

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 923/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

M/s VIP Group Housing Society 10/VI, Near Hari Kripa Tower, Sector No. 10, Vidhyadhar Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward-4(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATV8014H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 677/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

Shri Darshan Singh Agarwal, 10/1/3, No. 2, Hari Kripa Tower, Vidhyadhar Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward-4(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACNPS9316C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 678/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

M/s Top Star Group Housing Society 101/3-21, Hari Kripa Tower, Vidyadhar Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward-4(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABTT2563L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 679/JP/2019
निर्धारण वर्ष/Assessment Year :2009-10

Sh. Anil Singhal, 7/59, Vidhyadhar Nagar, Jaipur	बनाम Vs.	Income Tax Officer Ward-4(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AETPS1206H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से / Assessee by : Ms. Pallavi Joshi (Adv.)
राजस्व की ओर से / Revenue by : Smt. Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 25/06/2021
उदघोषणा की तारीख / Date of Pronouncement: 28/06/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are four appeals filed by the aforesaid assessees against the respective orders of Id. CIT(A), Ajmer dated 25.02.2019 for AY 2009-10. Since common issues are involved, all these appeals were heard together and are being disposed off by this consolidated order.

ITA No. 923/JP/2019

2. With the consent of both the parties, the case of the assessee in ITA No. 923/JP/2019 is taken as the lead case for the purposes of present discussion wherein the assessee has taken the following grounds of appeal:-

"On the facts and in the circumstances of the case:-

- 1. The Ld CIT has erred in not appreciating the assessee's reply and in not holding that the assessee society was working on mutuality basis and such principle of mutuality was applicable.*
- 2. The AO/ CIT(A) wrongly added/confirmed the entire sale proceeds in the hands of society without assigning any cogent reason.*
- 3. The Ld CIT has erred in not assigning any cogent reason for his decision, especially when assessee had filled detailed written submission with facts and figures. For this failure it can be said that no proper reason has been assigned for rejection of assessee's explanation.*
- 4. The Ld CIT has erred in confirming 15% of profit on the sale of flats of Rs. 46,60,000/- without giving any basis or citation of the comparable cases. Alternatively, it is submitted that, if any, profit*

was assessable u/s 44AD though not applicable in the present case.

5. *The Ld CIT has erred in not directing that capital gain, if any, was assessable in the hands of original flat owners.*
6. *The Ld CIT has erred in confirming the substantive assessment in the hands of assessee society."*

3. Briefly stated, the facts of the case are that the Assessing Officer was in receipt of certain information that the assessee society has sold certain immovable property amounting to Rs. 15,54,300/- and the profit earned thereupon has not been offered for taxation in absence of any return of income filed u/s 139 of the Act. Notice u/s 148 was thereafter issued and duly served on the assessee. In response, the assessee did not file any return of income. Subsequently, a notice u/s 142(1) was issued and in response, the assessee filed its return of income disclosing income at Nil. Thereafter, notice u/s 143(2) was issued and after calling for information and explanation from the assessee, the assessment was completed u/s 147 read with section 143(3) dated 29.12.2016 wherein the profit on sale of flats amounting to Rs. 6,99,000/- (15% of the total sale consideration of Rs. 46,60,000/-) was brought to tax on substantive basis in the hands of the assessee society in the status of association of persons. Besides, an amount of Rs. 46,60,000/- was brought to tax u/s 68 as investment made by the assessee society out of its undisclosed income and introduced as member's funds. Further, the Assessing Officer held that since the real beneficiary of sale of flats cannot be ascertained, therefore, to protect interest of Revenue, simultaneous additions of Rs 53,59,000/- were being made in hands of Sh. Anil Singhal on protective basis.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has since confirmed the said additions. Against the said findings, the assessee is now in appeal before us.

5. During the course of hearing, the Id. AR submitted that Jaipur Development Authority (JDA) allotted Plot No. 10/1/1, Sector 10, Vidhyadhar Nagar, Jaipur measuring 682.76 Sq. meters on lottery basis to the 8 members under the banner of VIP Group Housing Society for a consideration of Rs. 2,76,542/- on 23.11.1990. Subsequently, the lease deed was executed after 15 years of allotment on 18.07.2005 in which the list of Members (i.e. owners of the flat) along with their respective flat numbers were mentioned. Flats cannot be constructed separately by each member of the society therefore the flats were constructed by the society on the principle of mutuality. It was submitted that main purpose of the society was to construct flats on the said plots as directed by the JDA on behalf of the members on the principle of mutuality. For the purposes, the assessee society executed a flat construction agreement with a Contractor to construct flats according to the approved map on the basis of per square feet rate with material and labour.

6. It was submitted that the Assessing Officer has made an addition of Rs. 46,60,000/- being difference of closing balance of member's fund at the close of the financial year and opening balance as on the beginning of the financial year holding the same as investment made by the assessee society out of undisclosed income. It was submitted that both the lower authorities have not appreciated the fact that the increase in the member's fund was on account of contributions received during the year from its members out of sale consideration of the flats. It was accordingly submitted that the said amount of Rs. 46,60,000/- was received by the assessee society from its members from sale of their respective flats and therefore, there is no question of any investment made by the society out of its undisclosed income. It was further submitted that the Id. AO firstly made the addition of Rs. 46,60,000/- u/s 68 of the Act and the same amount was made the basis of another addition of Rs. 6,99,000/- towards undisclosed profit on sale of flats which was calculated @ 15% of Rs. 46,60,000/- on an arbitrary basis. It was submitted that even where principle of maturity is ignored, only real income can be brought in the

hands of the assessee after considering the cost of the construction which as on 31st March, 2009 stood at Rs. 1,24,46,381/-. There is no net profit which arises in the hands of the assessee and thus, nothing can be brought to tax in the hands of the assessee society.

7. It was further submitted that both the lower authorities have failed to appreciate the fact that society is not actual owner of the flats and the actual owners are members of the society who have sold the flats to third parties and therefore, capital gains if any arising from such transfer will arise in the hands of the members and not in the hands of the society. It was accordingly submitted that even the substantive assessment made in the hands of the assessee society is therefore, factually wrong. It was accordingly submitted that the addition so made by the Assessing Officer and which has been confirmed by the Id CIT(A) may be directed to be deleted.

8. Further, reliance was placed on the written submissions and contents thereof read as under:-

" G.O.A-1 " On the facts and in the circumstances of the case the Ld CIT has erred in not appreciating the assessee's reply and in not holding that the assessee society was working on mutuality basis and such principle of mutuality was applicable"

SUBMISSION

It is admitted fact that due to modernization, people are living in complexes and townships with many other persons sharing many common areas. Gone are the days, when people were living in own houses in a single piece of land. Now, a single piece of land is shared by many house owners. This is when the concept of Group Housing Scheme, Resident Welfare Association (RWA) or Apartment Owners Association has come into existence.

In the present case of the assessee, the above concept is applicable. The Jaipur Development Authority (JDA) allotted Plot No. 10/1/1, Sector 10, Vidhayadhar Nagar, Jaipur measuring 682.76 Sq. meters on lottery basis to the 8 members under the banner of society (VIP Group Housing Society) for the consideration of Rs. 2,76,542/- on 23-11-1990 through letter of allotment number 2149. Copy of Allotment Letter is enclosed and marked as Annexure-A. The lease deed was executed after 15 years on 18-07-2005 accompanied with the list of Members mentioning therein name of owners of the flat along with their respective flat numbers. (the copy of Lease deed (Patta) is enclosed and marked as Annexure B. However, main purpose of the society was to construct the flats on the said Plot as directed by the JDA on behalf of the members collectively.

The name of the members who applied for plot is as under and flat number assigned by JDA to respective member :-

<i>S. No.</i>	<i>Name of members</i>	<i>Flat No.</i>
<i>1.</i>	<i>Smt. Usha Devi Jajusariya</i>	<i>10/1/1(1)</i>
<i>2.</i>	<i>Shri Sanjay Kala</i>	<i>10/1/1(2)</i>
<i>3.</i>	<i>Shri Naresh Kumar</i>	<i>10/1/1(3)</i>
<i>4.</i>	<i>Shri Sharad Agarwal</i>	<i>10/1/1(4)</i>
<i>5.</i>	<i>Shri Shyam Sunder Bhargava</i>	<i>10/1/1(5)</i>
<i>6.</i>	<i>Shri Rajenda Prasad Agarwal</i>	<i>10/1/1(6)</i>
<i>7.</i>	<i>Shri ArunTulsiyan</i>	<i>10/1/1(7)</i>
<i>8.</i>	<i>Shri Khusiram</i>	<i>10/1/1(8)</i>

The above eight members are collectively called as Society.

*According to Section 5(1)(a) of the Rajasthan Cooperative Society Act, 2001
Application of Registration*

"at least fifteen members of persons, each of them being a member of different family, intend to form a cooperative society having objects to undertake certain

co-operative activities, for promotion of the economic interests of its members in accordance with the co-operative principles as specified in Schedule A”.

Since the number of members were less than the minimum number of members required to get the society registered under the Rajasthan Cooperative Society Act, 2001, therefore society could not be got registered. The plot was allotted to construct 8 flats for 8 members only. The unregistered society is a legal entity because it was recognised by JDA (a State Government Body) therefore it may be deemed that M/S VIP Group Housing Society is a legal entity. However, if the unregistered Society is considered as AOP then the "Principle of Mutuality" will be applicable, in case of AOP as well as in case of Unregistered Society. Reliance is placed on State of West Bengal & Ors V/S Calcutta Club Limited 311 CTR 121 (2019)(SC) wherein it was held that the 'doctrine of mutuality' continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Art. 366(29A) to the Constitution of India.

As it is an admitted fact that 'No man can make a profit out of himself' which is the touchstone of mutuality concept. Reliance is placed on the decision of CIT vs West Godavari District Rice Millers Association (150 ITR 395) The A.P. High Court held that it is well settled that the surplus accruing to a mutual association is no income or profit at all for purpose of income tax, the test of mutuality being complete identity between the contributors and participants.

The assessee society was working on the concept of mutuality with an object of not for profit. Flats cannot be constructed separately by each member of the society therefore the flats were constructed by the society on the Principle of Mutuality. The Society appointed a Contractor to construct flats according to the approved map on the basis of per square feet rate with material and labour. Copy of agreement between society and contractor is enclosed and marked as Annexure-C. The Contractor started construction on the said land.

As per the terms of the agreement the Contractor raised running bill every year in the month of March and the Society deducted TDS thereon.

All the above activities were done by the society on behalf of its members on combined basis with non-profit earning motive on the Doctrine of Mutuality. Reliance is placed on the following judgements where Principle of Mutuality is relied by the courts:-

1. *State of West Bengal & Ors V/S Calcutta Club Limited 311 CTR 121 (2019)(SC)-it was held that the doctrine of mutuality continues to be applicable to incorporated and unincorporated members' clubs after the 46th Amendment adding Art. 366(29A) to the Constitution of India.*
2. *ITO Vs. Venkatesh Premises Calcutta Club Limited 301 CTR 514 (2018) (SC).- it was held that "The doctrine of mutuality, based on common law principles, is premised on the theory that a person cannot make a profit from himself. An amount received from oneself, therefore, cannot be regarded as income and taxable. Sec. 2(24) of the IT Act defines taxable income. The income of a co-operative society from business is taxable under s. 2(24)(vii) and will stand excluded from the principle of mutuality."*
3. *CIT vs Prabhukunj Co-operative Housing Society Ltd. (2015) 377 ITR 13 (Guj)*
4. *CIT vs. Adarsh Co-operative Housing Society Ltd (1995) 213 ITR 677 (Guj)*
5. *Chelmsford Club vs. CIT (2000) 159 CTR (SC) 235 : (2000) 243 ITR 89 (SC)*
6. *CIT vs. Bankipur Club Ltd. (1997) 140 CTR (SC) 102 : (1997) 226 ITR 97 (SC)*
7. *CIT vs. Royal Western India Turf Club Ltd. (1953) 24 ITR 551 (SC)*
8. *Delhi Stock Exchange Association Ltd. vs. CIT (1961) 41 ITR 495 (SC)*
9. *CIT vs Talangang Co-operative Housing Society Ltd. (2010) 44 DTR (Del) 58 in which it was held that: the bye-laws clearly exposit that it is for the*

development and construction of residential houses, flats for the members to provide the members necessary common amenities and facilities as may be found practicable by the DDA and the municipal Corporation of Delhi and such other authorities and, therefore, the society, to cater to the needs of the members, has constructed the shops and no outside consumers are allowed to the complex of the society. The shops were built after obtaining proper certificate from the concerned engineer. In this factual matrix, the Tribunal has held that the principle of mutuality would apply to the above income.

As regards the interest derived from the deposits made by the society out of the contributions made by the members of the society, the Tribunal placing reliance on the decision in All India Oriental Bank of Commerce Welfare Society (supra) has expressed the view that once the identity of the contributor to the fund of recipients is accepted, the principle of mutuality would get attracted. It is also noticeable that there is nothing on record to show that the amount collected by the respondent has been diverted for any other purpose. In view of the aforesaid analysis, we concur with the conclusion of the Tribunal and accordingly, the appeal stands dismissed in limine."

G.O.A-2 "On the facts and in the circumstances of the case the AO/ CIT(A) wrongly added/confirmed the entire sale proceed in the hands of society without assigning any cogent reason"

AND

G.O.A-3 " On the facts and in the circumstances of the case the Ld CIT has erred in not assigning any cogent reason for his decision, especially when assessee had filed detailed written submission with facts and figures. For this failure it can be said that no proper reason has been assigned for rejection of assessee's explanation"

Submission

The Ld. AO has made an addition of Rs. 46,60,000/- (difference of closing balance 91,61,000/- and opening balance 45,01,000/- of members' Fund) u/s 68 as investment out of undisclosed income. However the Ld CIT(A) has confirmed the same ignoring the facts of the case and without assigning any cogent reason for rejecting the assessee's explanation and without stating why the principle of mutuality is not applicable in this case. Kindly refer to Para 5.3 of the order of the Ld. CIT(A), which is reproduced as under for your kind perusal:-

"5.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submissions carefully. It is seems that either during the course of assessment proceedings or appellate proceedings the appellant has not been able to produce any documents evidences in support of the submission made by the appellant. Therefore, the contentions raised in the written submission are not accepted. In view of the facts discussed by the AO in the assessment order, addition of Rs 6,99,000/- (15% of Rs 46,60,000/-) and addition of Rs 46,60,000/- are hereby confirmed."

The written submission filed before the Ld. CIT(A) is enclosed and marked as Annexure –D. It has been clearly mentioned that this increase was on account of contribution received during the year from its members out of sale consideration of flats. The details are as under:-

F.Y.- 2008-09

<i>Date of Sale</i>	<i>Flat No.</i>	<i>Sale Deed was executed between</i>	<i>Details of sale consideration</i>	<i>Amount received during the year</i>
<i>23-09-2008</i>	<i>5</i>	<i>VIP SHREE SHYAM SUNDAR BHARGAV</i>	<i>SMT. RINKU MAHARSHI / SHREE RAM PRAKASH MAHARSHI Sale consideration was Rs. 16,40,000/- out of which Rs. 2.80.000/- was received on 26.03.2008 and the remaining amount of Rs.</i>	<i>13,60,000/-</i>

			<i>13,60,000/- was received on 17.09.2008 at the time of execution of sale deed. Annexure-E (Pg 26 to 32 of Paper book)</i>	
<i>16-03-2009</i>	<i>2</i>	<i>VIP SHREE SANJAY KALA</i>	<i>SHREE RAKESH KUMAR MISHRA / SHREE RAMDAYAL SHARMA Sale consideration was Rs. 17,00,000/- out of which Rs. 1,51,000/- was received on 10.02.2009, Rs. 15,49,000/- was received on 17.03.2009 at the time of execution of sale deed. Annexure-F (Pg 33 to 44 of Paper book).</i>	<i>17,00,000/-</i>
<i>16-03-2009</i>	<i>8</i>	<i>VIP SHREE KHUSHI RAM</i>	<i>SMT. SEEMA JINDAL / SHREE ANIL JINDAL Sale consideration was Rs. 16,00,000/- out of which Rs. 51000/- was received on 11.03.2009, Rs. 13,60,000/- was received on 13.03.2009 and Rs. 1,89,000/- was received on 16.03.2009 at the time of execution of sale deed. Annexure-G (Pg 45 to 55 of Paper book)</i>	<i>16,00,000/-</i>
			<i>Total amount received during F.Y. 2008-09</i>	<i>46,60,000/-</i>

The Ld AO made the addition of Rs 46,60,000/- under Section 68 of the Income tax Act by treating investment of society out of its undisclosed income and introduced it as member's fund. From the above table it is evident that Rs 46,60,000/- was received by the society out of sale consideration of above flats. Therefore, there is no question of investment of society out of its undisclosed income. It is submitted that during the course of assessment and first appeal proceedings the assessee's AR has submitted all the necessary documents and explained that this amount was received from its members out of sale consideration received at the time of sale of their flats. Kindly refer and we are reproducing the relevant extract of the sale deed as under:-

यह कि उक्त वर्णित सेक्टर-10 के अन्तर्गत प्लॉट संख्या- 10/1/1 में ग्राउण्ड फ्लोर पर निर्मित फ्लैट संख्या- 10/1/1 (2) जिसका कुल क्षेत्रफल 1450 वर्गफीट बिजुटअप एरिया है, की खरीद हेतु मुख्य-समय पर उक्त वी.आई.पी. ग्रुप हाउसिंग सोसायटी, जयपुर को भुगतान की। उक्त प्लॉट पर फ्लैटों के निर्माण का कार्य करवाने हेतु हुए खर्च को वी.आई.पी. ग्रुप हाउसिंग सोसायटी द्वारा वहन किया गया है। इस प्रकार फ्लैट संख्या- 10/1/1 (2) पर खर्च हुए हिस्से की राशि का भुगतान मुख्यकारकर्ता श्री संजय काला द्वारा वी.आई.पी. ग्रुप हाउसिंग सोसायटी को करना बकाया है। अतएव इस विक्रय से प्राप्त राशि सोसायटी को प्रदान की जा रही है।

The above amount of sale consideration was accounted for by the assessee as member's contribution in its books of accounts, therefore, this amount is not undisclosed income of the assessee. It has already been stated that society is not the actual owner of the flats.

According to the terms of Flat Construction Agreement the society was liable to pay construction cost to the contractor. Kindly refer and we are reproducing the relevant extract of the Construction Agreement as under:-

- 10 यह कि द्वितीय पक्ष द्वारा प्रोजेक्ट के निर्माण में किये गये खर्च के भुगतान की जिम्मेदारी प्रथम पक्ष लेता है। प्रथम पक्ष भुगतान के लिए अपने सदस्यों से धनराशि एकत्रित कर द्वितीय पक्ष को तयशुदा राशि का भुगतान करने की जिम्मेदारी लेता है।
- 11 यह कि कोई भी सदस्य अपने फ्लैट का बेचान करता है तो ऐसी परिस्थिति में विक्रय प्रतिफल राशि में से द्वितीय पक्ष को भुगतान किये जाने की जिम्मेदारी प्रथम पक्ष लेता है।

Thus the A.O. has wrongly stated that funds of unaccounted money of group housing society have been invested. Society did not have any business activity merely working on mutuality concept then how unaccounted money had been generated by the assessee society. The Ld. AO failed to prove the generation of unaccounted money in his order. The Ld. AO also failed to assess the income in the hands of original owner of the flats and the Ld. CIT (A) has confirmed the same without assigning cogent reason.

As mentioned above that the society was working under the principle of mutuality and the funds contributed by the members in the common fund/members capital fund cannot be treated as undisclosed income of the Society.

G.O.A-4 "On the facts and in the circumstances of the case the Ld CIT has erred in confirming the 15% of profit on the sale of flats of Rs. 46,60,000/- without giving any basis or citation of the comparable cases. Alternatively it is submitted that, if any, profit was assessable u/s 44AD though not applicable in the present case."

SUBMISSION

During the year under consideration the assessee society has received the contribution from three members out of sale consideration of their respective flats. The Ld. AO made the addition of Rs. 46,60,000/- u/s 68 of the IT Act and on the same amount made another addition of Rs. 6,99,000/- towards undisclosed profit which was calculated @ 15% of Rs. 46,60,000/- on arbitrary basis and Ld. CIT (A) confirmed the same. If principle of mutuality was ignored then CIT(A) might apply rate of 8% mentioned u/s 44AD although the same is not applicable in the present case."

9. Per contra, the Id. DR submitted that the assessee society is an unregistered group housing society consisting of only 8 members and the same cannot be classified as a legal entity. It was submitted that these 8 members formed a group and got a plot from JDA in guise of a group housing, constructed flats thereon and which were later on sold in open market. There is no element of mutual benefit amongst the members. It is therefore a case of an unregistered group housing society which has been formed without any partnership deed and has rightly been assessed in the status of association of persons (AOP). It was further submitted that basis review of sale deeds entered into by the assessee society, it can be noted that it has sold 3 flats for Rs. 46,60,000/- and after issuing show cause to the assessee, net profit @

15% of the sale consideration has been determined at Rs. 6,99,000/- as undisclosed profit of sale of the flats which is quite reasonable. It was further submitted that from the documents so filed, it is clear that Sh. Anil Singhal has lead the group, signed all the sale deeds of flats along with power of attorney holders. He himself has sold two flats as power of attorney holder of others as well as President of Society i.e. absolute owner of the property. No document whatsoever is filed to show why any owner of flat has given power of attorney for sale of flat to Sh. Anil Singhal and given that both the society as well as Sh. Anil Singhal are denying getting income from sale of flat on different grounds and out of these two, the real beneficiary of sale of flat cannot be ascertained, to protect interest of Revenue, substantive assessment has been made in the hands of the assessee society and protective assessment in the hands of the President of society, Sh. Anil Singhal.

10. Regarding addition of Rs. 46,60,000/- u/s 68 of the Act, it was submitted that there is an increase of the said amount in the funds shown in the name of the members of the society and assessee was asked to file documentary evidence of investment made in construction by each of the members but no such details were filed during the course of assessment proceedings. However, the assessee only submitted that the said amount was from receipt of sale of flats. It was submitted that purchaser of the flat from whom the money has been received cannot be said to be member of the society and therefore, the Assessing Officer has rightly brought to tax the said amount introduced as member's fund as investment out of undisclosed income of the society. The Id DR accordingly supported the order of the lower authorities.

11. We have heard the rival contentions and perused the material available on record. We find that there are three sale deeds which have been executed during the financial year relevant to assessment year under consideration. On perusal of sale deed for flat no. 5, it is noted that the same has been executed on 23.09.2008 among Shri Anil Singhal as power of

attorney holder of Shri Shyam Sundar Bhargav who was allotted the flat, the assessee society through its president, Shri Anil Singhal, and Smt Rinku Maharshi, the buyer of the flat for a total consideration of Rs 16,40,000/-. Out of total consideration, an amount of Rs 13,60,000/- has been received at the time of execution of sale deed i.e, during the financial year 2008-09 relevant to impugned assessment year. In this regard, it is also noted that the said sum of Rs 13,60,000 has been paid to the assessee society in terms of impugned sale deed.

12. Similarly, on perusal of sale deed for flat no. 2, it is noted that the same has been executed on 16.03.2009 among Smt Seema Jindal as power of attorney holder of Shri Sanjay Kala who was allotted the flat, the assessee society through its president Shri Anil Singhal and Shri Rakesh Kumar Misra, the buyer of the flat for a total consideration of Rs 17,00,000/- out of which has been received during the financial year 2008-09 relevant to impugned assessment year. It is noted that said amount of Rs 17,00,000/- has been paid to the assessee society in terms of impugned sale deed.

13. Similarly, on perusal of sale deed for flat no. 8, it is noted that the same has been executed on 16.03.2009 among Shri Anil Singhal as power of attorney holder of Shri Kushi Ram who was allotted the flat, the assessee society through its president Shri Anil Singhal, and Smt Seema Jindal, the buyer of the flat for a total consideration of Rs 16,00,000/- paid in various installments during the financial year 2008-09 relevant to impugned assessment year. And it is again noted that the said amount of Rs 16,00,000/- has been paid to the assessee society in terms of the impugned sale deed.

14. We therefore find that the assessee society has received a total sum of Rs 46,60,000/- in terms of aforesaid three sale deeds and the same is clearly emerging from perusal of the contents of the sale deeds. It is also an

admitted position that the said amount has been credited by the assessee society in individual members account in its books of accounts. The source of such receipts is clearly discernable from the sale deeds duly executed and the same cannot therefore be termed as amount received from undisclosed sources. The identity of the members in whose name the flats were allotted and have sold the flats, the identity of the buyers, the mode and manner of receipt of amount is clearly discernable from the sale deeds which are duly executed and registered with the stamp duty authorities and are therefore clear pieces of evidence in support of known sources of receipts which cannot be ignored in absence of any other contradictory and compelling documentary evidence brought on record. Therefore, as far as addition of Rs 46,60,000/- u/s 68 is concerned, there is no legal basis for such addition in hands of the assessee society which has been assessed as a separate assessable person in the status of AOP and the same is hereby directed to be deleted.

15. The next issue that arises for consideration is as to why the amount of sale consideration has been received by the assessee society and not retained by individual members who have executed the impugned sale deeds and in whose name the flats were initially allotted. In this regard, it has been submitted by the Id AR that since the assessee society has appointed the contractor and borne the cost of construction on behalf of the individual members, the latter have an obligation towards the society and to discharge their past unfulfilled obligation, they have paid the amount out of sale consideration so received on sale of individual flats. In support of his contentions, he has relied on the contents of the sale deeds which carries a similar narration of facts as also admitted by the parties to the sale deeds, copy of construction agreement entered into between the assessee society and the contractor, and details of cost of land and construction as per financial statements of the assessee society as per particulars below:

"Following are the summary of Cost of land and cost of construction year wise:-

<i>Financial Year</i>	<i>Particulars</i>	<i>Amount (In Rs.)</i>	<i>Cumulative Cost</i>
<i>Upto</i>	<i>Cost of Land</i>	<i>4,83,660/-</i>	<i>4,83,660/-</i>
<i>2005-06</i>	<i>Construction cost</i>	<i>32,52,037/-</i>	<i>37,35,697/-</i>
<i>2006-07</i>	<i>Construction cost</i>	<i>41,55,307/-</i>	<i>78,91,004/-</i>
<i>2007-08</i>	<i>Construction cost</i>	<i>25,50,000/-</i>	<i>1,04,41,004/-</i>
<i>2008-09</i>	<i>Construction cost</i>	<i>20,05,377/-</i>	<i>1,24,46,381/-</i>
<i>2009-10</i>	<i>Construction cost</i>	<i>7,25,179/-</i>	<i>1,31,71,560/-</i>
<i>2010-11</i>	<i>Construction cost</i>	<i>2,00,000/-</i>	<i>1,33,71,560/-</i>
	<i>Total</i>	<i>1,33,71,560/-</i>	

The above Construction cost also includes Cost of transformer, Cost of lift and Other Misc Common Exp. The Society has already submitted the copy of ledger account of contractor for the aforesaid period alongwith TDS return before the Ld AO at the time of assessment proceeding. We are enclosing copy of ledger account of Land & Building for your kind perusal and marked as Annexure- C."

16. We find that where there is an understanding between the individual members and the assessee society that the latter shall carry out the construction on behalf of the former and the former will bear the cost, it is clearly an obligation on part of the individual members to pay to the assessee society towards the cost of construction. In the instant three cases, we find that the respective members have not fully discharged their obligation towards the assessee society in the past in terms of cost of construction and the amount received on sale of the flats have therefore been paid by them to the assessee society towards cost of construction of their respective flats and which has been credited in their individual members account in the books of assessee's society.

17. The next and related issue that arises for consideration relates to taxability of profits arising on sale of these three flats through execution of sale deeds. In terms of determination of quantum of taxable income, we

need to consider total revenues and total cost, and it is only the net income which can be brought to tax. The AO has considered total receipts of Rs 46,60,000/- as revenues in the hands of the assessee society and has estimated a profit percentage of 15%. As we have discussed above, these receipts have been received by the assessee society from its members towards the cost of construction incurred by it on behalf of respective members. Once the assessee society has been assessed as a separate person, it carries its identity distinct from its members and revenues in the hands of members need not be revenues in the hands of the society. Even if we were to consider the receipts as revenues in the hands of the society, no basis has been spelt out as to how the 15% profit percentage has been arrived at by the AO or where any third party comparable data has been considered, the details of such data. In contrast, we find that we have the construction cost figures as per the assessee's society financial statements before us. If we look at the cumulative construction cost of Rs 1,24,46,381/- as on the close of the financial year 2008-09 relevant to impugned assessment year, proportionate cost of construction for three flats out of total eight flats comes to Rs 46,67,392/- as against total receipts of Rs 46,60,000/- received during the year resulting in shortfall of Rs 7,392/. Therefore, in absence of any surplus, the question of taxability doesn't arise for consideration and addition of profits of Rs 6,99,000/- made by the AO deserve to be deleted.

18. In the entirety of facts and circumstances of the case and in light of aforesaid discussion, both the additions of Rs 46,60,000/- and Rs 6,99,000/- made in the hands of the assessee society are hereby directed to be deleted.

19. The other grounds of appeal being academic in nature are dismissed as infructuous.

In the result, the appeal of the assessee society is disposed off in light of aforesaid directions.

ITA No. 679/JP/2019

20. Now, coming to appeal in ITA No. 679/JP/19 wherein the assessee, Shri Anil Singhal has taken following ground of appeal:

"On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in confirming the addition of Rs.53,59,000/- assessed in the hands of the society "VIP Group Housing Society" on protective basis in the hands of assessee without having any material on record to establish that assessee was involved in the transaction of the society except that he was President of the Society."

21. In this regard, the Id AR has raised various contentions as are contained in the written submissions and contents thereof read as under:-

"The assessee is president of VIP Group Housing Society. The case of VIP Group Housing Society was reopened u/s 148 of the Income Tax Act, 1961 simultaneously the assessee's case was also reopened on the basis that profits on sale of flats have neither been declared by the society nor by the assessee and addition of 53,59,000/-was made in the hand of society on substantive basis and in the hands of assessee on protective basis. The Ld AO made the addition in the hands of appellant/assessee on Protective basis on the basis that the entire work has been done by the appellant/assessee under the guise of society holding him to be the real owner and beneficiary of the transactions made by the society, since the appellant/assessee signed the sale deed in the capacity of President of the Society. However the Ld AO has also stated that since the real beneficiary of the land cannot be ascertained therefore to protect the interest of revenue

simultaneous addition was being made in the total income of the appellant/assessee.

The Ld CIT(A) has confirmed the same ignoring the facts of the case and without assigning any cogent reason for rejecting the assessee's explanation and without stating how the appellant/assessee is real owner. We are enclosing herewith the Written Submission filed before the CIT (A) and marked as Annexure A (Pg 10 to 11 of Paper book). Kindly refer to Para 5.3 of the order of the Ld. CIT(A), which is reproduced as under for your kind perusal:-

"5.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submissions carefully. It is seems that either during the course of assessment proceedings or appellate proceedings the appellant has not been able to produce any documents evidences in support of the submission made MI the appellant. Therefore, the contentions raised in the written submission are not accepted. In view of the facts discussed by the AO in the assessment order, addition of Rs 6,99,000/- (15% of Rs 46,60,000/-) and addition of Rs 46,60,000/- are hereby confirmed."

The appellant/assessee was president of Society and working on honorary basis. He was involved in day to day working of society in the capacity of president and not in his individual capacity to earn any income. The appellant/assessee neither invested any fund for construction of flats nor taken any profit/remuneration from the society.

The protective assessment in the hands of assessee / appellant was made by the Ld. AO on the basis of irregularities which was noticed in the assessment order of VIP Group Housing Society. Kindly refer Para 3.2 of the assessment order wherein various irregularities were enumerated. The reply of respective irregularities is as under:

"The Society was formed by 8 members and it was not registered with Registrar of society.

According to the Ld. AO it is an irregularity but it is actuality that JDA has recognised the status of unregistered society and allotted plot for construction of 8 flats thereon. As per Section 5(1)(a) of the Rajasthan Cooperative Society Act, 2001 Application of Registration.

at least fifteen members of persons, each of them being a member of different family, intend to form a cooperative society having objects to undertake certain co-operative activities, for promotion of the economic interests of its members in accordance with the co-operative principles as specified in Schedule A".

Since the number of members were less than the minimum number of members required to get the society registered under the Rajasthan Cooperative Society Act, 2001, therefore society could not be got registered. The plot was allotted to construct 8 flats for 8 members only. The unregistered society is a legal entity because it was recognised by JDA (a State Government Body) therefore it may be deemed that M/S VIP Group Housing Society is a legal entity.

- In-spite of this, the members of society applied for allotment of plot to JDA Jaipur and somehow got the plot no. 10/ 1/ 1, Vidhayadhar Nagar, Jaipur in the name of society. Therefore, these 8 members draw a lottery and got one flat each.*

The Ld. AO used the word "somehow" which reflects that the Ld AO has formed his opinion based on suspicion. This irregularity is based on suspicion, surmises and conjectures. The AO is quasi-judicial authority and he should form his opinion judicially not in an arbitrary manner. The AO has just made the addition for the sake of addition based on

suspicion, surmises and conjectures. Suspicion how so strong cannot take place of proof.

Reliance is placed on the decision of Apex Court in the following cases:-

- (i) Dhakeshwari Cotton Mills Ltd. V/S CIT (1954) 26 ITR 775(SC) wherein it was held by the Apex Court that the "ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment under s. 23(3)".*
- (ii) Lalchand Bhagat Ambika Ram Vs CIT (1959) 37 ITR 288 (SC) wherein it was held by the Apex Court that "It is, therefore, clear that the Tribunal in arriving at the conclusion it did in the present case indulged in suspicions, conjectures and surmises and acted without any evidence or upon a view of the facts which could not reasonably be entertained or the facts found were such that no person acting judicially and properly instructed as to the relevant law could have found, or the finding was, in other words, perverse and this court is entitled to interfere.*

The Jaipur Development Authority (JDA) is a statutory body formed by Government of Rajasthan. The JDA has never objected or questioned that society formed was unregistered society and not eligible to get the aforesaid plot allotted in scheme, if it was mandatory condition then JDA would not allot the Plot. Therefore it is wrong to say that members somehow got the plot in the name of society.

- The flats were constructed and sold to other persons. The President of the Society Shri Anil Singhal has signed all the sale deeds on behalf of the society as first registered deed (Seller).*

The sale deeds were executed between buyer and seller. The sale deed was signed by appellant /assessee in the capacity of President of Society and member (Flat Owner) through Power of Attorney holder thus both the parties collectively called seller. The Society is a Performa party and signed for satisfaction of the buyer.

Kindly refer the language of Sale Deed Pg 12 of Paper book and we are reproducing the extract of sale deed in which the status of assessee was Secretary of VIP Group Housing Society:-

हम, श्रीमती सीमा जिन्दल पत्नी श्री अनिल जिन्दल, जाति-महाजन, निवासीया-221, ए. डबल्यू.एच.ओ.कोलोनी, अम्बाबाड़ी, जयपुर (राज.) बहैसियत मुख्तयारआम श्री संजय काला पुत्र श्री भंवर लाल काला, निवासी-प्लॉट नं.-9/81, विद्याघर नगर, जयपुर एवं वी.आई.पी ग्रुप हाउसिंग सासायटी, जरिये अध्यक्ष अनिल सिंघल पुत्र श्री ओ.पी. सिंघल, निवासी-प्लॉट नं.-7/59, सेक्टर-7, विद्याघर नगर, जयपुर के है।

- *During the assessment proceedings, in the case of M/s VIP Group Housing Society, details regarding the investment made for construction of flats have not been proved.*

It is wrong finding by the Ld AO as there was a Construction Agreement executed between the society and contractor. According to the terms of the agreement the cost of construction was initially born by contractor and society was liable to collect money from members. TDS was deducted on the running bills produced by the Contractor from time to time.

It is seen that Shri Anil Singhal was over all in-charge of construction of flats, transfer of flats through Ikrarnama/ Sale deed etc. None of the original 8 members appears to be involved in construction of flats.

The sale deeds were executed by appellant/ assessee signed in the capacity of President of Society. Since the society has entered into a Flat Construction Agreement with contractor and same had been signed by

the appellant/assessee on behalf of the society. The Ld. AO has not mentioned that how this actuality is irregularity. The appellant / assessee was representing all the members of the society therefore there was no role of involvement of 8 members required.

- *No detail whatsoever is filed regarding change of membership in the society.*

The Ld AO noticed this irregularity without going through the assessment order of Ms. VIP Group Housing Society. The Society has provided list of initial members as well as members changed thereafter on account of sale of flats by the original owner to other person. Kindly refer the assessment order of M/s VIP Group Housing Society Para no 7 at Page No. 6 the list of original

- *It appears that flats were constructed a group of persons lead by the assessee after allotment of plot from JDA in the name of society.*

It is not an irregularity because the society was working on the principle of mutuality and being assessee was President of the society, therefore, it was the responsibility of the assessee to perform his duties assigned by all the members.

- *Total 8 residential units/flats were constructed over this land and sold out by the assessee in different year as POA holder. Return of income of M/ s VIP Group Housing Co-operative Society has not been filed u/ s 139.*

The Jaipur Development Authority (JDA) allotted Plot No. 10/1/1, Sector 10, Vidhayadhar Nagar, Jaipur measuring 682.76 Sq. meters on lottery basis to the 8 members under the banner of society (VIP Group Housing Society) for the consideration of Rs. 2,76,542/- on 23-11-1990

through letter of allotment number 2149. The lease deed was executed after 15 years on 1807-2005. Since there was long time gap between allotment and execution of lease deed, some of the members appointed assessee as Power of Attorney holders to do any act on behalf of respective members before any Government Authorities Further the assessee has not obtained power of attorney from all the members. In the year under consideration three flats were sold out of which Flat no 2 was sold by the owner of the Flat (member) by appointing Smt. Seema Jindal as power of attorney holder of the member/owner of Flat No. 2. We are enclosing herewith the copy of sale deed for your kind perusal and marked as Annexure- B (Pg 12 to 23 of Paper book) therefore, it is not true that the assessee has sold all the flats as Power of Attorney Holder and no consideration was received by the assessee out of sale consideration.

- *The profit arising on sale of these units/ flats was not offered for taxation by the assessee in his individual return."*

Since assessee was not owner of the flats. He was only power of attorney holder as well as president of society, therefore, the sale of flats was not offered for taxation by the assessee in his return of income. The lease deed was executed after 15 years of allotment on 18-07-2005 in which the list of Members (i.e. owners of the flat) along with their respective flat numbers were mentioned. Flats cannot be constructed separately by each member of the society therefore the flats were constructed by the society on the Principle of Mutuality. Kindly refer the language of Sale Deed Pg 27 of Paper book and we are reproducing the relevant extract of the sale deed as under:-

यह कि उक्त वर्णित सैक्टर-10 के अन्तर्गत एक भूखण्ड/प्लाट नं.10/1/1 कुल 682.76 वर्गमीटर में थर्ड फ्लोर पर निर्मित फ्लैट संख्या 10/1/1(8) के मालिक खुशी राम ने अपना मुख्तयारआम श्री अनिल सिंघल को नियुक्त किया है जिसे उक्त फ्लैट संख्या 10/1/1(8) थर्ड फ्लोर पर स्थित के बावत् सभी प्रकार की लिखित व

मौखिक कार्यवाही करने के तमाम अधिकार मुख्यारआम श्री अनिल सिंघल को आज तक यथावत प्राप्त है।

The flat owner executed the power of attorney in favour of the assessee. The flat owner has neither transferred ownership nor possession of the flats in favour of the assessee

Reliance is placed on decision of Hon'ble Supreme Court in the case of Suraj Lamp and Industries (P.) Ltd. v. State of Haryana [2012] 340 ITR 1 where it was held that:-

"Scope of Power of Attorney

13. A power of attorney is not an instrument of transfer in regard to any right, title or interest in an immovable property. The power of attorney is creation of an agency whereby the grantor authorizes the grantee to do the acts specified therein, on behalf of grantor, which when executed will be binding on the grantor as if done by him (see section 1A and section 2 of the Powers of Attorney Act, 1882). It is revocable or terminable at any time unless it is made irrevocable in a manner known to law. Even an irrevocable attorney does not have the effect of transferring title to the grantee."

Reliance is also placed on decision of Hon'ble Madras High Court in the case of CIT Vs Shri C.Sugumaran Tax case (Appeal) No 840 of 2014 order dated 03-112014 {2014 (11) TMI 320} where in it was held that:-

"11. In the present case we find that there is no transfer to or enabling enjoyment of property in favour of the assessee in any manner and therefore, sub-clause (vi) of Section 2(47) of the Income Tax Act does not get attracted. Clause 21 of the power of attorney, which has been already referred to supra, clearly reveals that no consideration was received from the power agent for appointing him as power of attorney.

It also emphasised therein that the property right has not been handed over to the power agent. We are, therefore, unable to accept the plea of the Revenue that there was an element of transfer or enabling enjoyment in favour of the assessee. The letter of the land owner subsequently issued does not come to the aid of the Department. It is the duty of the power of attorney holder to deliver the amount received for the purpose of transfer of property. Therefore, no fault could be found on the part of the assessee. Assuming that he had delivered certain sum to the land owner, it is but the lawful duty of the power of attorney to deliver payment to the land owner. The sale to Dr.Meera Bai is also for the same value. Hence, nothing turns on the letter of the erstwhile owner, in favour of the Department.

12. We, therefore, now proceed to analyse the meaning behind circular No.495 dated 22.9.1987. The interpretation of the circular as put forward by Sri. T. Ravikumar, learned standing counsel appearing for the Revenue, we are not in agreement. The provisions of sub-clause (vi) of Section 2(47) of the Income Tax Act make it clear that the transaction, which has the effect of transferring or enabling the enjoyment of immovable property alone would come within the ambit of transfer. The circular reads something more into the provision. We are not inclined to accept such an interpretation. The circular also states that the legal ownership would continue with the transferor; but the property rights if it is transferred by way of power of attorney would come within the ambit of sub-clause (vi) of Section 2(47) of the Income Tax Act. Assuming we accept the intention behind the circular, then there should be an element of transfer or enabling enjoyment of property right as stated in paragraph 11.2 of the circular by the power of attorney holder.

13. We find no such recital in the power of attorney as extracted by the Tribunal and referred to by us. On the contrary, the terms of the power of attorney clearly show that property rights has not been

transferred to the power of attorney holder and there is also no provision for enabling enjoyment. It is not the case of the Department that the power of attorney is sham. If they accept the power of attorney is valid, then the plea of capital gains at the hands of the assessee has no legs to stand.

Accordingly, we find no merits in this Tax Case (Appeal)."

On similar issue the Hon'ble ITAT Jaipur Bench has decided in the case of Shri Gyan Chand Agarwal vs ACIT, Circle-6, Jaipur (ITA No. 266/JP/2017) wherein the Hon'ble Bench has referred the decision of ITAT Jaipur Bench in the case of Shri Suraj Narain Khatoria vs. ITO (ITA No. 1043/JP/2021) under the identical facts. The relevant portion of the decision is reproduced herein below:-

12. The admitted fact is that the appellant after correction of revenue record and recording the said land measuring 0.30 hect. in the name of Shri Bharat Singh and Shri Vijay Pal Singh, sold the same to Smt. Radha Devi Khatoria vide sale deed dated 19/ 12/2007 placed at assessee's paper book pages 49 to 54. The said sale deed has been executed by the appellant in his capacity as a power of attorney of Shri Bharat Singh and Shri Vijay Pal Singh for a sale consideration of Rs. 4.11 lacs. Smt. Radha Devi Khatoria happens to be wife of the appellant. The enquiries conducted by the Assessing Officer reveals that Shri Suraj Narain Khatoria, the appellant has not returned or made payment of the aforesaid sale consideration of Rs. 4.11 lacs to Shri Bharat Singh and Shri Vijay Pal Singh as the same is stated to have been denied categorically by them, but appellant's case is that the said payment stood made to Smt. Manju Yadav as is evidenced by the sale deed executed by the appellant. For such a controversy, the remedy lies somewhere else. The Sub- Registrar, in this case has adopted value of this property at Rs.42 lacs for stamp duty

purposes, which has been treated as sale consideration by the Assessing Officer.

13. Perusal of the sale deed dated 19/ 12/2007 at page 50 of the assessee's paper book, it is revealed that said Shri Suraj Narain did not execute the sale deed as an owner of the aforesaid land measuring 0.30 hect. He executed the sale deed in his capacity as a power of attorney holder only wherein he had only a delegated right. This right was not an independent right of the appellant. There is also no reliable material or documentary evidence on record to show that the said Shri Suraj Narain, the appellant before us had purchased the aforesaid land from any of its earlier owners before transferring the same in the name of Smt. Radha Devi Khatoria through sale deed dated 19/ 12/2007 as a power of attorney holder. It is a different matter that the sale consideration received by him on behalf of the previous owners was not paid or returned to them immediately after execution of sale deed or even up to the time of enquiries made by the Assessing Officer. The appellant, thus, being neither owner nor a deemed owner of the said capital asset, the said capital asset cannot be taken as property of the appellant. The sale consideration of the aforesaid land, therefore, could not be a subject matter of transfer of his own capital asset. The Income Tax Department has also not assessed him as a representative assessee or an agent of the said Shri Bharat Singh and Shri Vijay Pal Singh and as such question of making assessment of income from capital gains by application of provisions of Section 50-C of the Act adopting full value of consideration at Rs. 42 Lacs in his hands, is neither justified nor called for. The authorities below, therefore, have erred in bringing to tax the income from capital gains in his hand though the same may be a subject matter of taxation in the hands of the real owners. In this view of the matter, the

addition so made being unjust and uncalled for, the same is directed to be deleted.

Therefore, liability of tax cannot be fixed on the assessee and the income from the sale of land cannot be added in the assessee's income. The humble assessee prays your honor kindly set aside the orders of lower authorities and delete the addition made by Id AO and confirmed by Id CIT(A).

4.5 In view of the above binding precedents, on the issue under consideration. We are unable to sustain the finding of the Ld. CIT(A). Hence, the AO is directed to delete the addition however, he is free to take action against the real owners as per law. The ground no. 2 of the assessee's appeal is allowed."

Flats cannot be constructed separately by each member of the society therefore the flats were constructed by the society on the Principle of Mutuality. The assessee on behalf of Society executed a Flat Construction Agreement with Contractor to construct flats according to the approved map on the basis of per square feet rate with material and labour. Copy of agreement between society and contractor is enclosed and marked as Annexure- D (Pg 35 to 38 of Paper book). The assessee/appellant look after the construction activities on behalf of the society.

Kindly refer Pg 37 of Paper book and we are reproducing the relevant extract of the Construction Agreement as under:-

10 यह कि द्वितीय पक्ष द्वारा प्रोजेक्ट के निर्माण में किये गये खर्च के भुगतान की जिम्मेदारी प्रथम पक्ष लेता है। प्रथम पक्ष भुगतान के लिए अपने सदस्यों से धनराशि एकत्रित कर द्वितीय पक्ष को तयशुदा राशि का भुगतान करने की जिम्मेदारी लेता है।

11 यह कि कोई भी सदस्य अपने फ्लैट का बेचान करता है तो ऐसी परिस्थिति में विक्रय प्रतिफल राशि में से द्वितीय पक्ष को भुगतान किये जाने की जिम्मेदारी प्रथम पक्ष लेता है।

Due to above clauses of construction agreement it was liability of the society to make the payment to the contractor therefore assessee/appellant has signed the sale deed on behalf of the society to collect the payment from the members."

22. Per contra, the Id DR submitted that Shri Anil Singhal is the president of M/s VIP Group Housing Co-operative society and he has signed all the sale deeds on behalf of the society and also as POA holder. It was submitted that he was overall incharge of construction of the flats and he has carried out the entire work under the guise of the society, therefore, he is the real owner of the society and real beneficiary of the sale transactions. Given that both the society and the assessee were denying their liability, substantive assessment was made in the hands of the society and protective assessment in hands of the assessee. Further, he has relied on the findings of the lower authorities.

23. We have heard the rival contentions and perused the material available on record. On perusal of sale deed for flat no. 2, it is noted that the same has been executed on 16.03.2009 by Smt Seema Jindal as power of attorney holder of Shri Sanjay Kala who was originally allotted the flat, the assessee as president of M/s VIP Group Housing Society and Shri Rakesh Kumar Misra, the buyer of the flat. On perusal of sale deed for flat no. 5, it is noted that the same has been executed on 23.09.2008 by the assessee in capacity of power of attorney holder of Shri Shyam Sundar Bhargav who was allotted the flat and also in the capacity of the president of M/s VIP Group Housing Society and Smt Rinku Maharshi, the buyer of the flat. Similarly, on perusal of sale deed for flat no. 8, it is noted that the same has been executed on 16.03.2009 by the assessee in capacity of power of attorney holder of Shri Kushi Ram who was allotted the flat as well as in the capacity of president of M/s VIP Group Housing Society, and Smt Seema Jindal, the buyer of the flat. Therefore, we find that the assessee has signed only two sale deeds as power of attorney holder of originally allottees of the respective flats.

Therefore, as per documentary evidence available on record, the assessee has executed two sale deeds in the capacity of power of attorney holder and not in the capacity of owner of the property and accordingly, as far as power of attorney and sale deeds are concerned, nothing can be inferred that the assessee has acquired the property in question and subsequently sold the same via two sale deeds as owner of the said property. The lease deed issued by JDA to M/s VIP Housing society along with original allottees of respective flats continue to remain valid and pursuant thereto, the sale deeds have been executed. Further, there is nothing on record that the sale consideration has been received by the assessee in his personal capacity rather as we have noted above, the sale consideration has been paid by respective members to M/s VIP Group Housing Society towards discharge of their past obligations towards cost of construction. Therefore, in light of the aforesaid discussion, there is no basis to hold the assessee as liable to discharge any tax obligation in his individual capacity on profits on sale of the flats amounting to Rs 6,99,000/-. We find that the decision of the Coordinate Bench in case of Suraj Narain Khatoria (supra) wherein it was held that being a power of attorney holder, the person acquires only a delegated right and not an independent right over of the property also supports the case of the assessee. Further, as we have noted above, the amount of sale consideration has been credited in individual members accounts in the books of M/s VIP Group Housing Society and not in the individual account of the assessee nor the same has been received by him, therefore, the question of taxability doesn't arise in his hands and even addition towards undisclosed investment of Rs 46,60,000/- therefore deserve to be deleted. In the result, both the additions are deleted and the appeal of the assessee is disposed off in light of aforesaid directions.

ITA No. 677/JP/19 and 678/JP/19

24. In ITA No. 677/JP/19 and 678/JP/19, both the parties fairly submitted that the facts and circumstances of the case are exactly identical wherein

substantive assessment has been made in the hands of "Top Star Group Housing Society" and protective assessment in the hands of Shri Darshan Singh, the president of the society and similar contentions as raised in ITA No 923/JP/19 and 679/JP/19 may be considered. Therefore, our findings and directions contained in ITA No 923/JP/19 and 679/JP/19 shall apply *mutatis mutandis* to these matters and the appeals are disposed off accordingly.

Order pronounced in the open Court on 28/06/2021.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

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

जयपुर / Jaipur

दिनांक / Dated:- 28/06/2021

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant – M/s VIP Group Housing Society, Jaipur
M/s Darshan Singh, Jaipur
M/s Top Star Group Housing Society, Jaipur
M/s Anil Kumar Singhal, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 4(1), Jaipur
The ITO, Ward 4(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 Nos. 923, 677, 678 & 679/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar