concerned, in absence of necessary nexus been established by the Assessing officer, the same cannot be related to the assessee company merely basis the statement of Shri Nikhil Tripathi and entries in the books of accounts of M/s U-Turn Housing Pvt. Ltd. Therefore, the statement of Shri Nikhil Tripathi that the said payments made to the assessee company matches with the entries in the books of accounts of M/s U-Turn Housing Pvt. Ltd. again fails the test of corroboration to the extent of aforesaid payments.

40. Further, on perusal of the aforesaid ledger account of the assessee in the books of M/s U-Turn Housing Pvt. Ltd., we also find that there are various entries totaling to Rs 1.77 crores wherein cash payments have been

shown to have been made to the assessee company by M/s U-Turn Housing Pvt. Ltd out of its petty cash book. In this regard, firstly, it is noted that date and amount of cash payment as reflected in the ledger account doesn't tally with the date and amount of cash payment as recorded by the Assessing officer in the assessment order as apparent from following comparative table:

S. No.	As per assessment order		As per ledger account	
	Date	Amount (Rs.)	Date	Amount (Rs.)
1.	01.04.2006	25,00,000/-	22.04.2006	20,00,000/-
2.	10.04.2006	1,00,00,000/-	22.05.2006	40,00,000/-
3.	15.04.2006	50,00,000/-	11.06.2006	20,00,000/-
4.	24.04.2006	37,00,000/-	17.06.2006	12,00,000/-
5.	30.04.2006	16,00,000/-	23.06.2006	15,00,000/-
6.	17.05.2006	40,00,000/-	27.07.2006	13,00,000/-
7.	28.05.2006	40,00,000/-	22.08.2006	15,00,000/-
8.	14.08.2006	8,00,000/-	10.09.2006	10,00,000/-
9.		-	11.09.2006	10,00,000/-
10.		-	3.10.2006	10,00,000/-
11.		-	7.10.2006	12,00,000/-
	Total	3,26,00,000/-		1,77,00,000/-

41. As can be seen from above, there are not just vast difference in the date and amount of payment in two tables but even the total amount varies significantly from Rs 3.26 crores as recorded in the assessment order to Rs 1.77 crores as per the ledger account of the assessee in books of M/s U-Turn Housing Pvt. Ltd. and apparently, both these details of payments are claimed to be emerging from the books of accounts of M/s U-Turn Housing Pvt. Ltd. However, we find that the first set of data is emerging from a

statement signed by Sh. Nikhil Tripathi and apparently handed over by him during the course of recording of his statement u/s 131 which has no corroboration when the same is compared with the entries in the ledger account of assessee in books of M/s U-Turn Housing Pvt. Ltd. Given these apparent and inherent inconsistencies on face of record, the question is whether the Assessing officer carried out any further enquiry or investigation to verify the veracity of statement given by Shri Nikhil Tripathi. We note that there is no enquiry or investigation carried out by the Assessing officer regarding these discrepancies. Further, no finding has been recorded by him which proves that at the relevant point in time, M/s U-Turn Housing Pvt. Ltd. had sufficient cash balance in its hands or the money has been collected from prospective buyers or the money has been withdrawn from its bank to pay to the assessee company. We therefore find that there are vast differences in set of two figures as claimed to be paid to be assessee company and what has been reflected in the books of accounts and even the source of such payments are not emerging from the records. We therefore find that the Assessing officer has relied blindly on the statement of Sh. Nikhil Tripathi which lacks necessary corroboration and cannot be relied upon.

42. Further, on perusal of the aforesaid ledger account of the assessee in the books of M/s U-Turn Housing Pvt. Ltd., we find that there are various entries totaling to Rs 3.39 crores wherein cheque payments have been shown to have been made to the assessee company during the financial year 2006-07 and cheque payment of Rs 50 lacs during the financial year 2005-06 totalling to Rs 3.89 crores, whole of which has been accounted for in the books of assessee company during the financial year 2006-07. The same payment of Rs 3.89 crores has also been confirmed by Shri Nikhil Tripathi in the confirmation submitted before the AO which has apparently not being

considered by the AO while framing the assessment apparently for the reason that such confirmation has been obtained and submitted by the assessee company and blind reliance on the statement of Shri Nikhil Tripathi which fails the necessary corroboration test as we have noted above.

43. Now coming to the assessee company's contention regarding the basis of receipt of Rs 5.69 crores from M/s U-Turn Housing Pvt. Ltd. out of which Rs 3.89 crores was received/recorded in its books of accounts during the financial year 2006-07 relevant to impugned assessment year. The assessee company has submitted a document by way of a memorandum of understanding (MOU) dated 14.07.2007, notarized and registered with Notary Public, which has been entered into between the assessee company and M/s U-Turn Housing Pvt. Ltd. wherein both the entities have come together and agreed on terms and conditions including relevant obligations and payment of consideration wherein there is a clear mention of Rs. 5.69 crores which have been paid by M/s U-Turn Housing Pvt. Ltd. to the assessee company prior to entering into such MOU as part of earlier MOU which was cancelled and which shall be adjusted against the revised consideration of Rs 9.14 Crores. In this regard, we refer to para no. 3 of the MOU dated 14.07.2007 wherein it has been stated as under:

"That both the parties entered into an MOU earlier to this MOU (which is the present MOU) on 23.02.2006 and in pursuance of the earlier MOU dated 23.02.2006 party of the second part has already made a payment of Rs.5,69,00,000/- (Rupees Five Crore Sixty Nine Lac only) to the party of the first part but due to some unavoidable circumstances on the part of the second party the earlier MOU dated 23.02.2006 has been cancelled by a separate cancelled deed, executed by the mutual consent of both the parties, on dated 14.07.2007

wherein it has been agreed that both the parties will execute another MOU (which is the present MOU) with fresh understanding and with fresh terms and conditions and the said amount of Rs. 5,69,00,000/- (Rupees Five Crore Sixty Nine Lac only) which was paid by the party of the second part to the party of the first part will be adjusted against the total payment of Rs.9,14,40,000/- (Rupees Nine Crore Fourteen Lac Forty Thousand only) which is to be made by the party of the second party to the party of the first part under this MOU.”

44. The Assessing officer has not accepted the said MOU dated 14.07.2007 stating that Sh. Nikhil Tripathi in his statement has denied to have executed such MOU stating that his signature on this document was forged. The question is where the assessee company has stated that it has entered into such an MOU and the same is the basis for receipt of Rs 5.69 crores duly accounted for in its books of accounts and the other signatory to the MOU denies entering into such an MOU, what should be the course of action to be adopted by the Assessing officer. To our mind, once the payment of Rs 5.69 crores is duly accounted for in books of accounts of both parties and such payment has been made through banking channel and reflected in respective bank accounts, there cannot be any dispute that such payment has changed hands. Only question that remains is whether there is any payment over and above the aforesaid payment of Rs 5.69 crores in terms of earlier MOU. In such a scenario, certain basic due diligence was required in the matter where the matter relating to forged signatures could have been referred to the forensic expert and his report should be called upon. Further, necessary enquiry could have been conducted with the Notary Public who has authenticated the execution and signing of second MOU dated 14.07.2007 and cancellation agreement of even date where the earlier MOU dated 22.03.2006 was cancelled by both the parties. However,

there is nothing on record which suggest any such assistance was sought from forensic experts or any enquiry and investigation was carried out by the Assessing officer.

45. In addition, we note that original copy of MOU dated 14.07.2007 executed between the two parties was found during the course of investigation by the police authorities while investigating the economic offence alleged to be committed by Sh. Nikhil Tripathi, find mention in the copy of chargesheet filed in the ADJ Court, Patiala House, New Delhi, a copy of which is available as part of assessment records submitted before us and available at Department's paper book pages 51 to 75 and the relevant contents thereof reads as under:-

"The documents recovered from the office of the accused company also included one Memorandum of Understanding dt. 14.07.07, (in original) executed between Rajasthan Land Developers Pvt. Ltd through its director Mr. Prabhu Lal Chopra and M/s U-Turn Housing Pvt. Ltd through its director Nikhil Tripathi. In the said MOU M/s Rajasthan Land Developers Pvt. Ltd had agreed, to sell the marketing rights to M/s U-Turn Housing Pvt. Ltd in respect of 72,000 Sq. Yards of land out of the total land of 10.63 Acres situated in Villages Jaisinghpura & Manpura Tilawala, Tehsil Sanaganer, Jaipur. In the said MOU, it is mentioned that NOC and proceedings U/s 90B of the Land Revenue Act 1956 in respect of the land had been passed by the Competent Authority and Layout plans have been submitted & approved by the Zonal Level Committee, whereas the proceedings u/s 25(2) of the Jaipur Development Act were under process and lay out plans were yet to be released. The total consideration for the above rights was fixed @ 1270 Per sq. Yards totaling to Rs. 9,14,40,000/-, out of which Rs. 5.69 Crores had already been received as per an

earlier agreement Dt. 22.03.2006 (wrongly referred as 23.02.2006) in this MOU, which was cancelled on the same date i.e. 14.07.07. The remaining payment of Rs. 3.45 Crores was agreed to be paid by the U-turn Housing Pvt. Ltd. on the release of maps by the Jaipur Development Authority. It is also mentioned in the MOU that because of the reasons beyond the control of M/s Rajasthan Developers Pvt. Ltd., if the maps could not released within the six months of the execution of MOU dt. 14.07.2007, M/s U-Turn Housing Pvt. Ltd would have to make the remaining payment of Rs. 3.45 Crores, failing which the MOU shall stand cancelled."

46. Similarly, we find that Shri Nikhil Tripathi has filed an application before the learned C.M.M, Patiala House Court, New Delhi on 05.12.2013 for removing the embargo on the execution of lease deed by JDA on the assessee's land situated at Sanganer and in the said application, he has stated about the initial MOU dated 22.03.2006 and subsequent MOU dated 14.07.2007 and Id C.M.M has taken cognizance of the second MOU i.e, MOU dated 14.07.2007 and denied to lift the embargo vide his order dated 11.05.2015 and his findings read as under:

"In view of the arguments addressed on behalf of the parties and perusal of the record, I am of the opinion that in the present case offence alleged against the accused persons is serious in nature wherein the land was put for sale even prior to acquisition of ownership rights from M/s Rajasthan Land Developers Private Limited. As per the 2nd MOU, the applicant acquired the rights over the land in the year 2007 whereas the applicant had invited applications for allotment of land way back in the year 2006. Even M/s Rajasthan Land Developers Private Limited has also raised objection over lifting of

embargo and is willing to get the same removed only to the extent of 42,000 sqyds for which it has been paid for.

The applicant has applied for lifting of embargo for the benefit of victims but it is silent about making allotment of land or repayment to all the 408 investors involved in the present. The applicant has not come up with any concrete proposal to compensate them. Even the investors who are to be compensated have not been brought forward to substantiate the plea of the applicant. The applicant has not come up with any plan to justify as to how he will compensate the investors who left off after allotment of the available land since he has allotted the land more than what was available with him. Even M/s Rajasthan Land Developers Private Limited is not willing for sale of the entire land as it has offered the land only to the extent of 42,000 sqyads for which it has received the payment from the applicant. In these circumstances, I do not find that lifting of embargo would actually benefit the investors/victims and as such the application being devoid of any merit is dismissed.”

47. Further, we note that the existence of MOU dated 14.07.2007 and payment of Rs 5.69 crores also find mention in the suit filed by the assessee company before the ADJ-19, Jaipur which has been taken cognizance of by the ADJ Court and decree has been issued by Id. ADJ, Jaipur vide order dated 20.11.2015 which reads as under:

फलतः वादी कम्पनी का यह वाद विरुद्ध प्रतिवादीगण एकपक्षीय सव्यय डिक्री कर आदेश दिया जाता है कि वादी कम्पनी व प्रतिवादी कम्पनी के मध्य निष्पादित एम.ओ.यू. दिनांक 14.07.2007 के तहत ही वादी कम्पनी वर्णित शर्तों व प्राप्त राशि के अनुसार ही प्रतिवादी कम्पनी को भूमि उपलब्ध करवाने का दायित्व रखती है। जिसके फलस्वरूप यह स्थाई निषेधाज्ञा प्रदान की जाती है कि प्रतिवादीगण कम्पनी एम.ओ.यू. दिनांक 14.07.2007 में वर्णित शर्तों के विरुद्ध किसी प्रकार की कोई कार्यवाही नहीं करें। डिक्रीपर्चा तदानुसार जारी हो।

48. Therefore, where the existence of fresh MOU dated 14.07.2007 has been stated to be recovered in original during the course of police investigation and also find mention in the filings before the appropriate Courts and taken cognizance of even by the Appropriate Courts, it was not correct on part of the Assessing officer to brush aside the contention of the assessee and negate the very existence of such an MOU and that too, on basis of the statement of Shri Nikhil Tripathi which as we have noted above lacks necessary corroboration even with the books of accounts of M/s. U-Turn Housing Pvt. Ltd. The statement of Shri Nikhil Tripathi may raise certain initial apprehension in the mind of the Assessing officer and rightly so, however, such apprehension cannot take the form of final finding of the Assessing officer where he decides on his own that such MOU is forged and not taken cognizance of especially in the light of investigations and filings before the Appropriate Courts. In any case, in such type of matters where the parties claim that their signatures are forged on a particular document and the contents and existence of such documents are challenged, as Courts have held from time to time, the matter is best suited to be referred to the domain experts such as handwriting experts or forensic experts who have the requisite expertise and experience in the manner and the Assessing officer cannot arrogate to himself the power to determine the authenticity and existence of the document and that too, without referring to any reliable material.

49. Having said that, we now look at the contents of the MOU dated 14.07.2007. The MOU talks about selling of marketing rights by the assessee company to M/s. U-Turn Housing Pvt. Ltd. in respect of 72,000 sq yards of land which shall include the booking of plots and receiving the payment from prospective customers at the rate of Rs 1270 per sq yard for a

total consideration of Rs 9.14 crores. Further, on perusal of the MOU, we find that both the parties have agreed therein that the amount to the tune of Rs 5.69 Crores has already been paid by M/s. U-Turn Housing Pvt. Ltd. prior to entering into such fresh MOU and the same shall be adjusted against the total consideration of Rs. 9.14 crores. The Court of Id. ADJ Jaipur has also taken cognizance of receipt of Rs 5.69 crores by the assessee company. The said assertion in the MOU has also been confirmed separately by way of annual confirmation statement submitted before the Assessing officer duly signed by Shri Nikhil Tripathi and it is not the case of the Revenue that his signature on such confirmation was forged. Further, credit notes are issued by M/s. U-Turn Housing Pvt. Ltd. again signed by Shri Nikhil Tripathi drawing reference to MOU dated 14.07.2007 and stating that sum has been credited in account of the assessee company against sale proceeds of specified plots of land. Further, as we have noted above, the payment of Rs 3.89 Crores also corroborates with the books of accounts of M/s. U-Turn Housing Pvt. Ltd.

50. In light of aforesaid discussions and in the entirety of facts and circumstances of case, we are of the considered view that the statement of Shri Nikhil Tripathi cannot be held as reliable piece of evidence against the assessee company in view of various discrepancies and lack of corroboration as we have discussed above. Further, there is no material on record which can form the basis to hold that the assessee company has received Rs 3.26 crores in cash from M/s U-Turn Housing Pvt. Ltd. which has not been accounted for in its books of accounts during the financial year 2006-07. Therefore, the addition made by the Assessing officer to this effect is hereby directed to be deleted.

In the result, ground no. 3 of the assessee's appeal is allowed.

Order pronounced in the open Court on 17/03/2020.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 17/03/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Rajasthan Land Developers Pvt. Ltd.,
Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-02, 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. 109/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar