

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE RAJPAL YADAV HON'BLE VICE PRESIDENT
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**IT(SS)A No.42/Ind/2018
Assessment Year:2011-12**

Shri Kantilal Kataria 63, Chowmukhi Pool, Ratlam (Appellant)	<u>बनाम/</u> Vs.	DCIT(Central) Indore (Revenue)
P.A. No.ACFPK5786Q		

**ITA No.259/Ind/2018
Assessment Year:2011-12**

JCIT(Central)-1 Indore (Appellant)	<u>बनाम/</u> Vs.	Shri Kantilal Kataria 63, Chowmukhi Pool, Ratlam (Respondent)
P.A. No. ACFPK5786Q		

**ITA No.886/Ind/2018
Assessment Year:2012-13**

ACIT(Central)-1 Indore (Appellant)	<u>बनाम/</u> Vs.	Shri Kantilal Kataria 63, Chowmukhi Pool, Ratlam (Respondent)
P.A. No. ACFPK5786Q		

Appellant by	S/Shri Anil Kamal Garg & Arpit Gaur, ARs
Revenue by	Shri S.S. Mantri, CIT-DR

Date of Hearing:	25.05.2021
Date of Pronouncement:	02.08.2021

आदेश / O R D E R

PER MANISH BORAD:

The above captioned cross appeals for AY 2011-12 and appeal for AY 2012-13 at the instance of Revenue are directed against the respective orders of Ld. Commissioner of Income Tax(Appeals)-II, (in short 'CIT(A)'), Indore dated 15.01.2018 & 29.08.2018 which are arising out of the orders of DCIT –(Central) dated 28.02.2014.

2. Grounds of appeal raised by Assessee for AY 2011-12 in IT(SS)ANo.42/Ind/2019,

1(a). That, the learned CIT (A) grossly erred, both on facts and in law, in partially confirming the addition to the extent of Rs.1,35,36,828/- out of the total addition of Rs.7,30,89,378/- made by the AO in the appellant's income for the assessment year under consideration, on account of alleged profit on unrecorded sales of scraps.

1(b). That, in the facts and circumstances of the case, the learned CIT(A) grossly erred in not accepting the claim of the appellant that the unrecorded sales of scrap was not effected by the appellant only in one previous year relevant to A.Y. 2011-12 but factually, it was effected by him in two previous years relevant to A.Y. 2011- 12 and A.Y. 2012-13.

1(c). That, without prejudice to the above, the estimation of net profit @25% on unaccounted sales ofRs.9,41,47,3101- at Rs.1,35,36,828/- made by the ld. CIT(A) is quite excessive and arbitrary.

1(d). That, without prejudice to the above, the learned CIT(A) grossly erred in not giving any specific finding in his Order for grant of benefit of telescoping to the appellant in respect of the estimated net

profit against the unexplained investments of the appellant determined by the ld. CIT(A) himself.

1(e). That, without prejudice to the above, the learned CIT(A) grossly erred in not giving a specific finding in his Order for giving credit to the appellant at Rs.75,31,785/- in respect of income already offered by him on account of net profit from unaccounted business of scrap, in his return of income, filed post search.

2(a). That, the learned CIT (A) grossly erred, both on facts and in law, in estimating the investment of initial capital in the unaccounted scrap business at Rs.55,28,966/- as against the same claimed by the appellant at Rs.24,68,215/- thereby resulting into confirmation of an addition of Rs.31,11,201/- in the appellant's income on account of unexplained purchases.

2(b). That, without prejudice to the above, the estimation of investment of initial capital in unaccounted business of scrap at 50% of the unaccounted purchases, as made by the ld. CIT(A), is quite excessive and arbitrary without considering the material fact that the appellant had been carrying out his unaccounted business in cyclic manner and barring initial investment of Rs.24,68,215/- from the undisclosed sources, the subsequent purchases were made by him out of unaccounted sales.

3(a). That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.3,00,00,000/- made by the AO in the appellant's income on account of alleged advance payment by the appellant to one Mr. Rahul by invoking provisions of s. 69 of the Income-Tax Act, 1961 without properly considering and appreciating the explanation of the appellant furnished along with documentary evidences.

3(b). That, without prejudice to the above, the learned CIT (A) grossly erred, both on facts and in law, in not accepting the explanation of the appellant that factually a sum of Rs.30,00,000/- only was advanced by him to Mr. Rahul.

3(c). That, without prejudice to the above, the learned CIT (A) grossly erred, both on facts and in law, in not allowing the benefit of telescoping to the appellant in respect of advances made to Mr. Rahul against the income derived by the appellant from carrying out unrecorded trading transactions of scrap and granules.

3(d). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not accepting the appellant's plea that the loan of Rs.30,00,000/- given by him to Mr. Rahul was received back in the relevant year itself.

4(a). That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the addition of Rs.9,00,000/- made by the AO in the appellant's income merely on guess work, surmises and conjectures on account of alleged receipt of interest on advance to Mr. Rahul.

4(b). That, without prejudice to the above, the learned CIT (A) grossly erred, both on facts and in law, in not accepting the explanation of the appellant that factually a sum of Rs.30,00,000/- only was advanced by the appellant to Mr. Rahul and therefore, there was no justification for assuming a higher amount of receipt of interest in the hands of the appellant by misconstruing the facts of the case and thereby assuming a higher amount of advance to Mr. Rahul.

4(c). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not considering the material fact that the entire undisclosed income of the appellant for the relevant previous year was duly covered by way of additional income shown by the appellant himself in the return of income furnished in response to Notice u/s. 153A and therefore, there was no necessity for

5. That, while adjudicating the ground nos. 7 (a) & 7 (b) of the appellant, the learned CIT (A) grossly erred, both on facts and in law, in not giving a finding to the effect that the appellant having liquidated the investment made in land at Rs.52,00,000/- during the relevant year itself was having such funds available for explaining the sources of his unexplained investments.

6(a). That, the learned CIT(A) grossly erred, both on facts and in law, in partially confirming the addition to the extent of Rs.36, 10,000/- out of the total addition of Rs.7,83,60,000/- made by the AO in the appellant's income, on account of loans and advances, by invoking provisions of s. 69 of the Income-Tax Act, 1961.

6(b). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in giving set-off to the extent of Rs.1,95,40,000/- only out of the unexplained loans and advances made at Rs.2,31,50,000/- without considering and appreciating the material fact that the appellant had disclosed additional income to the extent of Rs.2,60,00,000/-, over and above the additional income of Rs.1,00,00,000/- surrendered on account of unaccounted business of scrap and investment therein, and the entire additional income of Rs.2,60,00,000/- was available to the appellant for explaining the sources of unexplained loans and advances of Rs.2,31,50,000/-.

7(a). That, the learned CIT(A) grossly erred, both on facts and in law, in giving a direction to the AO to recalculate the amount of interest on the confirmed addition of Rs.2,31,95,000/- on account of loans and advances.

7(b). That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not considering and appreciating the explanation of the appellant that a substantial amount of loans and advances actually given by the appellant had got refunded during the previous year itself and therefore, there was no justification for estimation of interest income for the whole year.

8. That, the learned CIT(A), while adjudicating the ground nos. 10(a) to 10(d) of the appellant, grossly erred, both on facts and in law, in not considering the material fact that the appellant had already shown an additional income of Rs.2,60,00,000/- in his return of income filed, post search, for the relevant assessment year, and all the undisclosed income, including that from interest on loans and advances, were duly covered from such additional income and therefore, there was no justification for making any separate estimation or addition on account of unrecorded interest on loans and advances.

3. Ground of appeal raised by Revenue for AY 2011-12 in ITA

No.259/Ind/2018

1."On the facts and in the circumstances of the case, the Ld. C/T(Appeals) erred in restricting the addition to Rs. 1,35,36,828/_ by applying N.P. @ 25% in place of addition made by of Rs. 7,30,89,378/_ on account of unaccounted sale of Scrap & Granules on the basis of incriminating documents found & Seized from the assessee's premises.

2. On the facts and in the circumstances of the cases, the Ld. c/T (Appeals) erred in restricting the addition to Rs. 31,11,201/- in place of addition made by AO of Rs. 1,10,57,932/- on account of unexplained expenditure u/s 69C on the basis of incriminating documents found and seized from the assessee's premise.

3. On the facts and in the circumstances of the cases, the Ld. c/T (Appeals) erred in deleting the addition to Rs. 52,00,000/- made by AO on account of unexplained investment in land on the basis of incriminating documents found & seized from the assessee's premises.

4. On the facts and in the circumstances of the cases, the Ld. CIT (Appeals) erred in deleting the addition of Rs. 12,60,000/- made by AO on account of sale of land on the basis of incriminating documents found & seized from the assessee's premises.

5. On the facts and in the circumstances of the cases, the Ld. C/T (Appeals) erred in deleting the addition of Rs. 6,90,00,000/- out of the addition of Rs. 7,83,60,000/- made by the AO on account of unexplained loans & advanced on the basis of incriminating documents found & seized from the assessee's premise.

6. On the facts and in the circumstances of the cases, the Ld. C/T (Appeals) erred in restricting the addition of interest made on account of unaccounted loans & advanced and directing to recalculate up on the account of Rs. 2,31,95,000/- as against Rs. 10,43,60,000/-

4. Ground of appeal raised by Revenue for AY 2012-13 in ITA No.886/Ind/2018,

1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in restricting the addition of interest made on account of unaccounted loans and adverting by directing to recalculate the same up on the amount of Rs. 2,31,95,000/- as against Rs. 10,43,60,000/- added by the Assessing Officer in the A.Y. 2011-12.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 10,27,036/- made on account of disallowance of business loss in the light of the fact that the assessee failed to substantiate such business losses with any documentary evidences.

3.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in allowing the set off of confirmed addition of Rs.36,00,000/- & Rs.27,83,400/- made on account of interest on unaccounted loan to Rahulji & interest on other unaccounted loans and advances respectively, against the additional income of Rs.2,40,00,000/- offered by the assessee in the return for A.Y.2012-13.

We will first take up the cross appeals pertaining to AY 2011-12

5. The brief facts of the case as culled out from the records are that the assessee is an individual and regularly assessed to Income-Tax for last many years. The assessee belongs to Kataria Group of Ratlam. Source of income is from salary and carrying out business of steel wires & scrap and plastic granules & scrap under the name and style of sole proprietorship concern 'M/s. D.P. Industries'. Search & Seizure Operations u/s. 132 of the Income-Tax Act, 1961 (in short "The Act")were carried out at the residential premises of the assessee and also on various other premises of the Kataria Group on 07-09-2011.During the course of the search various documents including diaries and loose papers were seized .In view of the seized diaries and other discrepancies noticed during the course of the search, the assessee, initially, through his nephew Shri Sunil Kataria, had

made a disclosure of an additional income of Rs.8,75,00,000/- vide a statement recorded under s. 132(4) of the Income-Tax Act, 1961. At the time of the search, Shri Sunil Kataria had admitted an overall additional income of Rs.26 Crores on behalf of the entire Kataria Group which was inclusive of disclosure of additional income of Rs.8.75 crores made on behalf of the assessee. The surrender was made subject to verification of the seized documents. Subsequently, after obtaining the copies of the seized material, Shri Sunil Kataria, vide letter dated 20-03-2012, while maintaining the overall amount of surrender on behalf of the group at Rs.26 crores, revised the amount of surrender on behalf of the assessee, at Rs.6.00 crores (Rs.3.60 cr for AY 2011-12 and Rs.2.40cr for AY 2012-13) vide letter dated 20-03-2012

6. Thereafter, the assessee furnished his Return of Total Income, for the assessment year under consideration on 31-03-2012, under s.139(4), declaring an income of Rs.3,79,93,930/- duly incorporating the undisclosed income of Rs.3.60cr. The remaining surrendered income of Rs.2.40cr was considered and

shown in return of income for the subsequent assessment year i.e. A.Y. 2012-13. In response to the Notice u/s. 153A, the assessee furnished his Return of Income on 06-08-2013 declaring the same income as was declared by him in his original return of income furnished under s.139(4) of the Act. The case of the assessee was selected for scrutiny and Notices u/s. 143(2) & 142(1) along with questionnaires issued from time to time duly served upon the assessee

7. Various information were sought by the Ld. AO regarding seized material and the element of income alleged to have been earned by the assessee. Detailed submissions were filed along with various documentary evidences. After considering the same the income of the assessee for A.Y. 2011-12 assessed at Rs. 25,03,84,440/- in the following manners:

Income shown in the return		Rs.3,79,93,930/-
Add:(1)	Trading profit in scrap and granules Rs.8,30,89,378/-	
	Less already offered by the assessee Rs.1,00,00,000 as per para 1.7	Rs.7,30,89,378/-
Add:(2)	Unexplained expenditure u/s 69C as per para -11.8	Rs.1,10,57,932/-
Add:(3)	Loan advanced to Rahulji as	Rs.3,00,00,000/-

	per para -12.6	
Add:(4)	Interest on above loans per para-12.6	Rs.9,00,000/-
Add:(5)	Unexplained investment in land as per para -13.3	Rs.52,00,000/-
Add:(6)	Profit on sale of above land as per para-13.3	Rs.12,60,000/-
Add:(7)	Loans and advances (as per para-14.4) Rs.10,43,60,000	
	Less: Already offered by the assessee Rs.2,60,00,000/-	Rs. 7,83,60,000/-
Add:(8)	Interest on above as per para-14.5	Rs.1,25,23,200/-
Total Assessed income		Rs.25,03,84,440/-
Rounded off		Rs. 25,03,84,440/-

8. Aggrieved assessee preferred an appeal before Ld. CIT(A) and partly succeeded and now both assessee and revenue are in appeal before this Tribunal.

9. We will first take ground Nos. 1(a), 1(b), 1(c), 1(d) & 1(e) of the assessee and Ground No. 1 of the Department relating to estimation of net profit from Trading in Scraps and Granules

10. The Ground Nos. 1(a), 1(b), 1(c), 1(d) & 1(e) of the Assessee and the Ground No. 1 of the Revenue are pertaining to the action of the Ld. CIT(A) in partially confirming the addition to the extent of Rs.1,35,36,828/- out of the total addition of Rs.7,30,89,378/-

made by the AO on account of alleged profit on unrecorded sales of scraps.

11. During the course of the assessment proceedings, from the various diaries inventorized as Annexure A-1 to A-8 of Panchnama dated 07-09-2011, Ld. AO found that the assessee had carried out unrecorded business transactions of purchase and sale of scrap. During the course of the assessment proceedings, the assessee was required to make his explanation on the seized material. The assessee submitted that the diary marked and inventorized as A-8 was containing the unrecorded transactions of purchases whereas the remaining diaries marked and inventorized as A-1 to A-7 were containing the unrecorded transactions of sales carried out by the assessee. As per the diaries, the total unrecorded sales and unrecorded purchases, of the assessee, got worked out respectively at Rs.9,41,47,310/- and Rs.1,10,57,932/-. A copy of the working (subject to be extrapolation with two zeros) has been submitted by the assessee in his Paper Book at Page No. 100 to 114. Undisputedly, the AO has also accepted the working of the

purchases and sales as submitted by the assessee before him without any interference and resultantly, while making the impugned addition, the AO has relied upon such working only. Finally, based upon the jottings made in the diaries, the AO worked out the net profit of the assessee from carrying out the unaccounted business of scrap at Rs.8,30,89,378/- [i.e. unrecorded sales of Rs.9,41,47,310 (-) unrecorded purchases of Rs.1,10,57,932]. Since, for the assessment year under consideration, the assessee had disclosed an additional income of Rs.3,60,00,000/-, out of which an additional income of Rs.1,00,00,000/- was declared by him towards undisclosed trading profit in scrap business, Ld. AO granted the credit such additional income of Rs.1,00,00,000/- and made addition of Rs.7,30,89,378/- in the assessee's income under the head 'Trading profit in scrap and granules'.

12. Against the aforesaid addition of Rs.7,30,89,378/-, the assessee preferred an appeal before the Ld. CIT(A). Before the Ld. CIT(A), the key submission of the assessee was that the Ld. AO was not correct in his approach in presuming that as against

the unaccounted sales of scrap aggregating to Rs. 9,41,47,310/-, there were purchases to the extent of Rs. 1,10,57,932/- only. According to the assessee, the factual position is that the amount of purchase was much higher than that considered by the AO for the reason that the entire records of unaccounted purchases were not found and seized during the course of the search and majority of the records relating to the purchases had got destroyed much prior to the date of the search. In support of such contention, during the course of the appellate proceedings before the Ld. CIT(A), the assessee furnished quantitative details of the purchases and sales of scraps as found jotted down in all the seized diaries inventorized as Annexure A-1 to Annexure A-8. A copy of such quantitative details are also furnished before us. From such details, it is demonstrated that as per the seized records, the quantity of sales is of 23,994.897 M.T. whereas, quantity of purchases is only of 2510.330 M.T. and therefore, it cannot be inferred that the unaccounted purchases made by the assessee was only to the extent of the seized records.

13. Ld. CIT(A), accepting the contention of the assessee, vide para (5.5) at page no. 48 of the impugned order, held that the entire unaccounted purchases were not found jotted down in the seized diaries. Thereafter, the Ld. CIT(A) held that in such case, the Ld. AO was not justified in working out the net profit of the assessee at Rs.8,30,89,378/- and Ld. AO ought to have adopted some logical and reasonable approach in estimating the net profit from sale of Rs.9.41 crores. Thereafter, by granting partial relief to the assessee, the Ld. CIT(A) determined the Net Profit on the sale of scrap by applying a flat N.P. rate of 25%. Accordingly, on the total unaccounted sales of Rs. 9,41,47,310/-, the Ld. CIT(A) determined the Net Profit of the assessee at Rs. 2,35,36,828/-, @25%, and thereafter, by granting the credit for the income of Rs. 1,00,00,000/- already offered by the assessee in his return of income furnished under s. 153A of the Act, confirmed the addition to the extent of Rs. 1,35,36,828/-, which resulted into a relief to the extent of Rs. 5,95,52,550/-.

14. Against the addition confirmed by Ld. CIT(A) the assessee is in appeal whereas against the relief granted, the Revenue is in appeal.

15. Before us, learned Department Representative (In short Ld CIT(DR)) vehemently argued supporting the observation of Learned AO and the finding of Ld.CIT(A) given in favor of Revenue on this issue of estimating profit from unaccounted scrap trading business.

16. Per Contra Learned counsel for the assessee has filed written synopsis. The relevant portion of such synopsis is being reproduced as under:

Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	<i>Submission in Brief</i>	<i>Relevant Pages of Paper Book</i>	<i>Remarks</i>
1	<i>Transactions were carried out in two previous years relevant to A.Y. 2011-12 and A.Y. 2012-13</i>	40 <i>[Statement recorded during the Search]</i> 100 to 114 <i>[Excel Sheet]</i>	<i>i) Even before the AO [kindly refer Para (11.4)(3.1) of AO's Order], it was claimed that the unaccounted trading transactions were carried out in two assessment years. ii) The nephew of the assessee namely Shri Sunil Kataria (PB Page No. 40), in his statement recorded u/s. 132(4), categorically stated such fact. iii) Diaries inventorized as A-1 to A-8 also demonstrate clearly that the transactions pertain to two financial years.</i>

			iv) Excel Sheet summarizing the transactions of the diaries placed at page no. 100 to 114. On a perusal of Page No. 102 of the Paper Book, it shall be observed that in the Diary No. A-1, transactions are bearing the dates such as '1.04' i.e. 1 st April and again in the Diary No. PAS-2, at page no. 111, the date has been mentioned as '1.04' i.e. 1 st April. It is submitted that the first date falls in the financial year 2010-11 whereas the second date falls in the financial year 2011-12.
2	Entire suppressed sales cannot be regarded as income.	115 to 117 [Copy of the Judgment of the Hon'ble MP High Court]	CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 (MP)
3	Seized diaries were not complete set of record of transactions of purchases and sales of scrap and granules. All transactions of unaccounted sales were found in diaries but records of all purchases not found.	-	Unaccounted Sales of Rs.9,41,47,310/- and Unaccounted Purchases of Rs.1,10,57,932/- found in diaries. Net Profit of Rs.8,30,89,378/- determined by the AO which is patently wrong, absurd and arbitrary. Refer Para (11.1) on pg. 11 & para (11.7) on pg. 15 of AO's Order.
4	On a perusal of diaries A-1 to A-8, quantity of purchases in purchase diary is much less than quantity of sales stated in various sales diaries. As per the seized records, the purchase quantity was to the extent of 2510.330 M.T. only as against the sales quantity of 23994.897 M.T.	193 [Summary of quantities of unrecorded purchases and unrecorded sales]	As per the seized material, Diary A-8, the purchase quantity is only 2510.330 M.T. whereas as per the other seized diaries viz. A-1 to A-7, the total quantity of sales is 23994.897 M.T. without purchases, there could not have been any sales.
5	In a scrap business, normally the rate of profit ranges between 5% to 10%. The estimation of net profit by the AO and CIT(A) is arbitrary	-	The AO has estimated the net profit at 88.25% and the CIT(A) has estimated the same at 25%. The assessee himself has shown net profit of 12.25% in two years.
6	On the aggregate turnover of Rs.9,41,47,310/-, the assessee has already offered undisclosed income of Rs.1,40,00,000/- in two assessment years i.e.	68	Even if the initial capital investment in unrecorded business at Rs.24,68,215/- is excluded, there would remain an undisclosed trading income of

Rs.1,00,00,000/- in A.Y. 2011-12 and Rs.40,00,000/- in A.Y. 2012-13. The undisclosed income of Rs.1,40,00,000/- includes the initial capital investment of Rs.24,68,215/-.		Rs.1,15,31,785/- which would result in net profit of 12.25% shown by the assessee himself.
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17. Reference was also made to the detailed submission of the assessee on this issue made before the CIT(A) which is placed at page no. 7 to 12 of the Paper Book.

18. For the ratio that *“while estimating the net profit of the assessee on suppressed sales, a reasonable net profit rate must be made”* reliance placed on following citations :-

- i) *CIT vs. Balchand Ajit Kumar (2003) 263 ITR 610 (MP)*
- ii) *Manmohan Sadani vs. CIT (2008) 304 ITR 0052 (MP)*
- iii) *Eagle Seeds & Biotech Ltd. vs. ACIT (2006) 102 TTJ 1065 (IndoreTrib.)*
- iv) *CIT vs. President Industries (2002) 258 ITR 654 (GujHC)*
- v) *Kulwant Singh vs. DCIT (2010) 134 TTJ 129 (Del.)”*

19. We have heard rival contentions, perused the records placed before us ,duly considered the facts and circumstances, carefully gone through the orders of lower authorities and written and oral submissions made from both the sides. We find that undisputedly, during the course of the search at the premises of the assessee on 07-09-2011, certain diaries

inventorized as A-1 to A-8 were found and seized by the search party. It is also an undisputed fact that in these diaries various transactions of purchases and sales of scrap were noted down which were not found recorded in the regular books of account maintained by the assessee.

20. We find that there is no difference of view between the assessee and the Revenue that out of the aforesaid eight pocket diaries, one pocket diary inventorized as A-8 was containing the transactions relating to unrecorded purchases carried out by the assessee, whereas, in the remaining seven pocket diaries inventorized as A-1 to A-7, the transactions of unrecorded sales were jotted down. The quantum of purchases and sales as per these seized diaries respectively at Rs. 1,10,57,932/- and Rs. 9,41,47,310/- have not been disputed by either of the parties.

21. Before the CIT(A) as well as before us, the contention of the assessee was that the transactions jotted down in these diaries pertain to two financial years relevant to A.Y. 2011-12 and A.Y. 2012-13. During the course of the hearing before us, the A.R. of

the assessee, reiterated his arguments by making a reference of the excel sheets of purchases and sales prepared on the basis of the seized diaries. However, even before us, Ld. counsel for the assessee (in short Ld. AR) failed to demonstrate with any positive evidence that the jottings made in these diaries pertain to two financial years. Since, the assessee himself is claiming that he had commenced the unaccounted business of scrap trading during the financial year relevant to A.Y. 2011-12 only and further since, from the seized diaries the assessee has failed to demonstrate that these transactions were also carried out by him during the subsequent financial year too, we find absolutely no infirmity in the views taken by the authorities below that the transactions of unrecorded trading of scrap were carried out by the assessee during the financial year relevant to A.Y. 2011-12 only and consequently, the entire income arising from carrying out such unrecorded transactions is liable to be taxed in the hands of the assessee for the A.Y. 2011-12 only. Accordingly, the Ground No. 1(b) of the assessee is dismissed.

22. Now, coming to the issue of determination of undisclosed income from the undisclosed and unrecorded trading transactions in scrap carried out by the assessee, we find that as per the seized material, being the pocket diaries inventorized as A-1 to A-7, the unrecorded sales works out to be at Rs. 9,41,47,310/- only and as against these unrecorded sales, the unrecorded purchases as per seized diary A-8 works out to be at Rs. 1,10,57,932/-. So with the application of the simple arithmetic, the total undisclosed net profit from the trading activities works out to be at Rs. 8,30,89,378/- only as worked out by the assessing officer. But, before making such plain arithmetical exercise, one has to see that whether or not the unrecorded purchases and unrecorded sales fully correspond with each other. In the instant case, we find that it is not so.

23. We find that the seized purchase records demonstrate the purchase quantity of only 2510.330 Metric Ton of scrap whereas the seized sales records reveal the sales quantity of 23994.897 Metric Ton. That these working of the quantities of purchases and sales have not been disputed by the Revenue. It is well

evident that with the purchase of meager 2510.330 MT, huge sales of 23994.897 MT cannot be effected and therefore, it leads to only one inference that the entire unrecorded purchase records of the assessee could not be found and seized during the course of the search. In these circumstances, we fully concur with the findings of the CIT(A) that the assessee's purchase record were not fully recovered and therefore, it could not be made the basis for determining the net profit of the assessee from carrying out the unrecorded trading business of scrap. We find force in the contention of the Ld. AR that the entire suppressed sales cannot be regarded as an income of the assessee but only the net profit element embedded in such suppressed sales has to be estimated as undisclosed income of the assessee. For such proposition, we place reliance on the judgement of Hon'ble High Court of Madhya Pradesh in the case of CIT vs. Balchand Ajit Kumar (2003) 263 ITR 0610 (MP) in which their Lordships at para (6) was pleased to observe as under:

"5. On appreciating the rival submissions raised at the Bar, we have carefully perused the order passed by the Commissioner of Income-tax (Appeals) and also that of the Tribunal. It is not disputed that the undisclosed income was Rs. 2,57,000. The sole question that arises for consideration is whether the entire income has to be treated as profit or there should be adoption of a method of net profit income. In the case of [CIT v. President Industries](#) [2002] 258 ITR 654, the High Court of Gujarat in a similar matter came to hold as under (page 655) :

"Having perused the assessment order made by the Assessing Officer, the order made by the Commissioner of Income-tax (Appeals) and the Income-tax Appellate Tribunal, we are satisfied that the Tribunal was justified in rejecting the application under [Section 256\(1\)](#). It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring the cost in acquiring the goods which have been sold has been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether the entire sum of undisclosed sale proceeds can be treated as income of the relevant assessment year answers by itself in the negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales."

6. We are in respectful agreement with the aforesaid opinion inasmuch as the total sale cannot be regarded as the profit of the assessee. The net profit rate has to be adopted and once a net profit rate is adopted, it cannot be said that there is perversity of approach. Whether the rate is low or high, it would depend upon the facts of each case. In the present case net profit rate of five per cent. has been applied. We do not think it appropriate that the same requires to be enhanced. We are also inclined to think that it is high. In any case, it cannot be said that there has been perversity of approach.

24. Therefore in the present set of facts and circumstances, in our considered view, the Revenue has no option but to estimate

a reasonable net profit on the suppressed sales. We find that in the return of income furnished for the assessment year under consideration, u/s. 153A of the Act, the assessee has voluntarily shown an income of Rs. 1,00,00,000/- on account of undisclosed income from scrap trading and undisclosed initial investment in the business of scrap trading respectively at Rs. 75,31,785/- and Rs. 24,68,215/-. Thus, on suppressed sales of Rs. 9,41,47,310/- the assessee has disclosed net profit of Rs. 75,31,785/- which works out to be 8% only. As against such net profit rate of 8%, the CIT(A) has estimated the rate of net profit at 25%. Considering the facts that the assessee has carried out only a trading business on wholesale basis which was commenced by him only in the financial year under consideration and further considering the amount of investment, rate of return on investment etc. in our view, the estimation of the net profit rate so made by the CIT(A) at 25% is quite at a higher side. In all the fairness to both the parties, we restrict the estimation of net profit at 10% of the undisclosed sales. Before us, the assessee has also taken two separate grounds

bearing nos. 1(c) and 1(d) for allowing him the benefit of telescoping of the total undisclosed income shown in the return against the net undisclosed income/investment finally determined. We are of the considered view that an assessee is eligible for claim of set-off of the undisclosed income voluntarily shown by himself in the return of income filed u/s. 153A against any undisclosed income/undisclosed investment, finally determined. Accordingly, the AO is directed to work out the net profit at the rate of 10% on the unaccounted sales of Rs. 9,41,47,310/- i.e. at Rs.94,14,731/- and after giving due benefit of telescoping of the undisclosed income of Rs. 3,60,00,000/- already shown by the assessee in his return of income (other than those undisclosed income for which a separate specific claim for set-off is made by the assessee), re-compute the total income of the assessee. Accordingly, the Ground No. 1 of the Revenue is dismissed and Ground Nos. 1(a), 1(c) and 1(e) of the assessee are Partly Allowed and Ground No. 1(d) of the assessee is fully allowed.

25. Ground Nos. 2(a)&2(b) of the assessee and Ground No. 2 of the Department – Unexplained Expenditure being Purchase of Scraps and Granuels – Rs.1,10,57,932/-

26. These grounds are interconnected with the Ground Nos. 1(a) to 1(e) taken by the assessee and Ground No. 1 taken by the Revenue. During the course of the assessment proceedings, from seized diary Ld. AO found that during the relevant year, the assessee had carried out unrecorded transactions of purchases/sale of scrap. Ld. AO treated the difference between the aforesaid sales and purchases (sale Rs.9,41,47,310/- less purchase Rs.1,10,57,932/-) as the profit of the assessee from unaccounted scrap business and made an addition of Rs.7,30,89,378/- in the assessee's income for the A.Y. 2011-12. Further, the AO also made an addition to the tune of Rs.1,10,57,932/- on account of aforesaid unaccounted purchases, by invoking the provisions of s.69C of the Act, treating the same as unexplained expenditure of the assessee for the A.Y. 2011-12. The AO also held that it is not allowable as

deduction under any head of income as per proviso to section 69C of the Act.

27. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) noted that there is a contradiction in the approach of the AO in treating the purchases of Rs.1,10,57,932/- as unexplained expenditure u/s. 69C of the Act and by allowing a credit thereof from the unaccounted sales of Rs.9,41,47,310/-. The Ld. CIT(A) further stated that the contention of the assessee is found reasonable to the effect that purchases found noted in the diary can be said to be unrecorded but the sources thereof cannot be considered as fully unexplained. The Ld. CIT(A) also stated that the entire purchases have not been made in a single day or single instance but they are found to be made on various dates and in various months in a cyclic manner and in small amounts. The assessee has been found to have recorded the corresponding sales in the same manner as purchases. The Ld. CIT(A) stated that barring initial investment, the assessee was not required to make investment in subsequent purchases. The Ld. CIT(A) further

stated that the assessee has not furnished any basis for initial investment and thus, the initial investment of Rs.24,68,215/- estimated by the assessee was found to be on a lower side. Accordingly, the Ld. CIT(A) estimated the initial capital of the assessee at one half of impugned purchase amount i.e. at Rs.55,28,966/- as against the same shown by the assessee at Rs.24,68,215/-. Finally, the Ld. CIT(A) granted a relief of Rs.79,46,731/- and confirmed an addition of Rs.31,11,201/- in the assessee's income.

28. Aggrieved with the Order of the Ld. CIT(A), both the assessee as well as the Revenue have preferred cross-appeals before this Tribunal on the issue.

29. Before us, learned Department Representative (In short Ld CIT(DR)) vehemently argued supporting the observation of Learned AO and the finding of Ld.CIT(A) given in favor of Revenue on this issue of estimating profit from unaccounted scrap trading business.

30. Learned Counsel for the assessee has also filed one written synopsis. The relevant portion of such synopsis is being reproduced as under:

Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	Once the assessee is found to have earned any unrecorded revenue and simultaneously has also been found to have incurred any unrecorded expenditure to earn such unrecorded income, then, first of all, such unrecorded expenditure cannot be considered as unexplained expenditure under s. 69C and, secondly, a set off of such unrecorded expenditure has to be given against the unrecorded revenue for determining the taxable income of the assessee	-	-
2	The transactions of both purchases as well as sales were made by the assessee in different trenches of petty amounts and that too in a cyclic manner.	-	Although the transactions of purchases remained unrecorded, but the sources thereof were very well explained before the AO having been made out of the cash realized from unrecorded sales transactions from time to time.
3	The assessee himself had offered an additional income of Rs.24,68,215/- on account of initial capital investment in the unrecorded business.	Part-II of the Synopsis above	Besides offering an income of Rs.24,68,215/- towards initial capital investment in unrecorded business, the assessee has also offered income aggregating to Rs.1,15,31,785/- on account of net profit earned from carrying out unrecorded trading business. The income so earned during the year and duly offered for taxation was available with the assessee for making investment in purchases. Since, the income so earned for trading has already been taxed separately, the corresponding investment made out of such income cannot again be added as it would tantamount

			to making of the same addition twice.
4	Over and above the income of Rs.24,68,215/- and Rs.75,31,785/-, aggregating to Rs.1,00,00,000/-, the assessee had also offered an additional income to the extent of Rs.2,60,00,000/- in his return of income filed under s. 153A.	-	The remaining additional income of Rs.2,60,00,000/- which was utilized by the assessee in making unrecorded investment in loans and advances was also available with the assessee in the initial days of the previous year for making investment in unrecorded purchases.
5	The assessee is squarely eligible for claim of telescoping benefit in respect of the total undisclosed income of Rs.3,60,00,000/- for the assessment year under consideration, on the basis of undisclosed income shown in the return against the unexplained investment, if any, found made in making the subject purchases and, therefore, no separate addition on this count was warranted.	-	-

G. Our Detailed Submissions before the Hon'ble Bench:

The detailed submission of the assessee on the issue, which was also made before the CIT(A) is placed at page no. 12 to 15 of the Paper Book. The same has also been reproduced by the CIT(A) at page no. 15 to 18 of the impugned Order while adjudicating the Ground Nos. 4(a), 4(b) & 4(c) raised by the assessee. The assessee wish to place reliance on such detailed written submission made before the CIT(A).

H. Legal Authorities on which Assessee wish to rely:

Reliance is placed on the following judicial pronouncements:

(i) *CIT (Central) Cochin vs. P.D. Abraham @ Appachan (2012) 252 CTR (Ker) 407*

[Copy of judgment enclosed as Annexure A-9.01 (PB Page No. 118 to 130)]

(ii) *CIT vs. Tips Industries Pvt. Ltd. (2010) 321 ITR 0154 (Bom.)*

[Copy of judgment enclosed as Annexure A-9.02 (PB Page No. 131 to 140)]

31. We have duly considered the facts and circumstances of the case and carefully gone through the AO's order, the Ld. CIT(A)'s

Order, various relevant seized documents, written and oral submissions made from both the sides.

32. We find that in the instant case, the AO has regarded the entire purchases aggregating to a sum of Rs.1,10,57,932/- as found recorded in one of the seized diaries inventorized as A-8, as unexplained expenditure of the assessee. We also find that even the Ld. CIT(A) while determining the quantum of undisclosed investment in the initial capital of the scrap business has taken into consideration the aforesaid amount of purchase only. However, while adjudicating the Ground Nos. 1(a) to 1(e) of the assessee and Ground No. 1 of the Revenue, we have already held that the aggregate amount of undisclosed purchases of the assessee for the year under consideration was much more than that recorded in the diary inventorized as A-8. In such circumstances, we are of the view that it would not be correct approach to determine the quantum of initial investment in the scrap business of the assessee only on the basis of the aforesaid sum of Rs.1,10,57,932/-. We find that both the authorities below have undisputedly determined the quantum of

unrecorded sales at Rs.9,30,89,378/- to which the assessee has also agreed, then in our considered view, the initial capital investment in the undisclosed trading business of the scrap ought to be determined on the basis of the aforesaid unrecorded annual sales of Rs.9,30,89,378/-. From the excel sheets, drawn by the assessee on the basis of the seized diaries which have also been accepted by the AO, we find that the assessee has made both the purchases and sales in multiple trenches, thus, the contention of the Ld. AR is worth accepting that the undisclosed trading transactions were carried out by him not in one go but in a cyclic manner. Accordingly, only for making the first few purchases, the assessee could be said to have made investment in his business and for making the subsequent purchases, the sales proceeds realized from the initial purchases were available for him for making further purchases and so on. Considering the entire facts and the pattern of purchase and sales as recorded in the seized diaries, we are of the considered view that it would be fair and reasonable to estimate that the assessee had made initial investment for carrying out

undisclosed trading business of scrap equivalent to a half month's sales of the entire sales made during the period under consideration. Accordingly, in our considered view, the undisclosed investment of the assessee in the initial capital of the business should be computed at $1/24^{\text{th}}$ of the total annual sales of Rs.9,30,89,378/- found recorded in the seized diaries which works out to be at Rs.38,78,724/- as against the same determined by the Ld. CIT(A) at Rs.55,28,966/-. We also direct the Ld. AO that assessee would be eligible to set off of this amount of Rs.38,78,724/- against the total income of Rs.3,60,00,000/- surrendered in the return of income furnished under s.153A of the Act. However, we will deal with the telescoping benefit/set off available to assessee against the surrendered income of Rs.3.60 cr offered in the income tax returns, available to the assessee for the additions to be confirmed in the hands of assessee, after dealing with remaining issues raised before us. Accordingly, the Ground Nos. 2(a) & 2(b) of the assessee are Partly Allowed and Ground No. 2 of the Revenue is dismissed.

Ground Nos. 3(a), 3(b), 3(c) &3(d) of the Assessee – Loans Advanced to Mr. Rahul – Rs.3,00,00,000/- AND Ground Nos. 4(a), 4(b) & 4(c) of the assessee – Estimated Interest on Loans to Mr. Rahul – Rs.9,00,000/-

33. The ground nos. 3(a) to 3(d) of the Assessee are pertaining to an addition of Rs.3,00,00,000/- made by the AO on account of alleged advance payment by the assessee to one Mr. Rahul by invoking the provisions of s.69 of the Act. Further, the ground nos. 4(a) to 4(c) of the assessee are concerned with estimation of receipt of interest of Rs.9,00,000/- on aforesaid advance to Mr. Rahul.

34. The brief facts relating to the grounds, as culled out from the records are that during the course of search and seizure operations carried out at the residential premises of the assessee i.e. at 62-63, Choumukhi Pool, Ratlam, certain loose papers were found and seized vide Annexure LPS-12, Page no. 1 to 52 of the Panchnama dated 07-09-2011. As per the AO, these loose papers were correspondence between the assessee and his son Shri Hemant Kataria in their own respective handwritings.

During the course of the assessment proceedings, the assessee was required to make his explanation on the subject seized material. It was submitted before the AO that the loose papers marked and inventorized as LPS-12 were containing the notings related to planning, projections, purchase orders, details of movable and immovable properties held by the family members of the assessee and other correspondences which is evident from the para (12.1) of the AO's Order itself. Subsequently, the AO, vide questionnaire dated 25-09-2013, required the assessee to explain the contents of page no. 50, LPS-12 containing reference of giving a loan of Rs.300 Lakhs to some Shri Rahul Ji. In response to the same, the assessee, vide his counsel's letter dated 25-01-2014, made an explanation in respect of the subject loose paper. The reply of the assessee on the subject issue has been reproduced by the AO at para 12.4 of the assessment order.

35. According to the AO, the contention of the assessee was not acceptable as the same is contradictory with his earlier submission dated 20.3.2012, filed before the Investigation Wing,

in which he had submitted that this was only a simple letter and there was some doubt between two brothers but now, the assessee has come with a new story that the amount was only Rs.29,90,000/- but not Rs.3,00,00,000/-. Ld. AO further stated that as per evidence available on record, the real fact is that Rs.3,00,00,000/- was given by the assessee to Shri Rahulji from his undisclosed income. Ld. AO also noted that the said letter was written by Shri Hemant Kataria to his father Shri Kantilal Kataria, i.e. the assessee on 24/12/2010, it will be assumed that the assessee has advanced this amount on or before 24/12/2010. Accordingly, the AO made an addition of Rs.3,00,00,000/- in the hands of the assessee as unexplained investment in the form of loans and advances to Shri Rahul ji by invoking the provisions of section 69 of the Act. The AO further made an observation to the effect that since the assessee has not furnished any proof regarding receiving back the amount of Rs.3,00,00,000/-, interest will also be estimated @12%. Accordingly, the AO estimated receipt of interest @12% p.a. on the aforesaid unexplained investment of Rs.3,00,00,000/- i.e. at

Rs.9,00,000/- and Rs.36,00,000/- respectively for the previous year relevant to A.Y. 2011-12 and A.Y. 2012-13 and added the same to the total income of the assessee.

36. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A), at para (7.3), stated that during the appeal proceedings, the assessee was required to file complete details of the impugned amount advanced to Mr. Rahul and also to correlate the advancing of loan out of unrecorded income earned but according to Ld. CIT(A), the assessee could not file any detail or explanation for the same. The Ld. CIT(A) also stated that apparently, the incriminating document makes reference to the amount of 3 crores advanced to Rahul Ji in the past which may be during earlier years also. Unless it is proved otherwise by the assessee through concrete evidences, the assessee cannot be given credit of current undisclosed income to be set-off against the amount under consideration. The Ld. CIT(A) further observed that there is no material on record which suggests dates/ modes/ trenches of advances given by the assessee to Mr. Rahul and therefore, it shall be reasonable to presume that the amount

of 3 crores must have been given to Mr. Rahul in earlier years. Accordingly, the Ld. CIT(A) upheld the action of the AO in making addition of Rs.3,00,00,000/- and estimated interest in the assessee's income for the assessment year under consideration.

37. Aggrieved with the Order of the Ld. CIT(A), the assessee has agitated the action of the Ld. CIT(A) in confirming the addition of Rs.3,00,00,000/- and estimation of interest thereon before this Tribunal.

38. Before us, the learned counsel for the assessee has filed one written synopsis. The relevant portion of such synopsis is being reproduced as under:

“Key Points of Assessee’s Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	Page No. 50 of LPS-12 on the basis of which the AO has made addition is basically a handwritten letter written by one of the three sons of the assessee namely Shri Hemant Kataria enquiring from the assessee about amount of Rs.300L allegedly given to Mr. Rahul for various projects.	141	At the relevant time, some severe family disputes were undergoing in the family of the assessee and during such time only, Shri Hemant Kataria got some misleading information that a sum of Rs.300 lakhs was given from the family funds to Mr. Rahul and under such confusion, he asked the assessee for

			furnishing the details.
2	The assessee never made any advance of Rs.3,00,00,000/- to Mr. Rahul. The assessee only made advances aggregating to Rs.29.90 lakhs to Mr. Rahul	149 & 148	Kindly refer LPS-12 Page No. 44 which contains a list of the loans and advances given to various persons. At S. No. 8 & 9 of such list, amounts of Rs.9,90,000/- and Rs.20,00,000/- [extrapolated to '00'] have been shown against 'Rahul Ji'. Even, in the decoded form, such reference was made by concerning son in his subsequent letter to the assessee [kindly refer PB Page No. 148].
3	Factum of family disputes is evident from a copy of letter addressed by the assessee on 01-12-2009 to all his three major sons. A copy of such letter was also seized and inventorized during search as page no. 25 to 29 of LPS-12	142 to 146	In the said letter, the assessee had requested all his sons to maintain peace and harmony in the family and to put all the disputes amongst themselves at rest.
4	The then prevailing family dispute, as asserted above, is also evident from one another letter dated 27-12-2010 written by yet another son of the assessee, namely Shri Arvind Kataria, to the assessee. Such letter was also seized and inventorized by the search party as Page no. 45 of LPS-12.	147	-
5	Shri Hemant Kataria, who had written the letter asking for the details of Rs.300 lakhs, realized that the total amount of advance to Mr. Rahul was of Rs.29.90 lakhs only and not of Rs.300 lakhs. Such fact is evident from the subsequent letter written by Shri Hemant Kataria which has been seized and inventorized as page no. 51 of LPS-12	148	On a perusal of such letter, it shall be observed by Your Honour that on such paper too, there are two jottings of 20000 and 9900 under the name of Shri Rahul Ji which fully coincides with the jottings found made at another loose paper seized and inventorized as page no. 44 of LPS-12 [kindly refer PB Page No. 149]. The figures written at LPS-12, Page No. 44 [PB Page No. 149], have been decoded by the AO himself by adding two zeros. Accordingly, 20000 and 9900 need to be interpreted respectively at Rs.20,00,000/- and Rs.9,90,000/- aggregating to Rs.29,90,000/- only.
6	All the amounts appearing at page no. 44 of LPS-12 [PB Page No. 149] have been taken into		The surrounding loose papers of the same LPS-12 i.e. page no. 44, which have also been relied upon

	consideration by the AO while making a separate addition of Rs.7,83,60,000/- on this count in the hands of the assessee for the relevant assessment year		and decoded by the AO himself while making another addition of Rs.7,83,60,000/-, are strong evidence to establish the assertion of the assessee that he had advanced a sum of Rs.29,90,000/- only to Mr. Rahul and not Rs.3,00,00,000/- as wrongly presumed by the AO
7	Even the CIT(A), at para (7.3), has stated that the amount of 3 crores to Rahul Ji may have been advanced during earlier years also. As per the CIT(A) himself, there is no material on record which suggests dates/ modes/ trenches of advances given by the assessee to Mr. Rahul and therefore, it shall be reasonable to presume that the amount of 3 crores must have been given to Mr. Rahul in earlier years	-	Para 7.3, Pg. 57 of CIT(A)'s Order. If according to the CIT(A), the loans were given in earlier years, then the same cannot be regarded as income of the assessee for the assessment year under consideration. It is a settled law that any addition on account of unexplained investment can be made only in that year in which the assessee was found to have made such investment.
8	It is a settled law that all the seized material, found from the same location, should be read conjointly and a loose paper cannot be read into isolation by disregarding the other loose papers found and seized in the similar circumstances. Except loose paper no. 50 of LPS-12, all other loose papers of LPS-12 give a clear indication and rather evidence that the agreement amount of advances to Mr. Rahul against purchase of properties in two projects was aggregating to Rs.29,90,000/- only and not of Rs.300 lakhs as presumed by the AO to suit his own convenience.	141	The assessee has demonstrated that even the contents of loose paper bearing page no. 50 of LPS-12 are not correct and therefore, there cannot be any justification for presuming the amount of advance to be at Rs.300 lakhs as against the actual amount of advance of Rs.29,90,000/-
9	The AO, except banking upon the only loose paper inventorized as page no. 50 of LPS-12, has not conducted any other enquiry and has not brought on record any other tangible adverse material. The AO has not conducted any enquiry from Shri Hemant Kataria, the author of the letter. The AO has also not enquired either from the assessee or from anyone else about the whereabouts of Mr. Rahul. The AO	-	The presumption of the AO as regard to making of advance of Rs.300 lakhs by the assessee to Mr. Rahul is not corroborated from any other evidence, no credence deserves to be given to such a bald and patently wrong presumption.

	has also not made any effort for conducting any enquiry from Mr. Rahul either by way of issuance of summons under s.131 or calling information under s.133(6) of the Act.		
10	As regard to the source of advance of Rs.29,90,000/-, it is submitted that such advances were given by the assessee in two trenches of Rs.20,00,000/- and Rs.9,90,000/- out of unaccounted receipts of his unaccounted business of scrap and granules. In respect of such business, the assessee had already made necessary disclosure of income of Rs.1,00,00,000/- in his return of income for the assessment year under consideration.	-	Over and above such income of Rs.1,00,00,000/-, the assessee has further disclosed an additional income of Rs.2,60,00,000/- in his return of income for the assessment year under consideration. Thus, in totality, to assessee, there was availability of sufficient funds aggregating to Rs.3,60,00,000/- and therefore, out of such funds, the investment of Rs.29,90,000/- cannot be disbelieved. Sources are covered by the undisclosed income shown in the return as is apparent from the table given at Part-II above

39. Ld. counsel for the assessee also referred to the detailed submission made before the Ld. CIT(A) (placed at page no. 15 to 20 of the Paper Book). The same has also been reproduced by the Ld. CIT(A) at page no. 54 to 56 of the impugned Order while adjudicating the Ground Nos. 5(a), 5(b), 5(c)&5(d) raised by the assessee. Reference was also made to following submissions made before the Ld. CIT(A):

Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	No iota of evidence found suggesting receipt of any interest by the assessee from Mr. Rahul.	-	-

2	The assessee has only given advances of Rs.29,90,000/- to Mr. Rahul and such advances were not given as interest bearing but the same were given for making investment in some properties at Khajrana and Shrinagar which is evident from LPS-12 Page no. 44.	149	-
3	The assessee himself had shown an income of Rs.3,60,00,000/-, in his return of income for the assessment year under consideration, from undisclosed sources and therefore, even if any receipt of interest is assumed, the same is very well covered by the aforesaid income and no further addition was warranted	-	-

40. Per contra Ld. CIT-DR vehemently argued referring to the finding of both the lower authorities and seized documents.

41. We have heard rival contentions, duly considered the facts and circumstances of the case, carefully gone through the orders of both the lower authorities, relevant seized documents and material placed before us. We find that in the instant case, Ld.AO has made the entire addition of Rs.3,00,00,000/- as unexplained investment of the assessee under s.69 of the Act on account of advance payment made to some Mr. Rahul on the sole basis of some correspondences exchanged between the assessee and his son Shri Hemant Kataria. We find that both the

authorities below have heavily relied upon one letter dated 25.12.2010 purported to be in the handwriting of Shri Hemant, (one of the sons of the assessee) and given to the assessee by which he has required his father to seek the details of the various advances aggregating to 300 Lacs (written as '300L'), for various projects. We find that except this letter, there was no other basis either for the AO or for the CIT(A) to presume that the assessee had given some advances amounting to Rs.300 Lacs to some Mr. Rahul.

42. We notice that at the relevant time, when the letters were exchanged between the assessee and his son, some family disputes were going on and one of the sons Shri Hemant Kataria, without having any authentic information, was simply assuming that some sum of Rs.300 Lacs was given by the assessee to Shri Rahul. However, on the another loose paper inventorized as Page No. 51 of LPS-12, as seized from the same premises along with the above referred letter, again two jottings with figures of '20000' & '9900' have been found written under the name 'Rahul'. We also notice that a claim was made by

assessee before both the authorities that the total amount of advance to Shri Rahul was not to the extent of Rs.300 Lacs but, it was only to the extent of Rs.29,90,000/-. It was submitted that Mr. Rahul was given advances in two parts of Rs.20,00,000/- and Rs.9,90,000/- and since the assessee and other family members were habituate to write the figures in coded form by omitting two zeros, the sum of Rs.20,00,000/- and Rs.9,90,000/- were respectively written in the coded form as '20000' and '9900'. We also find that in the jottings found made in yet another loose paper inventorized as Page No. 44 of LPS-12, which has been reproduced by the Ld. CIT(A) at Para (11.3) on Page No. 71 of the impugned Order while adjudicating another ground of additions made by Ld. AO. We find that based upon such loose paper, the AO, while making addition on some other issue, for which the assessee and Revenue have raised separate grounds and which have been discussed in the subsequent paras, has reached to a conclusion that the assessee had given loans/ advances to various persons for the amount as written against the name of such persons, in the coded form, by

omitting two zeros. On a perusal of the seized loose paper, we find sufficient force in the contention of the assessee that the factum of making advances amounting to Rs.20,00,000/- and Rs.9,90,000/-, in two parts are also jotted down in such loose paper. Thus, we find that as against the only one mention of Rs.300Lacs on one letter, on all other loose papers which have also been relied upon by Ld. AO while making another addition, the aggregate amount of advances given by the assessee to Mr. Rahul works out to be at Rs.29,90,000/- only.

43. We find that in this case, except placing reliance on some jotting in some letter from one of the sons of the assessee addressed to the assessee, ld. AO or the Ld. CIT(A) was not having any other corroborative evidence on record. We notice that Ld. AO has not made any attempt to make any enquiry either from Mr. Rahul or from Mr. Hemant, the author of the letter. Even the statement of the assessee on this issue was not sought either by the Investigation Wing or by the AO. However, as against such sole piece of evidence in the form of letter, with the aid of the other loose papers, Ld. counsel for the assessee

has established that the amount of advances given to Mr. Rahul was to the extent of Rs.29,90,000/- only. And on this document which contain names of various other person to whom loans and advances are alleged to have been given is also in dispute before us and shall be dealt with in subsequent paras. Accordingly in the given facts and circumstances of the case, we reverse the finding of the Ld. CIT(A) given in the impugned order on the subject issue.

44. We further find merit in the contention of the assessee that even in respect of sum of Rs.29,90,000/-, no separate addition was called for inasmuch on the basis of jottings of Rs.20,00,000/- and Rs.9,90,000/-, made in the loose paper seized and inventorized as LPS-12, Page no. 44, the AO has already made a separate addition of Rs.7,83,60,000/- which was partly confirmed by Ld. CIT(A). Since, both the assessee and the Revenue have taken separate grounds on this issue, which have been adjudicated by us in the subsequent paras, and further since, we find that the amount of Rs.29,90,000/- has already been considered by both the authorities below while

making/ restricting the addition as aforesaid, in our considered view, no further addition is required on account of advances amounting to Rs.29,90,000/- made by the assessee to Mr. Rahul. It is well known maxim of the law that the same addition cannot be made twice. Since, while making the separate addition of Rs.7,83,60,000/-, which includes the advances amounting to Rs.29,90,000/- given by the assessee to Mr. Rahul, the AO has separately determined the interest amounting to Rs.1,25,23,200/-, in our considered view, no separate addition is required even in respect of receipt of interest on advance to Mr. Rahul. Accordingly, the Ground Nos. 3(a) & 3(b) of the assessee are allowed.

45. Through the Ground No. 3(c), the assessee has agitated the action of the Ld. CIT(A) in not granting any benefit of telescoping to the assessee in respect of advances given to Mr. Rahul against the additional income of Rs.3,60,00,000/- surrendered and shown by the assessee himself in his return of income for the assessment year under consideration. This ground of the assessee becomes infructuous and academic since we have

already deleted the addition of Rs.3 cr. for the alleged advance to Mr. Rahul. However we find that the Ld. CIT(A) has dislodged the claim of the assessee on the ground that the assessee failed to demonstrate that the advance to Rahul was given only during the year under consideration and not in the earlier years and therefore, the benefit of telescoping of such advances against the additional undisclosed income shown in the return for the year under consideration cannot be given. In our considered opinion, the Ld. CIT(A) is not correct in his approach for the reason that if the assessee had given the advances in the earlier years then, legally, no addition on this count could have been made in the assessee's income for the year under consideration. Once the CIT(A) has confirmed the addition under s.69 of the Act, it has to be necessarily held that the advances were given by the assessee during the year under consideration only and not in the earlier years, for the reason that under the provisions of s.69 of the Act, an addition can be made only for the year in which the assessee has been found to have made undisclosed investment. In our view, the Ld. CIT(A) was not correct in sailing on two boats

inasmuch while confirming the addition, he has presumingly affirmed that the assessee had made the investment only during the year under consideration but, while considering the benefit of telescoping, the Ld. CIT(A) has presumed that the assessee might have made such investments by giving advances to Mr. Rahul in earlier years. In our considered view, since, we have fully deleted the addition of Rs.3,00,00,000/- so made by the AO, as aforesaid, the question of telescoping has become academic in nature only. Accordingly, the Ground No. 3(c) of the assessee is allowed.

46. Through the Ground No. 3(d), the assessee has claimed that the Ld. CIT(A) did not accept his plea that the advances given to Mr. Rahul were received back during the year under consideration only. In our view, having given a finding that on account of advance given to Mr. Rahul, no separate addition is warranted, this ground has become academic in the nature only. Even otherwise, we find that the assessee at no stage could substantiate his claim of having received back the advances given to Mr. Rahul with any positive evidence, the claim of the

assessee is not eligible for acceptance. Accordingly, ground no. 3(d) of the assessee is dismissed.

47. Through the ground Nos. 4(a), 4(b) & 4(c), the assessee has agitated the confirmation of addition amounting to Rs.9,00,000/- made by the AO on account of interest on advances amounting to Rs.3,00,00,000/- given to Mr. Rahul. Since while adjudicating the ground No. 3(a) & 3(b), we have already given our findings that first of all, the amount of advance given to Mr. Rahul was only to the extent of Rs.29,90,000/- and further since, we have already given a finding that in respect of such advances and interest thereon, separate additions have already been made by the AO, in our considered view, the addition of Rs.9,00,000/- so made by the AO is not sustainable. Accordingly, ground Nos. 4(a), 4(b) & 4(c) of the assessee are allowed.

48. Ground No. 5 of the assessee and Ground No. 3 & 4 of the Revenue – Unexplained Investment in Land u/s. 69 – Rs.52,00,000/- and Profit on sale thereof – Rs.12,60,000/-

49. The ground no. 5 of the Assessee is against the action of the Ld. CIT(A) in not giving a finding to the effect that the assessee having liquidated the investment made in land at Rs.52,00,000/- during the relevant year itself was having such funds available for explaining the sources of his unexplained investments. Whereas, the Ground Nos. 3 & 4 raised by the Revenue pertains to the action of the Ld. CIT(A) in giving telescoping benefit of addition of Rs.52,00,000/- made by the AO on account of unexplained investment in land and Rs.12,60,000/- on account of profit on sale of such land, against the surrendered income of Rs.3.60 cr. offered during search and disclosed in Income Tax Return.

50. The brief facts relating to the grounds, as culled out from the records are that one page no. 47 of LPS-12 was found and seized from the premises of the assessee. Such loose paper was in the form of a letter dated 12-01-2011 written by Shri Hemant Kataria [one of the sons of the assessee] to the assessee asking, vide Q. No. 9, for details of land purchased and sold at Indore.

Below such query, some jottings of purchase and sale are written in the handwriting of the assessee that 65000 sq. ft. land purchased for Rs.80/- per sq. ft. and 36000 sq. ft. land sold for Rs.115/- per sq. ft. During the course of the assessment proceedings, Ld. AO required the assessee to furnish the details of purchases and sales. The assessee, in response, stated that he had made an investment of Rs.52,00,000/- for purchase of land but the registration of the same had not taken place. The assessee further added that the entire investment was made out of his undisclosed income and the same was covered by the additional income of Rs.3,60,00,000/- shown by the assessee in his return of income for the relevant assessment year. Since as per the assessee, no formal documents were executed for purchase and sale, the details of sellers and buyers could not be furnished. Ld. AO has stated that the assessee did not file any details in respect of purchasers and sellers or copies of agreements etc. Ld. AO further stated that the payment made by the assessee was not recorded in the books of account and explanation offered by the assessee regarding nature and source

of investment was found unsatisfactory, Ld. AO treated the investment of Rs.52,00,000/- in purchase of property as unexplained investment u/s. 69 of the Act. and made addition thereto, and also made an addition of Rs.12,60,000/- on account of short term capital gain on sale of land.

51. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) stated that Ld. AO was justified in holding that the assessee had purchased 65000 sq. ft. land in Indore @Rs.80/- per sq. ft. by making investment of Rs.52,00,000/-. However, the Ld. CIT(A) also found that the assessee has disclosed additional income of Rs.2,60,00,000/- in his return of income for the relevant assessment year which is sufficient to cover the subject investment in purchase of land. Therefore, the Ld. CIT(A) directed Ld. AO to allow credit of surrendered amount against such investment and held that no separate addition was warranted. Further, in respect of the addition of Rs.12,60,000/- on account of profit on sale of land, the Ld. CIT(A) has stated that the incriminating document page no. 47 of LPS-12 evidently reflects the earning of profit @Rs.35 per sq. ft. on sale rate of

Rs.115 sq. ft. as against purchase of Rs. 80 per sq. ft. Therefore, the action of Ld. AO has been justified and the addition requires to be confirmed. However, the Ld. CIT(A), concurring with the contention of the assessee, held that no separate addition is required as the same is to be considered as covered in the surrendered income of Rs.2.60 crores shown by the assessee from the sources other than business income. Accordingly, the Ld. CIT(A) directed Ld. AO to delete the addition.

52. Aggrieved with the Order of the Ld. CIT(A), both the assessee as well as the Revenue have preferred cross-appeals before this Tribunal on this issue.

53. Ld. CIT-DR vehemently argued supporting the order of Ld. Assessing Officer.

54. Per contra Ld. Sr. learned counsel for the assessee has filed one written synopsis and the relevant portion of the source is being reproduced as under:

a). Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S.	Submission in Brief	Relevant	Remarks
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No.		Pages of Paper Book	
1	The investment of Rs.52,00,000/- was made by the assessee out of his undisclosed income already surrendered and disclosed in the return of income	68	The assessee disclosed an additional income of Rs.3,60,00,000/- in his return of income for the relevant assessment year. The same has also been considered in the table given at Part-II above.
2	In respect of the subject transactions, no registration of documents was done. Since no formal documents regarding purchases and sales were entered into, the same could not be produced before the lower authorities and in such eventuality, the assessee also could not furnish the details of purchasers and sellers.	-	

b) Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	The assessee disclosed an additional income of Rs.3,60,00,000/- in his return of income for the relevant assessment year which is inclusive of the profit of Rs.12,60,000/- from sale of the subject land and therefore, no separate addition was warranted.	68	The income has also been considered in the table given at Part-II above.

55. Reliance also placed on the submission of the assessee made before the CIT(A) placed at page no. 23 & 24 of the Paper Book. The same has also been reproduced by the CIT(A) at page no. 63 of the impugned Order while adjudicating the Ground Nos. 8(a)

&8(b) raised by the assessee. The assessee wish to place reliance on such detailed written submission made before the CIT(A).

56. We have heard rival contentions and perused the material place before us and carefully gone through the order of the lower authorities and documents filed before us by both the sides. We find that the Ld. CIT(A) has rightly confirmed the addition of Rs.52,00,000/- and Rs.12,60,000/- respectively on account of unexplained investment in land and profit on sale thereof. We also find no infirmity in the action of the Ld. CIT(A) to grant the benefit of telescoping to the assessee in respect of the aforesaid undisclosed investment and undisclosed profit against the additional undisclosed income of Rs.2,60,00,000/- voluntarily shown by the assessee himself in his return of income furnished under s.153A of the Act for the reason that the income so shown by the assessee was sufficient to cover up the aforesaid undisclosed investment in the land and as also, the undisclosed profit on sale of land. Thus, the ground nos. 3 & 4 of the Revenue, being devoid of any merits, are hereby dismissed.

57. Through the Ground No. 5, the assessee has claimed that the Ld. CIT(A) has erred in not giving a finding to the effect that the sales proceeds from the sales of the land were available to the assessee for explaining the sources of other undisclosed investments found made by him during the year under consideration.

58. Before us, it has been contended by Ld. Counsel for the assessee that from the seized documents viz. page no. 47 of LPS-12 containing letter dated 12.01.2011 placed at page no. 150 of the assessee's Paper Book, it is evident that during the year under consideration itself, the assessee had made an investment of Rs.52,00,000/- for purchase of certain lands admeasuring 65000 sq.ft. at a rate of Rs.80/- per sq. ft. and such investment is claimed to have been made out of undisclosed income amounting to Rs.2,60,00,000/- It has further been contended that from the same seized paper, it is evident that out of the aforesaid 65000 sq.ft. of land, during the year under consideration itself, the assessee had sold 36000 sq.ft. land at a

rate of Rs.115/- per sq.ft. i.e. for Rs.40,80,000/-. It has further been submitted by the assessee that in respect of the profit on sale of the 36000 sq.ft. land which works out to be Rs.35/- per sq.ft. at Rs.12,60,000/-, a separate addition has duly been made by the AO himself. It has been contended that the sales proceeds amounting to Rs.40,80,000/- from the subject land was duly available to the assessee for explaining his sources for other unexplained and undisclosed investments in loans and advances and as also, in the scrap business. It was prayed that a suitable direction for grant of benefit of telescoping against such sale proceeds of Rs.40,80,000/- be allowed against other unexplained investments found to have been made in the same year.

59. Per contra, the Ld. CIT(DR) objected the assessee's claim on the ground that the assessee could not establish nexus of such sales proceeds with other unexplained investments.

60. We have considered the rival contentions, seized documents and facts and circumstances of the case. In our considered view,

having held that the assessee had derived income amounting to Rs.12,60,000/- from partial sale of land, it has to be necessarily held that the sales proceeds of such land amounting to Rs.40,80,000/- was available with the assessee. We find that the transaction of purchase of land has its nexus with the letter dated 12.01.2011. Business of trading in scrap and other related activities are since the beginning of the year and another seized paper showing loans and advance is having a date of December. Therefore this plea of the assessee that sale proceeds of land was used in giving loans and advances and used in the business of scrap has no merits. Accordingly, the ground no. 5 of the assessee appeal for A.Y. 2011-12 is dismissed

61. Ground Nos. 6(a), 6(b), 7(a), 7(b) & 8 of the assessee and Ground Nos. 5 & 6 of the Revenue regarding addition for unexplained Loans & Advances to various persons u/s. 69 and Interest earned thereon.

62. The ground nos. 6(a) & 6(b) of the Assessee are against the action of the Ld. CIT(A) in partially confirming the addition to the extent of Rs.36,10,000/- out of the total addition of

Rs.7,83,60,000/- made by the AO on account of loans and advances. The ground nos. 7(a), 7(b) & 8 of the assessee are against the action of the Ld. CIT(A) in giving a direction to the AO to recalculate the amount of interest on the confirmed addition of Rs.2,31,95,000/- on account of loans and advances. Whereas, the Ground No. 5 raised by the Revenue pertains to the action of the Ld. CIT(A) in deleting the addition of Rs.6,90,00,000/- out of the total addition of Rs.7,83,60,000/- made by the AO on account of unexplained loans and advances. Further, the Ground No. 6 of the Revenue is against the action of the Ld. CIT(A) in restricting the addition of interest made on account of unaccounted loans & advances and directing to recalculate on the amount of Rs.2,31,95,000/- as against Rs.10,43,60,000/-.

62. The brief facts relating to the grounds, as culled out from the records are that on page 44 of LPS-12, found and seized from the premises of the assessee, a list of all the investment made/ loans advanced by the assessee had been prepared. Such loose paper has also been scanned by the Ld. CIT(A) at Page no. 71 of

the impugned Order. On the basis of the loose paper, the AO has prepared one table by decoding and summarizing the transactions found noted on page no. 44 of LPS-12. During the course of the assessment proceedings, the AO, vide his questionnaire dated 25-09-2013, required the assessee to explain the contents of page no. 44, LPS-12 probably bearing a date '27.12.' which contained reference of giving loans and advances aggregating to Rs.10,43,60,000/- to various persons. In response to the same, the assessee, vide his counsel's letter dated 25-01-2014, made a detailed explanation in respect of the subject loose paper and also demonstrated that the aggregate amount of Rs.10,43,60,000/- as calculated by him was suffering from some factual errors and the total of the advances ought to have been at Rs.2,31,95,000/- only. Ld. AO rejected the explanation and held that the advance of Rs.10,43,60,000/- as unexplained investment of the assessee under s.69 of the Act in the form of loans and advances. Ld. AO, after giving a set-off of the additional income of Rs.2,60,00,000/- offered by the assessee from such undisclosed investment of

Rs.10,43,60,000/-, made an addition of Rs.7,83,60,000/- in the hands of the assessee as his undisclosed income. Further, the Ld.AO also estimated interest @12% p.a. on the aforesaid loans & advances and made a separate addition of Rs.1,25,23,200/- in the assessee's income for the year under consideration.

63. Aggrieved, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) noted that Ld. AO was inclined to decode the figures noted in the said loose paper by adding two zeros but while decoding and interpreting the loose paper, Ld. AO committed some mistakes. The Ld. CIT(A) has reproduced the chart prepared by the AO and given in the assessment order. At para (11.5), the Ld. CIT(A) has observed the mistake of decoding committed by the AO in respect of two entries. The Ld. CIT(A) observed that in respect of two entries, serialized as Item No. (2) & (3), Ld. AO committed mistake inasmuch instead of decoding the figure with two zeros, decoded the same with three zeros which resulted into over-reading of the figures by a sum of Rs.1,21,50,000/-. Thus, at para (11.6), the Ld. CIT(A) directed to

delete the addition of Rs.1,21,50,000/- on account of mistake of decoding.

64. At para (11.7), the Ld. CIT(A) observed that the AO has made additions in respect of the figures written in brackets on account of Borana Jameen, Kareni Jeemen and 19km Jeemen listed at S. No. 11, 12 & 13 of loose paper. Ld. CIT(A) observed that the figures written in brackets were the requirements of forthcoming months. In respect of 19km Hemant Jeemen, the requirement of 3 crores has been shown in the month of May which means May 2011 since the date of search is 07.09.2011 and the same falls in the next financial year 2011-12. But Ld. AO made addition of this amount in F.Y. 2010-11.

65. At para (11.8) of the impugned order, the Ld. CIT(A) considered the plea of the assessee that neither during the search proceedings nor during assessment proceedings, the assessee was ever confronted with individual entries of the document. At para (11.9), the Ld. CIT(A) stated to have forwarded the submission of the assessee to the AO for his

remand report and also reproduced the remand report of Ld. AO on this issue. At para (11.10), the Ld. CIT(A) reproduced the rejoinder of the assessee on the remand report filed by Ld. AO.

66. At para (11.11) of the impugned order, the Ld. CIT(A) stated that undisputedly, every entry of the page no. 44 were never confronted to Shri Sunil Kataria (authorized person on behalf of the assessee) or to the assessee. The Ld. CIT(A) further stated that undisputedly, the assessee has made a surrender of Rs.2.60 crores on this account as against the determined amount of Rs.10.43 crores. The Ld. CIT(A) also observed that from the assessment order and remand report, it is evident that no enquiries were found conducted by the AO on the issue of bracketed figures which were shown as future requirements. No evidences have been brought on record to prove that the figures shown in brackets were actually paid/ advanced. The Ld. CIT(A) further stated that ld. AO has not conducted any enquiry to ascertain the details and nature of loans/ advances or investment in land or projects. Accordingly, the Ld. CIT(A) directed Ld. AO to delete the addition to the tune of Rs.3.90

crores (figures in brackets) on account of future projections found made against items at S. No. 11 to 13 of Page no. 44 of LPS-12.

67. At para 11.12 of the impugned order, the Ld. CIT(A) further observed that at S. No. 14 of loose paper, there is mention of name of one Atul, CA against whom the remark "300 Lakh march profit required" is given. The Ld. CIT(A) stated that ld. AO has made addition of Rs.3 crores without even raising a single query. The Ld. CIT(A) further stated that the amount seems some future planning or requirement as 'March' is clearly written on this incriminating document dated 27/12/2010. The Ld. CIT(A) referred to the contention of the assessee that it was planning to bring back the amount of profit earned in the undisclosed business of scrap in the business through CA Atul. The explanation of the assessee was found reasonable and plausible by the Ld. CIT(A) as the assessee has declared undisclosed income of Rs.3.60 crores during the year under consideration. Accordingly, the Ld. CIT(A) stated that the AO has

not been found justified in making addition of Rs.3 crores and directed to delete the same.

68. At para 11.13 of the impugned order, the Ld. CIT(A) stated that undisputedly, the assessee has made disclosure of Rs.2.60 crores on the basis of entries in the impugned document and since the disclosure made has been set-off partly with the addition of Rs.52,00,000/- (as per ground 7) and Rs.12,60,000/- (as per ground 8), the net surrendered amount available for adjustment is Rs.1,95,40,000/- which can be allowed to be reduced from confirmed additions of unexplained loans and advances.

69. In respect of calculation of interest on loans and advances, the Ld. CIT(A), at para (12.3), has observed that no evidence or material has been found during search or assessment proceedings to infer that the assessee has earned any interest/return out of impugned investment but at the same time, it has been duly admitted by the assessee that the entries in the document were in the nature of loans and advances and

disclosure of 2.60 crores has also been made on this account. Accordingly, the Ld. CIT(A) directed the AO to re-calculate the interest income on confirmed amount of Rs.2,31,95,000/-.

70. Aggrieved with the Order of the Ld. CIT(A), both the assessee as well as the Revenue have preferred cross-appeals before this Tribunal on the issue.

71. Ld. CIT-DR vehemently argued referring to the observation and finding of Ld. AO.

72. Per contra Learned counsel for the assessee has filed written synopsis and the relevant portion of such synopsis is being reproduced below:

“ Key Points of Assessee’s Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	The subject loose paper page no. 44 of LPS-12 is not in the handwriting of the assessee. Further, it has not been prepared on the instruction or requirement of the assessee.	149/151	Such loose paper was prepared by Mr. Arvind Kataria, one of three sons of the assessee. The assessee had owned such paper before the search party and even before the Assessing Officer, the assessee had fastened his liability on the subject loose paper. Thus, in any manner, the assessee is not disowning the subject loose paper.

2	The date put on such loose paper is that of 27-12. Thus, it can be presumed that it was prepared on 27-12-2010, a date which falls in the previous year relevant to the assessment year under consideration.	-	Probably, the purpose and intent of preparing such loose paper, by Shri Arvind Kataria, was to keep himself reminded of certain things.
3	Such loose paper is mixed in the nature. It contains jottings of certain transactions which have already taken place. It also contains certain jottings for work to be done. It will be appreciated that if the said loose paper was prepared on 27-12-2010, then the notings with the description of January clearly relates to something to be done in the next month.	-	For an example, against item no. 11 of the subject loose paper, where there is a mention of 'Borana Jameen', a description of (Jan. 30-40 lac Require). Similar description is also written against item no. 12, 13 & 14.
4	During the course of the entire search proceedings, statement of the assessee or author of the subject loose paper was not recorded by the search party.	-	-
5	The AO had rightly attempted to decode the subject loose paper by adding two zeros.	151	However, probably under some mistake, in respect of two items, instead of adding two zeros, he has added three zeros. For the second item of 8500=00, jotted down with the description of 'Lndriji', the AO has taken the figure of Rs.85,00,000/- instead of correct figure of Rs.8,50,000/- only. Likewise, for the third item of 5000=00, jotted down with the name of Anil Ji, the AO has mistakenly taken the figure by adding three zeros as that of Rs.50,00,000/- instead of taking the correct figure of Rs.5,00,000/-. The papers ought to have been decoded at the figures as submitted before the CIT(A) at para (2.06) of our written submission before him which has also been reproduced by the CIT(A) at page nos. 31 & 32 of his Order.
6	In respect of the item no. 11, attributable to 'Borana Jeemen', for the figures written in the said	151	It appears that while interpreting the item no. 13, the AO has taken into consideration jottings made

	<p>loose paper as 5000=00, instead of decoding it to be Rs.5,00,000/-, the AO has decoded the same to be at Rs.45,00,000/- which is patently wrong.</p> <p>Likewise, in respect of item no.12, attributable to 'Karen Jeemen', for the figures written on the loose paper as 600=00, the AO, without assigning any reason for doing so, decoded the same at Rs.50,60,000/-.</p> <p>In the same fashion, without assigning any reason, for the item no. 13, with the description of '19 km Hement Jeemen', the AO has decoded the figure of 6200=00 as Rs.3,06,20,000/- instead of the correct amount of Rs.6,20,000/-.</p>		<p>adjoining to figure of 6200=00 with the description of '6 May 300Lac Req.' and probably, under a patently wrong notion and misinterpretation, he added some future requirement with the amount of investment. It is a settled position of law that a document has to be read in the holistic manner and in the same manner in which the author of the document was purported to. The subject loose paper cannot be interpreted in a manner suiting the convenience of the AO. On a plain reading of the description written against item no. 13, no person of ordinary prudence could have reach to a conclusion that the assessee had actually given a sum of Rs.300 lacs to Mr. Hemant which was only shown as a requirement on the loose paper.</p>
7	<p>The AO has also misinterpreted the figures ' =00 (300 Lac March Profit Req.)', written against item no. 14 'Atul C.A.' as Rs.3,00,00,000/- without assigning any reason.</p> <p>The figure of 300 Lac with the narration of 'March Profit Require' was just a planning (which could not materialize) and it was not, in any manner, representing any loan or advance of Rs.300 Lacs made by the assessee to Atul C.A. as wrongly interpreted by the AO.</p>	151	<p>During the relevant previous year, the assessee had earned an income of Rs.3,60,00,000/- from undisclosed sources. Such income was earned by the assessee from carrying out unaccounted transactions of scrap trading, interest income on unaccounted money lending and others. Such income was earned by the assessee from undisclosed sources and there was no recording of such income in his regular books of account. The assessee wanted to bring such income in his regular books of account. In such circumstances, Shri Arvind Kataria, son of the assessee, had contacted his friend at Kolkata and such friend had intimated Shri Arvind Kataria that some C.A. Atul can manage this profit for him. Eventually, no such profit could be managed and the same got unearthed during the course of search proceedings.</p>
8	No independent enquiry	-	

	conducted by the AO either during the assessment proceedings or during remand report proceedings. No material brought on record by the AO.		
9	During the relevant previous year, the assessee had given a sum of Rs.2,31,95,000/- only by way of loans & advances and the entire amount of loans & advances is covered by the total income of Rs.3,60,00,000/- already offered by the assessee in his return of income	-	The sources of investments of Rs.2,31,95,000/- for giving loans and advances are covered by the undisclosed income of Rs.3,60,00,000/- offered by the assessee in his return of income for the assessment year under consideration [kindly refer Table at Part-II above].

73. Reference was also made to the detailed submission made before the CIT(A) placed at page no. 24 to 31 of the Paper Book. The same has also been reproduced by the CIT(A) at page no. 67 to 70 of the impugned Order while adjudicating the Ground Nos. 9(a) to 9(c) raised by the assessee. Supplementary written submission is also placed at page no. 152 to 157 of the Paper Book reproduced below:

Key Points of Assessee's Submission and Relevant Pages of Paper Book:

S. No.	Submission in Brief	Relevant Pages of Paper Book	Remarks
1	On a perusal of the page no. 44 of LPS-12, the only loose paper on which the details of loans and advances are jotted down, it shall be observed that nowhere there is a mention of receipt of interest of a sum of Rs.1,25,23,200/- as presumed by the AO.	151	The action of the AO can be described only a result of bald guesswork, surmises and conjectures without any basis. From the subject loose paper, it cannot be interpreted that all the loans and advances were given as interest bearing loans. Furthermore, from such loose paper, it cannot be interpreted that all the loans were given on

			interest on very first day of the relevant previous year so as to yield interest income to the assessee for the whole year.
2	The AO has worked out the interest @ 12% on the assumption that the assessee had given loans and advances aggregating to Rs.10,43,60,000/-.	-	The actual aggregate amount of loans and advances given by the assessee during the relevant previous year was to the extent of Rs.2,31,95,000/- only. The interest bearing loans were given by the assessee, on various dates, during the relevant previous year from time to time out of undisclosed income generated by him from time to time.
3	From making the loans and advances, the assessee had earned interest income nearly Rs.15,00,000/- only. The interest income so earned was redeployed by the assessee for making loans and advances. Since the assessee has already considered the aggregate amount of loans and advances of Rs.2,31,95,000/-, which includes the amount of loans and advances given from the deployment of interest, no separate addition on this count is called for.	-	-
4	The assessee himself had shown an income of Rs.3,60,00,000/-, in his return of income for the assessment year under consideration, from undisclosed sources and therefore, even if any receipt of interest is assumed, the same is very well covered by the aforesaid income and no further addition was warranted	-	-

74. We have heard rival contentions and perused the material placed on record, duly considered the facts and circumstances of the case, orders of lower authorities, written and oral submissions made from both the sides.

75. We find that during the course of the search in the assessee's premises, one loose paper inventorized as page no. 44 of LPS-12 was found and seized supposedly being a date on top '27/12'. From the copy of such loose paper, as furnished by the assessee in his paper book at page no. 149 and as also, scanned by the Ld. CIT(A) in his Order at page no. 71, we find that such loose paper is in handwritten form in which against the 27 names/ items, some amounts have been written. We find that the AO has held that the figures written on such paper were in coded forms by omitting two zeros. Further while undertaking the exercise of decoding the figures, in respect of some items, the AO has rightly made the decoding for an example, in respect of S. No.1, against the name of some Prashant Ji, the written figures of 50000=00 has rightly been decoded by the AO to Rs.50,00,000/-. Likewise, against the Item No.4,5,6,7,8,9,10,11,15,16,17 & 18, all the figures written have been decoded by adding two zeros. However, we find that in respect of two items viz. the item no. 2 & 3 respectively of 8500=00 and 5000=00, have erroneously been decoded by the

AO by adding three zeros in the figures, which resulted in the misinterpretation of the amount respectively at Rs.85,00,000/- and Rs.50,00,000/-. Before us Ld. CIT(DR) has not rebutted such arithmetical error committed by the AO. Accordingly, in our considered view, there is no infirmity in the CIT(A)'s action in deleting the additions amounting to Rs.1,21,50,000/- pertaining to aforesaid two items.

76. We also note that in impugned loose paper page no. 44 of LPS-12, against three items serialized at S. No. 11, 12 & 13, respectively under the captions 'Borana Jameen', 'Kareni Jameen' and '19km Hemant Jameen', adjacent to the figures, there is some mention in brackets about some requirements again in the coded forms. We find that the AO without conducting any independent enquiry and merely on the basis of the jottings of the word 'requirement', presumed that the sum of funds required by the assessee were actually so invested by the assessee during the year itself. We find merit in the findings of the CIT(A) that the loose paper was prepared on 27.12.2010 and therefore, any mentioning regarding the requirement of funds in

the May can only be interpreted that such funds were required in the May 2011 and not in the year under consideration. On such holistic interpretation of the loose paper, it cannot be said that the assessee was required to make any investment of Rs.300 lacs for purchase of any land at 19km. In our considered view, it is not the case of the AO that the description mentioned against the aforesaid three items denotes the amount already invested by the assessee prior to the search. In our view, such description only denotes the requirements of some further funds in future and therefore, it can only be termed as planning and projections and not the actual investments made by the assessee during the year under consideration. We note that at no stage, the revenue conducted any independent enquiry regarding the alleged investment by the assessee either from the records of Sub-Registrar or any other sources. In such circumstances, in our considered opinion, merely on the basis of jottings with the description 'requirement' and the undisclosed investment by the assessee cannot be presumed merely on guess work, without having any corroborative evidence on record. Thus, we find no

infirmity in the action of the CIT(A) in deleting the partial additions in respect of the aforesaid three items.

77. We also find merit in the contention of the assessee, which was also accepted by the CIT(A), that the description with the words '(300 Lac March profit require)' against the name of some 'Atul C.A.' as serialized at S. No. 14 of the impugned seized paper, it cannot be interpreted that the assessee made any undisclosed investment. Such description only denotes some future planning. We find that the AO has not conducted any independent enquiry from Atul CA and further by no stretch of imagination, the description written on the loose paper can be interpreted as making of any undisclosed investment by the assessee. Thus, we find no infirmity in the action of the CIT(A) in deleting the addition made by the AO on the allegation of advance to Atul CA on the basis of jottings made at S. No. 14 of the subject loose paper. In nutshell, we are in complete agreement with the findings given by the Ld. CIT(A) that during the year under consideration, the assessee had made investment by way of loans and advances aggregating to a sum of

Rs.2,31,95,000/- only and not of Rs.10,43,60,000/- as determined by the AO. Here, it would not be out of context to mention here that the aforesaid sum of Rs.2,31,95,000/- also includes the advances amounting to Rs.29,90,000/- given by the assessee to Mr. Rahul for which we have given separate findings while adjudicating other grounds, supra. Accordingly, we find no merit in the Ground No. 5 raised by the Revenue and the same is hereby dismissed.

78. Now, coming to the ground nos. 6(a) & 6(b) raised by the assessee, from the CIT(A)'s Order, we note that after determining the amount of undisclosed investment by way of loans and advances at Rs.2,31,95,000/-, Ld. CIT(A) vide para (11.13) of his Order, has also made a direction to give the benefit of telescoping of income disclosed by the assessee in his return of income filed under s.153A of the Act for the assessment year under consideration. The CIT(A) has restricted the benefit of telescoping to the extent of Rs.1,95,40,000/-. The CIT(A) while holding the claim of the assessee from Rs.2,60,00,000/- to Rs.1,95,40,000/-, has held that the separate benefit of

telescoping has already been granted by him to the assessee in respect of undisclosed investment in purchase of land at Rs.52,00,000/- and profit on sale of such land at Rs.12,60,000/- aggregating to a sum of Rs.64,60,000/- while adjudicating the separate grounds related to such issues.

79. We observe that the assessee has challenged the quantum of telescoping benefit given by the Ld. CIT(A) against the total undisclosed income of Rs.3.60 cr. surrendered during the course of search and offered to tax in the return of income. As observed earlier in the preceding paras, we will specifically deal with the issue of telescoping benefit and set off of the addition sustained in the hands of assessee against the income surrendered and offered to tax, in the subsequent paras. However, since we have deleted some of the additions sustained by ld. CIT(A) there will be an overall change in the telescoping benefit available to the assessee. Thus, these two grounds of the assessee are partly allowed subject to our working of telescoping benefit available to the assessee.

80. Now, coming to the ground no.7(a) & 7(b) raised by the assessee and ground No. 6 raised by the Revenue which relates to issue of addition made on account of interest earned by the assessee on various loans and advances made by ld. AO. We note that Ld. AO made addition for unexplained loans and advances at Rs.10,43,60,000/- based on the seized documents page No. 44 LPS-12. Ld. AO also calculated the interest income at Rs.1,25,23,200/- which is computed @12% interest per annum on the sum of loans and advances.

81. Subsequently when the matter came up before the Ld. CIT(A), he after examining the facts confirmed the addition of Rs.2,31,95,000/- in place of the addition of Rs.10,43,60,000/- made by the Ld. AO. As regards on interest Ld. CIT(A) directed the Ld. AO to recompute the interest on the reduced amount of addition.

82. Before us when this matter of unexplained loans and advances was raised by both sides. We have concurred with the finding of Ld. CIT(A) and sustained the addition of loans and advances at Rs.2,31,95,000/-.

83. Now coming to the part of interest computation we find that Ld. AO calculated the interest @ 12% for the whole year. We however on perusal of the seized document find that there is a date mentioned on the top of seized documents LPS 12 page 44 which is '27/12'. Both the assessee and revenue have accepted that the date on this document was 27/12/2010. The addition of loans and advances has been made purely on the basis of this loose paper. Therefore, all types of addition based on such loose paper needs to be made keeping in mind this date i.e. 27.12.2010. Thus the alleged loans and advances of Rs.2,31,95,000/- needs to be presumed to be give on 27.12.2010 and therefore the interest income is to be calculated only from December 2010 till March 2011. In the instant year under appeal by applying rate of 12% on the loans of Rs.2,31,95,000/-, the interest for 4 months will come to Rs.9,27,800/- only. We, therefore, set aside the finding of Ld. CIT(A) and confirm the addition for interest at Rs.9,27,800/-. Thus, ground no. 7(a) & 7(b) of assessee's appeal is partly allowed and dismissed ground no.6 raised by Revenue.

84. Now we take up the common issue relating to telescoping benefit being available to the assessee. In most of the additions confirmed by Ld. AO and subsequently confirmed/partially confirmed by Ld. CIT(A), this issue of telescoping benefit has been discussed. Now since we have dealt with all the additions challenged before us by assessee and revenue and have decided the same, in order to keep clarity, we deem it proper to deal with this issue keeping in mind our finding of various additions dealt by us in the forgoing discussions.

85. We find that the assessee was subjected to search u/s 132 of the Act and in his individual name surrender of Rs.6 cr. was made which was bifurcated into two parts. For A.Y. 2011-12 Rs.3.60 cr. was offered to tax in the income tax return and the remaining sum of Rs.2.4 cr. was disclosed in the return of income for A.Y. 2012-13. The instant appeal relates to A.Y. 2011-12 for which Rs.3.60 cr. have been offered to tax.

First we will mention the details of additions confirmed by us in the hands of assessee for A.Y. 2011-12:

i. Estimated net profit in scrap business Rs.94,14,731/-

ii. Unexplained investment in scrap trading business	Rs.38,78,724/-
iii. Unexplained investment in purchase of land	Rs.52,00,000/-
iv. Unaccounted profit on sale of land	Rs.12,60,000/-
v. Unexplained investment in loans and advances	Rs.2,31,95,000/-
vi. Estimated interest on unexplained	Rs.9,27,800/-
vii. Loans and advances	Rs.27,50,000/-
Total	Rs.4,38,76,255

86. Now against the above additions Ld. counsel for the assessee has requested to provide telescoping benefit of the following:

1. Undisclosed income surrendered during the search and offered to tax	Rs.3,60,00,000/-
2. Accumulated net profit from unaccounted scrap business earned up to 30 th November, 2010	Rs.62,76,487/-
Total	Rs.4,22,76,487/-

87. Ld. DR opposed to the request of ld. counsel for the assessee of providing set off of accumulated unaccounted profit from scrap business till 30th November 2010.

88. We have heard rival contentions, perused the records placed before us. In order to examine the issue of telescoping benefit we have examined the records and also considered our finding adjudicating various issues raised by both the sides. So far as, the amount of addition confirmed by us the same remains at Rs.4,38,76,255/- (as stated above). As regards set off of income is concerned there is no doubt with regard to the benefit of set off of available to the assessee against undisclosed income offered to tax at Rs.3.60 cr. which was admitted during the course of search and subsequently disclosed in the income tax return.

89. The only issue remains is set off of accumulated profit from unaccounted business of trading in scrap and granules at Rs.62,76,487/-. As far as, the total estimated profit is concerned, we have already decided the estimated net profit to be added in the hands of assessee at Rs.94,14,731/- which is 10% of the total unrecorded sales of Rs.9,41,47,310/- and this figure of unrecorded sales is derived from seized diaries bearing Annexure No. A1 to A7. On perusal of the seized record we find

that the assessee has carried out the transactions of sales from April 2010 till completion of year. In other words this unaccounted business of trading in scrap has been carried round the year and one cannot dispute that the assessee kept on earning income as and when sales were made. Such income from scrap trading business kept on accumulating with the assessee.

90. Now here it would be relevant to refer the seized loose paper LPS-12, Page 44. We have analysed this seized document elaborately in the preceding paras and have confirmed the addition of Rs.2,31,95,000/- as unaccounted loans and advances given by the assessee. On this seized loose paper a date 27.12.2010 is mentioned and since the addition has been made purely on the basis of this loose paper and no other incriminating material has not been found nor any other enquiry conducted, we have held that the date mentioned this document 27.12.2010 is to be presumed as the date on which loans and advances were given. Now keeping this fact in mind we find that apart from the income of Rs.3.60 cr. offered to tax, the assessee

also possessed the accumulated profit from unaccounted business of trading in scrap as on the date of giving loans and advances on 27.12.2010. Thus if we presume that assessee had evenly earned the income during the year from scrap trading business and then the income for 8 months i.e. from 01.04.2010 to 30.11.2010 based on the yearly estimated income from scrap trading business of Rs.94,14,731/-, would come at Rs.62,76,487/-. In our considered view this amount was also available with the assessee to give loans and advances appearing in the seized loose paper appearing no. LPS-12 page 44. We, therefore, hold that the assessee was having sum of Rs.4,22,76,487/- (Rs.3.60 cr. offered in the income tax return + profit from scrap trading business for 8 months Rs.62,76,487/-) available for set off against the addition sustained by us at Rs.4,38,76,255/-. Thus Rs.15,99,768/- remains to be taxed in the hands of assessee.

91. We, therefore, are of the view that against total addition sustained by us after providing the telescoping benefit of amount available, there remains only Rs.15,99,768/- to be taxed by the ld.

AO for A.Y. 2011-12. To make it simple we direct Ld. AO to tax this amount under the head of unexplained loans & advances.

92. In the result, this issue of telescoping benefit is partly allowed in favour of the assessee and that raised by revenue is dismissed.

Now we take up the Revenue's appeal for A.Y. 2012-13.

93. The first issue raised in ground no.1 relates to the addition for interest on the unaccounted loans and advances. We find that we have dealt this issue in the cross appeals for A.Y. 2011-12 and have confirmed the addition for unaccounted loans and advances at Rs.2,31,95,000/- and have also confirmed for levy of interest on such loans and advances. In the instant appeal also Ld. CIT(A) has taken the consistent view and directed the Ld. AO to recalculate interest amount of Rs.2,31,95,000/-. We, thus find no reason to interfere in the finding of Ld. CIT(A). Thus, this ground of revenue's appeal is dismissed.

94. As regards ground No.2 raised by revenue challenging the finding of Ld. CIT(A) allowing the business loss of Rs.10,27,036/- made by the Ld. AO, we find that the Ld. AO disallowed the claim of loss of Rs.10,27,036/-. However, Ld. CIT(A) on appreciating the fact that due to search assessee could not concentrate on the business. However all the transactions are duly recorded and books of account are audited and thus allowed the business loss. We, on perusal of the records, find no reason to interfere in the finding of Ld. CIT(A), since the Ld. AO has not pointed out any defect in the books of account before disallowing the business loss of Rs.10,27,036/-. The revenue fails to succeed in ground no.2.

95. As regard ground no.3 raised by the revenue pertaining to issue relating to interest on unaccounted loans to Rahul Ji we find that the issue of quantum addition of Rs.3 cr. for the alleged loans to Mr. Rahul Ji came up before us while dealing with cross appeal for A.Y. 2011-12. After examining the facts of the case and relevant seized material we have deleted the addition of the alleged loan given to Rahul at Rs.3 cr. Since the very basis of

computing interest challenged in the instant ground no.3 of revenue's appeal has been deleted by us, this ground of Revenue becomes infructuous and deserves to be dismissed. We accordingly, order so and dismissed ground no.3.

96. All the grounds of appeal raised by the revenue for A.Y. 2012-13 are dismissed.

97. In the result, appeal by the assessee in IT(SS) ANo.42/Ind/2018 for A.Y. 2011-12 is partly allowed and appeals by the Revenue in ITANo.259/Ind/2018 for A.Y. 2011-12 & ITANo.886/Ind/2018 for A.Y. 2012-13 are dismissed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 02.08.2021.

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated :02/08/2021

Patel/PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Assistant Registrar, Indore