

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.805/Ind/2018
Assessment Year 2012-13

DCIT, (Central-2)
Indore : Appellant

V/s
M/s. Gautamswani Enterprises
Indore : Respondent
PAN AAIFG3350K

Revenue by	Shri S.S. Mantri, CIT-DR
Assessee by	Shri C.P. Rawka, & Venus Rawka, ARs
Date of Hearing	11.06.2021
Date of Pronouncement	23.08.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2012-13 is directed against the orders of Ld. Commissioner of Income Tax(Appeals)-3 (in short

'Ld. CIT], Bhopal dated 04.07.2018 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 24.02.2016 framed by ACIT-(Central), Indore. The Revenue has raised the following only ground of appeal:

“On the facts and in the circumstances of the case, Ld. CIT(A) erred in law in deleting the addition of Rs.5,15,14,000/- made by Assessing Officer on account of suppressed purchase price of land purchased without appreciating the facts and evidences mentioned in the assessment order by the Assessing Officer.”

2. Facts, in brief, are that the assessee is a partnership firm engaged in real estate business of colonising, developing buildings and construction. Return of income showing a loss of Rs.326/- was filed u/s 139(1) of the I.T. Act by the assessee on 24.7.2012. A search and seizure operation u/s 132 was carried out at the business and residential premises of various persons of Jhaveri group of Indore on 21.9.2008 wherein various books of account and other documents were seized. During search and post search inquiries, it was noted that main person of the Jhaveri group i.e. Mr. Mukesh Jhaveri had purchased lands in the name of various individuals as well as its various concerns including the present assessee at higher prices but in the

registered document, actual consideration has not been shown, therefore, it was noted that while purchasing land, substantial part of purchase was paid in cash from unaccounted income and source of the same was not explained. Thus, the Assessing Officer reopened the case of the assessee u/s 147 of the I.T. Act and in response, the assessee requested to treat the return filed u/s 139(1) of the I.T. Act on 24.7.2012. Therefore, the assessee filed its reply but the Assessing Officer did not find it acceptable and noted that the guideline value for the purpose of stamp duty are fixed by the Govt. after taking into consideration several factors and the value fixed for stamp duty gives an idea of market value, which is higher than guideline value, therefore, the assessee has suppressed the actual purchase price. Accordingly, the Assessing Officer added the difference amount i.e. Rs.10,08,02,000/-[Rs.19,08,96,000 – Rs.9,00,94,000] to the total income of the assessee treating the same as unaccounted investment u/s 69 of the I.T. Act.

3. Feeling dissatisfaction with the action of the Assessing Officer, the assessee filed an appeal before the Id. CIT(A) who on consideration of facts, circumstances, remand report called for

from the Assessing Officer and assessee's submissions in the light of relevant judicial pronouncements deleted the addition. The discussion and findings thereof recorded by the Id. CIT(A) are part and partial of this order. However, for ready reference, the relevant portion of the order of the Id. CIT(A) is reproduced hereunder:

“ 5.1 In view of the objection of the assessee about factual mistake committed by the Id AO by making double addition based on 'original' as well as ' photocopies' of same purchase deeds in few cases (which were seized during search), it was thought appropriate to call remand report from concerned AO. Accordingly, a Remand Report vide letter dated 12.06.2018 was called for from the A.O regarding the double addition made on account of two set at-registered deeds seized relating to the same lands purchased by the appellant. In reply Id. AO vide letter F.No. DCIT (Central)-2/Ind./Remand Report/ 2018- 1 9 dated **20.06.2018** submitted factual report. This remand report is scanned here below for the sake of convenience:

Government of India

Ministry of Finance (Department Of Revenue) Office of the

Deputy Commissioner of Income Tax (Central)-2, Indore

Room No. 313, Main Building, "Aayakar Bhawan" Opp. White
Church, Indore

Email: indore.dcit.cen2@incometax.gov.in

F.No.DCIT(Central)-2/Ind.lRemandReportl2018-191 Dated: 20/06/2018

To,

The Commissioner of Income Tax Appeals-Ill

Bhopal,

(Through Proper Channel)

Respected Sir,

Sub: Remand Report in the case of M/s Gautamswami Enterprises, Appeal No. 872/2015- 16 for A.Y 2012-13-reg.

Kindly refer to your letter F.No. CIT (A)-III/BPL/RR/Gautamswami Enterprises/2018-19/S17 dated 12/06/2018 on the above subject.

2. In connection to the above, it is submitted that during the search action u/s 132(1) of IT Act

dated 2110912012 in the Jhaveri group, some loose papers had been found and seized. The copies of registry of land were also found and seized as per LPS-1/48, M-7 and M-II. On the basis of such copy of registries seized and report of investigation wing, the addition of Rs 10,08,01,674/- was made by the AO on account of unexplained investment u/s 69 during the assessment proceedings u/s 143(3) r.w.s. 147 dated 24/02/2016. The details of the seized registry as per assessment order forming basis of addition by the AO are as are as under:-

forming basis of addition by the AO are as are as under:-

LPS No.	Page No.	Name of the assessee	Name of the land	Area	Date of Registry	Value Considered	Govt. Land Revenue
1748	32	Gautamswami Enterprises through Partner Shri Mukesh Jhaveri S/o Shri Rakesh Jhaveri, 112-113, Silver Sanchora Circle, 7th, RNT Marg Indore.	Shri Shivaraj S/o Shri Ashwani S/o Shri Anand S/o Shri Village Indore	Area 0.174 hect	06.02.2012	1350000	393000
1748	49	Gautamswami Enterprises through Partner Shri Mukesh Jhaveri S/o Shri Rakesh Jhaveri, 112-113, Silver Sanchora Circle, 7th, RNT Marg Indore.	Shri Pratik S/o Shri Ramesh, Puh. & Dist. Indore	Area 3.787 hect	04.02.2011	2152100	4924000
1748	78	Gautamswami Enterprises through Partner Shri Mukesh Jhaveri S/o Shri Rakesh Jhaveri, 112-113, Silver Sanchora Circle, 7th, RNT Marg Indore.	Shri Nishu S/o Shri Himanshu S/o Shri 117/1, Chitra Keri, Badli Bazar, Village Indore	Area 0.24 hect.	26.03.2011	151200	804000
1748	50	Gautamswami Enterprises through Partner Shri Mukesh Jhaveri S/o Shri Rakesh Jhaveri, 112-113, Silver Sanchora Circle, 7th, RNT Marg Indore.	Shri Mukesh S/o Shri Shivaraj S/o Shri 117/1, Chitra Keri, Badli Bazar, Village Indore	Area 0.224 hect.	26.03.2011	151200	804000

भारत सरकार वित्त मंत्रालय
कार्यालय अपर/संयुक्त आयकर आयुक्त
21 JUN 2018
(केन्द्रीय), इन्दौर

After verification of the above list, it is found that copies of registries of following loose papers are same with respect to registry amount, registry date and stamp paper serial numbers as mentioned above (The copies of same are enclosed herewith).

1. Lps 1/48(page 87) and Lps M-I I (page 32)
2. Lps 1/48 (page 78) and M-7(page 29)
3. Lps 1/48(page 50) and M-I I (page 12)
4. Lps 1/48 (page 19) and M-II(page 42),

5. Lps 1/48(page9) lnd M- \ I (page 2J.)

Submitted for kind perusal and necessary action.

5.2 A copy of Remand Report was also provided to the Ld. AR of the appellant to file counter-comments or rejoinder. In response, Ld. AR vide order sheet entry dated 29.06.2018 has stated that report of Ld.AO is crystal clear and self explanatory, therefore no further comments are required.

Discussion and appellate decision:-

6. All the details / material brought on record have been duly considered inter alia submission filed by the appellant. Due consideration has been given to the findings arrived at in the assessment order and remand report. **Ground # 1& 2** of the appeal are intrinsically linked and common to each other and essentially relating to addition made to the tune of Rs. **10,08,02,000/-** on account of alleged suppression of purchase price relating to the lands purchased by the assessee firm. In the assessment order, Ld. AO has observed that during the year under consideration assessee firm had purchased lands admeasuring **14.258 hectare'** or consideration of Rs. **9,00,94,000/** -reflected in the purchase deed (copies filed). However, it was noticed by the Ld. AO that guideline value/market value for the said land located at Rao, Indore was determined by Stamp Duty Authority at Rs. 19.08.96.000/-. Thus, there was a huge difference of **Rs. 10,08,02,000/-**. Ld. AO worked out the purchase cost accordingly and presumed that assessee must have paid **Rs. 10,08,02,000/-** out of undisclosed Sources and added the differential amount to the total income.

6.1 At the outset, it also need to be highlighted about a 'glaring mistake' committed by the Ld AO while computing the differential amount between purchase cost shown in purchase deeds vis-a-vis market value determined by the stamp Valuation authority. It so happened during the course of search both "original purchase deed" as well as "photocopies thereof" were found and seized by the search party. This happened with regard to 5 such purchase deeds. Due to this reason, while working out the differential amount, Id AO inadvertently considered and taken into account both the documents- i.e. **original purchase deeds** and its **photocopies** treating them two different and distinct documents. During the assessment proceedings itself, Id AR of the assessee vide his letter dated **22.01.2016** [vide para 5) invited the attention of Id AO about 'duplication of details' but Id AO seems to have paid no heed to such a vital aspect and went on to pass the assessment order based on the details mentioned in his Show Cause Notice. During appellate proceedings, my attention was once again drawn by the Id AR towards this mistake on the part of the Id AO. Therefore a factual report was summoned from AO who unequivocally admitted in his remand report that after verification of relevant material, he noticed

such duplication in relation to 5 such purchase transactions. The said remand report has been already scanned on page 9 to 13 of this order for ready reference. However, at cost of repetition, I cite the relevant cases of 'duplication' here below :-

- i. LPS 1/48 (page87) and LPS M-11 (page 32)*
- ii. LPS 1/48 (page78) and LPS M-7 (page 29)*
- iii. LPS 1/48 (page50) and LPS M-11 (page 12)*
- iv. LPS 1/48 (page 19) and LPS M- 71 (page 42)*
- v. LPS 1/48 (page9) and LPS M- 71 (page 27)*

6.1.1 Ld AO in his remand report dated 21.06.2018 has clearly stated that on verification of seized copies of registries it was found that there are photocopies of registry in LPS-1/48, M-7 and M-1 and also found that the copies of registries are same with respect to registry amount, registry date and stamp paper serial numbers. Total 5 instances of duplicate Idouble registered documents as admitted by AO are as under:-

[1] LPS 1/48 (page50) vis LPS M-11 (page 32)
.....

[2] LPS 1/48 (page78) and LPS M-7 (page 29)
.....

[3] LPS 1/48 (page50) and LPS M-11 (page 12)
.....

[4] LPS 1/48 (page19) and LPS M-11 (page 42)
.....

[5] LPS 1/48 (page9) and LPS M-11 (page 21)
.....

Effects of duplicate registered deeds on the addition made by the Assessing Officer
.....

6.1.2 In view of the above, it is proved beyond any doubt that

Ld AO erred in making addition to the tune of Rs. 4,91,28,000/- for his mistake in taking into account the 'original' as well 'photocopies' of the same document i.e. purchase deeds (total 5) while computing the differential amount between purchase value shown in purchase deed vis-a-vis *value* determined by Stamp Valuation Authority, based on guideline value, Thus, the contention of the appellant is found correct that in reality the assessee has purchased land admeasuring 7.128 hectare and not 14.258 hectare as alleged by AO and difference is attributed to mistake in considering the same document twice-original as well as photocopy of the same document. In view of the above, addition to the extent of Rs. 4,91,28,000/- deserves to be deleted out of the total addition of Rs. 10,08,02,000/- made by Ld AO in assessment order, Ld AO has been fair enough in conceding this mistake upfront in his remand report,

6.2 For the other set of registries (original registries) involving additions of Rs. 5,15,14,000/- Id AO presumed that appellant has paid over and above the price shown in sale deed price out of its undisclosed income, The brief details of these properties are as under:-

6.3 This is an admitted fact that neither the sellers of impugned lands have admitted that impugned lands were sold over and above the amount disclosed in registered purchase deed nor any incriminating evidence was found & seized during the Course of search to corroborate the allegation of Ld AO that for purchase of impugned land, the assessee had paid consideration to the tune of Rs. 19,08,96,000/. (actual figure Rs. 9,74,16,000/-). It is true that except there being a difference in price as per Stamp Valuation vis-a-vis shown in the registered deeds, there is no other piece of evidence to corroborate the allegation of Id AO that assessee actually paid any amount over and above the consideration shown in the respective registered deeds. Ld. AO has also made some sweeping remarks that Jhaveri Group led by Shri Mukesh Jhaveri indulged in Suppression of purchase price with regard to other lands purchased by them. In the "Reason to believe" (copy filed PB pg 5), Id AO has quoted one example **of Shri Sanjay Sharma** who alongwith other family members have sold 18 Acres of lands to **Shri Mukesh Jhaveri** and admitted 'on money' receipt of Rs. 3,64,00,000/-. However, this is evident from details of lands purchased by the assessee provided by AO in remand report that assessee firm has never purchased any land from Shri Sanjay Sharma. Thus, his statement is not relevant in this case having no evidentiary value to draw any adverse inference against the appellant. This it is proved beyond doubt that Ld AO has re-opened the case and consequently made the addition on the basis of totally irrelevant material. It is also seen that Ld AO has neither cited any instance where assessee is found guilty of making payments to sellers over and above the registered value nor such generic remarks can be made basis of making such huge addition as done in this case. Id. AO has also made a passing reference that Jhaven Group have purchased lands in the name of various concerns including M/s

Gautamswami Enterprises at higher prices but in the registry, actual amount paid by them were not declared. This is a bald allegation made by AO without having brought any corroborative material on record; therefore such statements do not have any evidentiary value. Thus, in my view impugned addition of Rs, 5,15,14,000/- is not sustainable without having corroborative and cogent material to prove the allegation at Id AO that assessee actually made payment by CASH to the tune at Rs. **5,15,14,000/-**.

6.4 Ld. AR of the assessee has strongly opposed to the applicability of provision of **Section 69 of the Act** because there was not even a shred of evidence to establish that investment was not fully recorded in the books of account. Onus of proof is on the department to prove that appellant made some unaccounted investment in purchase of property. It is undisputed fact that Id AO has failed to discharge his onus and simply on guess work, presumption and suspicion, additions in this regard have been made. I agree with the contention of the appellant that Id A.O. is not justified in making the addition Simply on assumption and presumption basis. It would be pertinent to refer to the decision of Hon' ble Apex Court in the case of **Umacharan Saha & Bros Co. v /s CIT 37 ITR 21 (SC)** wherein it was held that suspicion, however, strong cannot take place of proof. It Would be most pertinent to refer to the deCision of Hon I ble Supreme Court in the case of **K P Varghese vis ITO (1981) 131 ITR 597(SC)** wherein it was held that assessee must be shown to have received more than what is disclosed by him as consideration. Burden of proof is on the department. Here the ratio of the above cited case is squarely applicable to the facts of this case, the AO is required to bring some tangible and Positive material on record to prove that assessee has paid more consideration than disclosed by it in the books, Hon'ble Supreme Court in the case of *Dhakeshwari Catton Mills Lld Vis CtT (1954) 26 tTR 775 (SC)* has held that although strict rules of evidence Act do not apply to income tax proceedings, assessment cannot be made on the basis of imagination and guess Work. Similar views have been expressed by Apex court in the case of **Dhiraj Lal Girdharilal v /s CIT (1954) 26 ITR 736 (SC)**.

6.5 Without prejudice to the above, the differential amount between value as per registered purchase deed vis-a-vis guideline value determined by Stamp Valuation Authority is not taxable under any Provision of the Act as applicable "deeming fiction" enshrined u/s 50C of the Act in the case of sellers. Thus, differential amount *per se* cannot be brought to tax under provision of IT Act. This is an undisputed fact that all the properties have been purchased in F, Y 2011-12 (A. Y 2012-13) and at the relevant time, there was no deeming provision to make liable the buyers to pay tax as per guideline value of property as applicable in the case of sellers u/s 50C of the Act. This is pertinent to mention that purchasers have been made liable to pay tax on differential amount i.e.aos per stamp valuation vis-a-vis shown in purchase deed **w.e.f. 01.04.2014 i .e. A.Y. 2014- 15** by making necessary amendments in section 43CA and 56(2) (vii) (b) of the Act. Obviously, because the said transaction had taken place before 01,04,2014, assessee's case is not hit

by the said provisions. Section 43CA and 50C are applicable in the case of the seller of an immovable property whereas section 56(2)(vii) (b) is applicable to purchasers of immovable property viz. Individual/HUF. This is important to note that the assessee being firm, the said provision is not even applicable in instant case and even otherwise provision of section 56(2) (vii) (b) is applicable w.e.f. A.Y. 2014-15 only. Hon'ble ITAT, Chandigarh Bench in the case of **ITO v/s Mrs. Inderjii Kour (2012) 50 SOT 377 (Chd)** has held that deeming fiction created u/s 50C regarding full value of consideration received or accrued to seller, cannot be extended to the provisions of section 69, in the case of purchasers. Such statutory legal fiction cannot be extended, to rope in the purchasers, in the context of undisclosed investment u/s 69B. It has been held that legal fictions created for a definite purpose should be limited for that purpose and cannot be extended beyond their legislative needs. It is well-settled that deeming provision creating legal fictions, especially in taxing statute have to be strictly construed. Certain other case laws which also support this propositions are:-

- CIT v/s K K Enterprises 13 DTR (Raj) 289
- ITO v/s Satyanarayan Agarwal 112 TT J (Jd) 717
- Kamal Kishore Chandok v/s ITO 103 DJ (Jd) 843
- JaiMarwar co. Pvt. Ltd. v/s ACIT 79 TT J (Jd) 178
- ITO vis Harley Street pharmaceuticals Ltd. (2010) 38 SOT 486 (Ahd)

Conclusion:

In view of the remand report submitted by the A.O it is very unambiguous that "double addition" has been made on account of photocopies of original registries, thus addition made on account of difference in sale consideration and market value with respect to duplicate/double addition to the tune of **Rs.4,91,28,000/-** is hereby ordered to be **deleted** outrightly. Further, in view of above discussion and case laws discussed above, ld. AO was not at all justified in adopting the value determined by Stamp Valuation Authority as actual consideration paid as purchase cost without bringing any tangible or positive material on record, action of A.O. is held not to be sustainable on facts and in law. Hence, remaining addition of **Rs. 5,15,14,000/-** made purely on guess work, conjunctures & surmises u/s 69 of the Act is also hereby ordered to be deleted leaving a difference of **Rs.1,60,000/- (Rs. 10,08,02,000- Rs. 4,91,28,000- Rs.5,15,14,000)**. Ld AR of the appellant has brought to my notice that the difference of Rs. 1,60,000/- is due to wrong amount taken in sale consideration column vide row no 4 of the chart on page 3 of the assessment order and row no 9 of the chart on page 4 of the assessment order. On perusal of the copies of registries it is seen that vide row no 4 ld.A.O. has wrongly taken sale consideration of **Rs. 31,01,200/-** instead of **Rs. 33,01,200/-** and in row no 9 the sale consideration was taken as **Rs. 22,82,800/-** instead correct amount of **Rs. 22,42,800/-** cumulative effect of this mistakes works out to a difference of **Rs. 1,60,000/-**. In view of the above it is manifestly clear that on merit no addition can be sustained and this being a mistake of clerical nature thus, the difference of **Rs. 1,60,000/-** is also **deleted**

which is attributed to topographical error. In the result, entire amount of addition of **Rs. 10,08,02,000/-** is ordered to be deleted. Hence, ground of appeal # 1 & 2 are allowed.”

Feeling dissatisfaction with the order of the ld. CIT(A), the Revenue is in appeal before this Tribunal.

4. Before us, ld. CIT/DR relied on the order of the Assessing Officer and submitted that the assessee firm had purchased the land and on money was paid in cash over and above the price i.e. Rs.9,00,94,000/- shown in the registered deed out of its unaccounted income. The guideline value of said land was Rs.19,08,96,00/-. Thus, the Assessing Officer is justified in making an addition of difference of Rs.10,08,02,000/- on account of cash payment made by the assessee from unaccounted income. Therefore, the order of the ld. CIT(A) deserves to be reversed.

5. On the other hand, the learned Counsel for the assessee relied on the order of the ld. CIT(A) and submitted that there is no tangible evidence whatsoever in the hands of Revenue to prove the alleged cash transaction from unaccounted income during the relevant assessment year. This allegation is baseless and far

from truth. The assessee has not paid a single penny out of books as it never possessed any unaccounted income. The assessee has never purchased any land from Shri Sanjay Sharma. Thus the figure work relating to Shri Sanjay Sharma is infructuous. The Assessee has purchased only 7.218 Hectare land during the year. Total investment in the said land is Rs. 5,37,60,371/- which has been duly reflected in the Balance Sheet. Therefore, the figure of 14.258 hectare is a baseless allegation. Further, from its very formation, the assessee has not affected any sales till 31.03.2012. The land purchased is duly reflected in the balance sheet. Since no sales have been affected, there is no question of any accounted or unaccounted income up to the end of the subject assessment year. Without prejudice to the above, notional income under section 56(2)(vii) has been brought on the statute book with effect from 1.04.2014 . It is not a retrospective amendment. Therefore, the Assessing Officer is not empowered to apply the said provision from retrospective date. The view of cash transaction from unaccounted money formed by the Assessing Officer is not supported by any evidence or document. While invoking section 69, the Assessing Officer is bound to establish that actually the assessee has paid any

amount in cash and the same ought to be supported by the tangible evidence. Section 69 clearly speaks that the assessee should have made investment which is not recorded in the books of accounts. Learned Counsel for the assessee also relied on the ratio laid down in the following judicial pronouncements:-

1. CIT vs P.V. Kalyanasundaram; Supreme Court of India; 294 ITR 0049 (2007)
2. CIT vs Kamal Trading Company; High Court of Rajasthan; 346 ITR 0060
3. CIT vs P.M. Aboobacker; High Court of Kerala; 363 ITR 0447
4. ACIT vs Govind Bhai N. Patel; High Court of Gujarat; 33 taxmann.com 237
5. CIT vs Ashwini Gupta; High Court of Delhi; 2010
6. PCIT vs Kanubhai Maganlal Patel; High Court of Ahmedabad; 2017
7. Heirs and Legal Representatives of Late Laxmanbhai S. Patel vs CIT; High Court of Gujarat; 2008

Thus, learned Counsel for the assessee submitted that the order of the ld. CIT(A) is justified.

6. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that the ld. CIT(A), on consideration of facts and material

available on record, observed that a glaring mistake was committed by the Assessing Officer while computing the differential amount between purchase cost shown in purchase deed and market value determined by Stamp Valuation Authority. During search, original purchase deed and photocopies thereof were found and seized and the Assessing Officer inadvertently taken into consideration both the documents i.e. original purchase deed and photocopies thereof treating the same two different and distinct documents. We find that during assessment proceedings in reply to the show-cause notice, the assessee also pointed out about the duplication of details but the Assessing Officer ignored the same and made the addition. Therefore, the ld. CIT(A) called for the remand report from the Assessing Officer on this issue and having gone through the remand report, the ld. CIT(A) noted that the Assessing Officer admitted such duplication and therefore, the ld. CIT(A) was deleted the addition to the tune of Rs.4,91,28,000/- as the assessee's contention was found to be correct that the assessee had actually purchased 7.128 hectare land and not 14.258 hectare. Since the Assessing Officer admitted this fact in the remand report, the Revenue has not raised this point before this

Tribunal. However, the remaining addition of Rs.5,15,14,000/- has been challenged before this Tribunal, on which, we find that the Assessing Officer was of the view that the assessee paid over and above the price shown in the registered deed out of its unaccounted income. However, having gone through the orders of Revenue Authorities, submissions and material available on record in the light the ratio laid down in the judicial pronouncements (supra), we find that neither the sellers of impugned lands have admitted that impugned lands were sold over and above the amount disclosed in the registered deed nor any incriminating evidence was found and seized during the course of search to corroborate the allegation of the Assessing Officer and only making guesswork on the guideline value of the land and the transaction value, the Assessing Officer presumed that cash transaction was made. The Assessing Officer noted an example in the assessment order that one Mr. Sanjay Sharma sold 18 acres land to Mr. Mukesh Jhaveri and admitted 'on money' receipt of Rs.3,64,00,000/-. However, having gone through the remand report, the ld. CIT(A) recorded that the assessee firm never purchased any land from Mr. Sanjay Sharma. We are of the view that under Section 69 of the I.T. Act,

the onus is on the Assessing Officer to prove that the assessee made some unaccounted investment in purchase of property but in the present case, the Assessing Officer failed to discharge his onus and simply on guesswork, the addition was made. The judicial pronouncements cited by the learned Counsel for the assessee supports this view. Under these facts and circumstances, we are of the view since the Assessing Officer failed to pinpoint any instance by bringing any cogent and corroborative evidence on record where the assessee is found guilty of making payments to sellers over and above the value shown in the registered deed, the general remarks recorded by the Assessing Officer on the basis of presumption and assumption cannot be the basis for making the addition. Thus, we find that the ld. CIT(A), having made discussion on facts and relevant judicial pronouncements thereof, rightly held that the addition made is not based on any tangible evidence and there are no corroborative evidences in the hands of Revenue to substantiate the allegations of cash transaction. Even before us, the Revenue could not controvert the findings of the ld. CIT(A) by bringing any tangible or contrary evidence on record. Therefore, we confirm the findings recorded by

the ld. CIT(A). Accordingly, the only ground raised by the Revenue is dismissed.

7. In result, the appeal filed by the Revenue is dismissed.

Order pronounced as per Rule 34 of ITAT Rules, 1963 on 23.8.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 23 .8.2021
!vyas!

Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore