

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

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

आयकर अपील सं./ITA No. 1190/JP/2019  
निर्धारण वर्ष/Assessment Year :2011-12

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| Shri Prakash Chand Kothari<br>B-4A, Kothari House, Prithviraj Road,<br>C- Scheme, Jaipur | बनाम<br>Vs. | DCIT,<br>Central Circle-02,<br>Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPBK2884R                                       |             |                                       |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent               |

आयकर अपील सं./ITA No. 1298/JP/2019  
निर्धारण वर्ष/Assessment Year :2011-12

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| The Dy. Commissioner of<br>Income-tax, Central Circle-02,<br>Jaipur | बनाम<br>Vs. | Shri Prakash Chand Kothari<br>B-4A, Kothari House,<br>Prithviraj Road, C- Scheme,<br>Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPBK2884R                  |             |   |
| अपीलार्थी / Appellant   |             | प्रत्यर्थी / Respondent   |

आयकर अपील सं./ITA No. 66/JP/2020  
निर्धारण वर्ष/Assessment Year :2011-12

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| Shri Prakash Chand Kothari<br>B-4A, Kothari House, Prithviraj Road,<br>C- Scheme, Jaipur | बनाम<br>Vs. | DCIT,<br>Central Circle-02,<br>Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPBK2884R                                       |             |                                       |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent               |

निर्धारिती की ओर से / Assessee by : Sh. Rajeev Sogani (CA) &  
Sh. Rohan Sogani (CA)  
राजस्व की ओर से / Revenue by : Sh. B. K. Gupta (PCIT)

सुनवाई की तारीख / Date of Hearing : 27/07/2021  
उदघोषणा की तारीख / Date of Pronouncement: 12/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are two cross appeals filed by the assessee and the Revenue against the order of Id. CIT(A)-4, Jaipur dated 02.09.2019 for AY 2011-12 and another appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 13.11.2019 for AY 2011-12. Since these are connected matters, all these appeals were heard together and are being disposed off by this consolidated order.

2. In ITA No. 1190/JP/2019, the assessee has taken the following grounds of appeal:-

"1. *In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in reopening the case of the assessee u/s 147 of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire re-assessment proceedings, being illegal and without jurisdiction.*

2. *In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the action of the Id. AO in issuing notice u/s 148 of the Income Tax Act, 1961, without obtaining proper sanction u/s 151 of the Income Tax Act, 1961. Relief may please be granted by quashing the entire re-assessment proceedings, being illegal and without jurisdiction.*

3. *In the facts and circumstances of the case and in law, Id. AO has erred in reopening the assessment u/s 147 instead of section 153C of the Income Tax Act, 1961. The action of the Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the reassessment proceedings being illegal and without jurisdiction."*

3. In ITA No. 1298/JP/2019, the Revenue has taken the following grounds of appeal:-

*"1. Whether on the facts and in the circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 25,00,00,000/- on account of cash loan in spite of the fact that there is direct nexus between Ramesh Chand Maheshwari and the assessee, Sh. Prakash Chand Kothari as corroborated in seized documents, pen drives, phone directory, name, surname and address. The Ld. CIT(A) has erred in not acknowledging the corroborative evidence found in Pen Drive which reveals assessee names, office address and mobile number.*

*2. Whether on the facts and in the circumstances of the case & in law, the Ld. CIT(A) has erred in deleting the addition of Rs. 90,58,625/- made on account of interest charged on cash loan of Rs. 25,00,00,000/- on account of non-providing of the opportunity of cross objection to the assessee.*

*3. Whether on the facts and in the circumstances of the case & in law the Ld. CIT(A) has erred in deleting the addition of Rs. 25,00,00,000/- made on account of cash loan and interest charged thereon amounting to Rs. 90,58,625/- in spite of the fact that the Sh. Ramesh Chand Maheshwari surrendered undisclosed income on account of cash loan & commission before Hon'ble Settlement Commission wherein the assessee was one of the lender of cash loan.*

*4. Whether on the facts and in the circumstances of the case & in law the Ld. CIT(A) has erred in deleting the addition of Rs. 50,05,578/- in spite of the fact the Ld. CIT has not discussed the issue in the appellate order. "*

4. The facts of the case are that the assessee filed his original return of income on 29.09.2011 declaring total income of Rs. 1,10,86,623/- which was taken up for scrutiny and thereafter, the assessment was completed u/s 143(3) of the Act vide order dated 31.03.2013 wherein the returned income was accepted. Subsequently, search and seizure operations were carried out u/s 132 in case of Ramesh Manihar Group on 07.01.2016 wherein certain information/documents were seized and basis information received from the office of DCIT, Central Circle-3, Jaipur on 29.03.2018, the Assessing Officer recorded reasons that income has escaped assessment in the hands of the assessee and notice u/s 148 of the Act was issued online on 31.03.2018 after taking requisite approval of the competent authority and duly served on the assessee on the same date.

5. In the reasons so recorded before the issuance of notice u/s 148, the Assessing Officer has stated that information has been received from the office of DCIT, Central Circle-3, Jaipur that search and seizure action u/s 132 of the Act was carried out in the case of Ramesh Manihar Group which has been indulging in cash loan financing on a large scale. During the course of search, voluminous data comprising of excel sheets in 18 pen-drives were seized during the course of search action at the main office of the Ramesh Manihar Group at 303, Ratna Sagar, MSB Kaa Rasta, Johari Bazar, Jaipur which included details of cash loans financed by the Ramesh Manihar Group. It was found that the persons of the said group namely Sh. Ramesh Chand Maheshwari and Sh. Manmohan Krishan Bagla were engaged as finance brokers for arranging cash loans between various borrowers and lenders which were not reflected in the books of accounts and that the brokerage received for such unrecorded cash transactions was also not offered for taxation by the Group. It has also been found that the figures in the aforesaid data were suppressed by five zeroes. The Assessing Officer thereafter has listed down certain details of the transactions stating that the same relates to the assessee and from the perusal of the information, it is found that the assessee has paid cash loan of Rs. 25

crores out of his income from undisclosed sources in A.Y 2011-12 and received interest accordingly. The Assessing officer also stated that during the assessment proceedings, the assessee has not furnished the copy of cash book for the year under consideration and not shown the same in the loans and advances given by him in the balance sheet and the assessee has clearly failed to disclose fully and truly all material facts necessary for determination of income for A.Y 2011-12. Basis detailed enquiries made by the Investigation wing and material available on the assessment records, the Assessing officer stated that he has reason to believe that the income of Rs. 25 Crores in the form of loan given in cash and interest thereon has escaped assessment within the meaning of section 147 of the Act in the hands of the assessee.

6. Thereafter, on receipt and in compliance to the notice issued u/s 148 of the Act, the assessee filed his return of income declaring total income of Rs. 1,10,86,623/- as originally returned and assessed u/s 143(3) of the Act. Thereafter, notices u/s 143(2) and 142(1) of the Act were issued and copy of the reasons was also provided to the assessee. The assessee filed his objections which were disposed off vide order dated 26.10.2018. Thereafter, the assessee was issued a show cause as to why the addition of Rs. 25 crores should not be made as unaccounted income along interest @ 1% per month.

7. In compliance to the said show cause notice, the assessee asked the Assessing Officer to provide all the relevant documents relied upon by the department for making such additions as well as opportunity for cross examination. The copies of documents were provided to the assessee and thereafter, the assessee furnished his reply stating that he, at no point of time, during the relevant previous year or otherwise, has given any amount in cash, as loan or otherwise, through any person, including Sh. Ramesh Chand Maheshwari. Without prejudice, it was further submitted that from the documents so provided, the assessee is unable to understand as to how the Assessing Officer has inferred that he has provided cash loans to different

persons through Sh. Ramesh Chand Maheshwari. It was submitted that the statements of Shri Ramesh Chand Maheshwari are full of contradictions and even contradictions persist in the reasons recorded vis-a-vis documents/statements provided to the assessee. It was further submitted by the assessee that the Assessing Officer may point out specific portions of the statements of Sh. Ramesh Chand Maheshwari, on the basis of which he concluded the involvement of assessee in providing cash loans and for which the case of assessee was reopened. It was further submitted that where the Assessing Officer wishes to rely on the statement of Sh. Ramesh Chand Maheshwari, the assessee may be allowed an opportunity to cross examine him and in absence of such cross examination, such statements/documents cannot be used against the assessee in any manner whatsoever.

8. The reply so furnished by the assessee was examined by the Assessing Officer and as per the Assessing Officer, reply of the assessee is of routine nature having no evidence to contradict the information available with the Revenue and duly incorporated in the reasons for reopening of the case and the assessee has failed to substantiate the onus cast upon him about the impugned transactions of Rs. 25 crores where the assessee has provided cash loans through Ramesh Manihar Group to various parties.

9. The Assessing Officer thereafter stated that during the course of search as well as in post search proceedings, statements of the aforesaid persons of Ramesh Manihar group were taken in which they have admitted that these transactions were made by them and amounts were taken in cash from the lenders and the same was advanced to the borrowers in cash, and they earned commission on these transactions. Further, various incriminating documents were found and seized by the Investigation wing of the Department, which includes loose papers, pen drives etc. On analysis of the seized documents particularly pen drives, it has been found that the lenders as well as the borrowers are the renowned and well known persons/business group of Jaipur

and the assessee is one of them. On examination of the documents and data in pen drives, it has been noted that one pen drive is having names in short/code word 'Jagat.xlsx' that names of the lenders as well as borrowers were noted in code name or maybe say in short name likewise 'Prakash Chand Kothari' the assessee as 'PCK'. This short name is again verifiable with another pen drive namely 'from & to group.xlsx', where name of the assessee 'PCK', is mentioned along with his full name address in the seized documents. Accordingly, it is proved that the assessee was the only person who has given his unaccounted cash for lending through the Ramesh Manihar Group. On further examination of these pen drives, it was also found that amount of transaction was mentioned after suppressing 'five zeros' i.e. Rs. 25,00,00,000/- was mentioned as 2500 in the form of different entries. In these pen drives, it was also mentioned, as for which period and on what rate of interest, the amount was advanced to the borrowers. The excel sheet notings extracted from the Jagat. XIs from the the PEN drive in possession of Ramesh Manihar (finance broker) as above reveals that name of the person, surname, firm, office address and phone no. (i.e Prakash Chand Ji, Kothari, KGK, Jewellers, 73, Barnala House, 2<sup>nd</sup> Crossing, Haldiyan Ka Rasta, Johari Bazar, Jaipur respectively) are related to Shri Prakash Chand Kothari (PCK). As per records and phone directory, the said details pertain to the assessee (i.e. Shri Prakash Chand Kothari of KGK Group). Hence all the above transactions of cash loans pertain to the assessee.

10. The Assessing Officer, thereafter, referred to the statement of Sh. Ramesh Chand Maheshwari dated 07.01.2016 recorded on oath u/s 132(4) of the Act and his subsequent statement dated 08.11.2017 recorded u/s 131 of the Act and reproduced certain questions and replies so submitted by him. The Assessing Officer further stated that after search operations, Ramesh Manihar Group and its associates have filed their application before the the Income Tax Settlement Commission. In their application filed before the Settlement Commission, they have surrendered the income so earned as commission on account of these un-recorded or unaccounted transactions and due taxes has

also been paid. The Assessing Officer basis the said application filed by the Ramesh Manihar Group stated that it can clearly be deduced that the assessee also made transactions regarding lending its unaccounted money through said group and advanced the same out of books to earn interest income which was also not recorded in the books of accounts.

11. Regarding assessee request to provide cross examination of these persons whose statements were recorded and relied upon, the Assessing Officer stated that the right of cross examination is not an absolute right and depends upon facts and circumstances of the each case and in the instant case, the assessee has been allowed ample opportunity but he has failed to furnished any evidence contradicting the information available with the Revenue and no substantive material has been produced by the assessee.

12. It was accordingly held by the Assessing Officer that the assessee advanced a sum of Rs. 25 crores in cash which is not recorded in his books of accounts through Ramesh Manihar Group and same was brought to tax in the hands of the assessee. Further, it was held that the assessee has advanced the said amount on various dates for different period as per the details mentioned in the reasons for reopening of the case, accordingly, considering the period under consideration as well as amount advanced @1% per month, addition towards interest of Rs. 90,58,625/- was also made in the hands of the assessee. The assessment was accordingly completed u/s 147 read with section 143(3) of the Act at the total income of Rs. 27,01,45,250/- as against the returned income of Rs. 1,10,86,623/- by making addition of Rs 25,90,58,625/-.

13. Being aggrieved, the assessee challenged the order and findings of the Assessing Officer before the Id CIT(A) raising various grounds of appeal challenging the jurisdiction and legality of the order so passed by the Assessing officer as well as merits of the case. The Id. CIT(A) while disposing off the

assessee's grounds challenging the reopening the assessment u/s 147 of the Act stated that the Assessing Officer has rightly assumed jurisdiction u/s 147 of the Act for the reason that the information along with documents collected during search on Sh. Ramesh Manihar could easily result into Assessing officer forming a belief of escapement of income on the part of the assessee. The Id. CIT(A) also dismissed the ground taken on behalf of the assessee relating to issuance of notice u/s 148 without obtaining proper sanction u/s 151 stating that A/R of the assessee has not been able to put forth any cogent reason or evidences leading up to the conclusion that the approval taken by the Assessing Officer u/s 151 of the Act was not proper. Therefore, grounds challenging reopening of the assessment u/s 147 and issuance of notice u/s 148 of the Act without seeking proper sanction were dismissed by the Id. CIT(A) and against the said findings, the assessee is in appeal before us.

14. On merits of the additions made by the AO and grounds of appeal so taken by the assessee challenging such addition, the Id. CIT(A) firstly referred to the statement of Sh. Ramesh Chand Maheshwari recorded during the course of search at his premises on 07.01.2016 and stated that though the Assessing Officer has produced certain questions and answers of the said statement in the assessment order, however, neither during the course of search by the Investigation wing nor during assessment proceedings by the Assessing Officer, any question was put to Sh. Maheshwari as to what 'PCK' stand for and against the name 'PCK', no address or telephone number is found to have been recorded. The Id CIT(A) stated that in what circumstances and on what basis or evidence the name 'PCK' is inferred as to the appellant herein is not forthcoming. The name of appellant is appearing only in the records maintained under the filename 'Ankoot' which was stated to be for the purpose of sending invitation card as per answer to question No. 31 of the above referred statement. The Id CIT(A) further stated that on perusal of extracted statement in the assessment order or in the entire statement of Sh. Ramesh Chandra Maheshwari, he do not find any answer which suggested the appellant herein is

found to have advanced such loan. The seized material only refers to 'PCK' as having given advances. However on examination of entire material, he is unable to relate the material to the appellant herein. When a particular material is found from a third-party, before drawing any adverse inference against a person other than from whom such material is found, it is a necessary condition that a specific question needs to be put to the person from whom such material is found as to whom and who it relates to such other person. Statement during the course of search was recorded u/s 132(4) by officer of the Investigation wing. In the said statement, reading it entirely, it is not forthcoming as to any reference to the appellant herein. Even further statement of Ramesh Chand Maheshwari was recorded by the AO having jurisdiction over him under section 131 dated 8.11.2017 and not by the Assessing officer having jurisdiction over the assessee. In said statement also, there is no reference to 'PCK' being considered as 'Prakash Chand Kothari'. During the course of assessment proceedings, the appellant specifically asked the Assessing officer to point out which portion of the statement on the basis of which it is concluded as to involvement of the appellant in providing cash loan. The Assessing officer is completely silent on the same. If the Assessing officer wants to draw any adverse inference against any other person based on such statement, it was incumbent upon him to relate such statement to the appellant and also to provide an opportunity of cross examination of such person.

15. The Id. CIT(A) thereafter referred to the decision of Hon'ble Supreme Court in case of Common Cause (A Registered Society) reported in 394 ITR 220 wherein the earlier decision of Hon'ble Supreme Court in case of V. C. Shukla's case has been discussed at length and relying on the said decision, the Id. CIT(A) stated that though these judgments of the Hon'ble Supreme Court were rendered in the context of criminal law, yet what the Hon'ble Supreme Court held that merely on the basis of such uncorroborated entries kept by third-party investigation cannot be conducted and applying the principle in the

present case which is a civil law, it can be said that though cognizance may be taken in respect of entries by third-party in the assessment of other person so as to initiate inquiry for assessment, yet when there is no finding that such entries are in fact pertaining to such third person only which should be emanating from the entries itself or from the person who has recorded such entry, no cognizance can be taken so as to fasten tax liability on such third person.

16. The Id. CIT(A) further referred to the observations of the Assessing Officer regarding application filed by the Ramesh Manihar Group before the Settlement Commission and stated that it is not understood as to how an income admitted by one person will bind other person in absence of any nexus between the person admitting and other person. Neither the Investigation wing during search proceedings nor Assessing Officer during the assessment proceedings have put any question as to what 'PCK' stand for nor is it discernible from the seized record any reference to the appellant herein against the entries stated to be of Rs. 25 crores. Further, referring to the decisions of Hon'ble Supreme Court in case of Kishinchand Chellaram reported in 125 ITR 713 and Andaman Timber Industries (*dated 2 September, 2015 in Civil Appeal No. 4228 of 2006*), the Id CIT(A) stated that it is a trite law when the statement of a person is to be used in evidence against any other person, such other persons should be given an opportunity of cross examination and in the present case., the assessee specifically asked for the cross examination which was denied arbitrarily by the Assessing Officer. The Id. CIT(A) stated that relying upon the statement and not providing cross examination to find out any involvement of the person affected by such statement is a gross violation of principles of natural justice which renders such reliance a nullity and if such statement is discarded, there remain no evidence to hold that the appellant has given any such advance to the tune of Rs. 25 crores. The Id CIT(A) finally stated that since no case is made out to relate the entries found during search in the case of Ramesh Manihar Group with the assessee and in absence of any

statement of the searched person to relate the entries to the appellant, the Assessing Officer was directed to delete the addition of Rs. 25 crores being considered as an amount advanced by way of cash loans and not recorded in the books of accounts and consequent addition towards notional interest was also directed to be deleted. Against the said findings of the Id CIT(A) deleting the additions, the Revenue is now in appeal before us.

17. In the aforesaid factual matrix of the matter, we find that both the parties are in appeal before us against the findings and order of the Id CIT(A) and have raised respective grounds of appeal. We firstly refer to assessee's grounds of appeal challenging the reopening of assessment and assumption of jurisdiction by the Assessing officer u/s 147 of the Act which has been upheld by the Id CIT(A) and the contentions advanced by the respective parties in this regard.

18. The Id. A/R submitted that elaborate submissions were made before the Id. CIT(A) in this regard, however, he has not appreciated the same in correct perspective and hence the assessee wishes to reiterate the contentions raised before the Id. CIT(A). It was submitted that there is no reason to believe that income has escaped assessment in the hands of the assessee as reopening was done on the basis of borrowed satisfaction and solely on the basis of information received from DCIT, Central Circle-03, Jaipur. It was submitted that only on the basis of so called information, the Assessing Officer concluded that 'PCK' was no other person but the assessee who has advanced the money in cash through Ramesh Manihar Group and figures mentioned in the table were suppressed by 'five zeroes'. It was further submitted that the identity of the persons alleged to have received loans from the assessee was also not established and proceedings, if any, initiated against such persons for any contravention of the provisions of the Income Tax Act, 1961 were not disclosed. It was submitted that the Assessing Officer did not corroborate the information received from the DCIT, Central Circle-03, Jaipur and did not

mitigate the risk of any lapse/disconnect in the information so provided. It was submitted that the Assessing Officer relied upon extracts of certain excel sheets, however, no steps were taken to mitigate any risk of the Electronic Records having been tempered in terms of section 65A, 65B of Evidence Act, 1872. It was submitted that even the screenshot of excel sheet provided to the assessee, relied upon by the Assessing Officer was taken on 22.10.2018, after recording the reasons for reopening the case. It was accordingly submitted that the AO reopened the case of the assessee on account of borrowed satisfaction and without any tangible material in his possession before recording the reasons for reopening the case.

19. In support of his contentions, the Id A/R has placed reliance on the decision of Hon'ble Supreme Court in case of Manzil Dinesh Kumar Shah [2019] 101 taxmann.com 259 (SC), Hon'ble Rajasthan High Court decision in case of Sandeep Stocks Pvt. Ltd. (*Civil Writ Petition No. 16705/2018*), and the decisions of Hon'ble Delhi High Court in case of CIT vs. SFIL Stock Broking Ltd [2010] 325 ITR 285 (Del), CIT vs. Insecticides (India) Ltd. [2013] 357 ITR 330 (Del), Krown Agro Foods (P.) Ltd vs. ACIT [2015] 375 ITR 460 (Del), Pr. CIT vs. RMG Polyvinyl (I) B Ltd [2017] 396 ITR 5 (Del), Pr. CIT vs. Meenakshi Overseas Pvt. Ltd. [2017] 395 ITR 677 (Del) and Pr. CIT vs. G & G Pharma Ltd. (2016) 384 ITR 147 (Del). Further, reliance was placed on the Co-ordinate Benches decisions in case of Deepraj Hospital (P) Ltd. vs. ITO (2018) 65 ITR (Trib.) 663 (Agra), Unique Metal Inds. Vs. ITO (*ITA No. 1372/Del/2015 dt. 28/10/2015*), and ACIT vs. Devesh Kumar (*ITA No. 2068/Del/2010*).

20. It was further submitted by the Id A/R that the entire re-assessment proceedings were based on the information received from DCIT, Central Circle, 3 during the course of search u/s 132 and Assessing Officer should have taken recourse to section 153C and not section 147, for carrying out impugned re-assessment proceedings in the case of the assessee. In support, the reliance was placed on the Co-ordinate Benches decisions in case of Shri Navrattan

Kothari (*ITA No. 425/JP/2017*), ITO vs. Arun Kumar Kapoor [2011] 140 TTJ 249 (Asr), G. Koteswara Rao [2015] 64 taxmann.com 159 (Visakhapatnam-Trib) and Rajat Shubra Chatterji vs. ACIT (*ITA No. 2430/Del/2015*). It was submitted that Id. CIT(A) without any cogent basis, dismissed the aforesaid contentions so raised by the assessee.

21. It was further submitted that the original assessment was completed pursuant to search in case of KGK Group to which assessee belongs. During the course of search, only excess jewellery and stock was found which was surrendered. No unaccounted cash was found. The alleged incriminating material relied upon by AO is found from the premises of a third party and not that of the assessee. Hence it cannot be said that the assessee had not made true and full disclosures during the course of original assessment proceedings. Thus, as per the first proviso to section 147 as well, reopening is bad in law. It was further submitted that as thorough scrutiny was done in the course of original assessment proceedings pursuant to search and materials seized during search, present proceedings are nothing but a clear case of change of opinion and in support, reliance was placed on the Hon'ble Supreme Court decision in case of CIT vs. Kelvinator of India Ltd. 320 ITR 561 (SC).

22. It was further submitted that the Assessing Officer vide letter dated 19.07.2018 has not supplied copy of reason actually recorded by Assessing Officer. From the extract of the reasons supplied, it is not possible to ascertain the date on which reasons were actually recorded. Further it is not clear whether compliance of first proviso to section 147 and other aspects of section 147 were recorded in the reasons actually recorded by Assessing Officer. It is also not clear whether the reasons actually recorded demonstrated independent application of mind by AO to the information received by him. Hence, great prejudice is caused to the assessee on account of non-receipt of actual recorded reasons and in support, reliance was placed on Co-ordinate

Benches decision in case of Tata International Ltd. vs. DCIT [2012] 52 SOT 465 (Mum.) (Trib).

23. In his submissions, the Id PCIT/D/R submitted that firstly, the contention of the Id A/R that the Assessing Officer has not supplied copy of reason actually recorded by Assessing Officer is factually not correct and our reference was drawn to the APB pages 23-27 wherein the Assessing officer letter dated 19.07.2018 issued to the assessee is enclosed and it was submitted that the said letter contains the exact contents of the reasons as recorded by the AO prior to issuance of notice u/s 148 of the Act. It was further submitted that the assessee vide its letter dated 13.08.2018 has acknowledged the receipt of the reasons so recorded by the AO and basis the said reasons, had raised objections which were disposed off by the Assessing officer by way of speaking order. It was submitted that the assessee cannot now be allowed to raise any fresh objections in this regard when the reasons as so recorded were supplied to the assessee and on receipt thereof, the assessee has filed his objections as well. It was submitted that the reasons were duly recorded by the Assessing officer prior to issuance of notice u/s 148 and contains detail reasons for firming the belief that income has escaped assessment and also in terms of the compliance of the proviso to section 147 in terms of failure on the part of the assessee to disclose truly and correctly all material facts necessary for the assessment.

24. It was further submitted by Id PCIT/D/R that the reasons so recorded were based on information received from the DCIT Central Circle-3, Jaipur and detailed enquiries were conducted by the Investigation wing as well as examination of the assessment records was undertaken by the Assessing officer and which shows clearly due and independent application of mind on part of the Assessing officer based on appreciation of material on record that the income in the hands of the assessee has escaped assessment. It was submitted that where the Assessing officer basis detailed information and

enquiries conducted by the Investigation wing which forms a tangible material forms a reasonable belief that the income in the hands of the assessee has escaped assessment, there is no infirmity in the action of the Assessing officer in assuming jurisdiction u/s 147 of the Act by recording the reasons and issuance of notice u/s 148 of the Act.

25. In support, reliance was placed by the Id PCIT/DR on the decision of Hon'ble Rajasthan High Court in case of Ankit Agrochem (P.) Ltd vs. Joint Commissioner of Income-tax, Range-1, Bikaner [2018] 89 taxmann.com 45 (Raj), the decisions of the Hon'ble Gujarat High Court in case of Peass Industrial Engineers (P.) Ltd. vs. Deputy Commissioner of Income-tax [2016] 72 taxmann.com 302 (Guj), HVK International (P) Ltd. vs. Deputy Commissioner of Income-tax, Central Circle-3 [2016] 72 taxmann.com 208 (Guj), and Ankit Financial Services Ltd. vs. Deputy Commissioner of Income-tax, Circle 1(1)(2) [2017] 78 taxmann.com 58 (Guj), the decision of Hon'ble Mumbai High Court in case of Bright Star Syntex (P.) Ltd. vs. Income-tax Officer 9(2)(1) [2016] 71 taxmann.com 64 (Bom), the decision of the Hon'ble Delhi High Court in case of Principal Commissioner of Income-tax-7 vs. Paramount Communication (P.) Ltd [2017] 79 taxmann.com 409 (Del).

26. It was further submitted by Id PCIT/D/R that there is no doubt and it's a factual position as emanating from the assessment records that the reassessment proceedings were initiated based on the information/documentation received from DCIT, Central Circle, 3 which were collected/seized during the course of search u/s 132 conducted in the case of Ramesh Maniar Group, however, it is not in every case that the Assessing officer can take recourse to section 153C for carrying out the reassessment proceedings as there are conditions specified in section 153C which needs to be fulfilled and only in such cases where the conditions so specified are fulfilled, the Assessing officer can take recourse to section 153C of the Act. It was submitted that in the instant case, the conditions specified in section 153C are

not fulfilled as no satisfaction has been recorded by the Assessing officer of the searched person and no seized material has been handed over to the Assessing officer of the assessee and hence, basis receipt of information/documentation and subsequent enquiries and investigation conducted during the course of search, the Assessing officer recorded the reasons for escapement of income and initiated the proceedings u/s 147 by issuance of notice u/s 148 of the Act. It was accordingly submitted that there is no infirmity in action of the Assessing officer in assumption of jurisdiction u/s 147 instead of section 153C of the Act. In support, reliance was placed on the Coordinate Benches decision in case of Shailesh S. Patel vs ITO Ward-5, Palanpur [2018] 97 taxmann.com 570 (Ahd) and decision of the Hon'ble Madras High Court in case of Karti P. Chidambaran vs Principal DIT(Investigation), Unit 3(2), Chennai [2021] 128 taxmann.com 116 (Mad).

27. It was further submitted that the sufficiency and adequacy of material may not be required to be looked into at the time of recording the reasons and what is relevant is whether there was relevant material on which a reasonable person could have formed a requisite belief that the income has escaped assessment. It was submitted that in the instant case, there was relevant material in possession of the AO for him to proceed with recording of reasons that income has escaped assessment and assumption of jurisdiction u/s 147 of the Act. In support, reliance was placed on the Hon'ble Supreme Court decisions in case of Assistant Commissioner of Income-tax vs. Rajesh Jhaveri Stock Brokers (P.) Ltd. [2007] 161 Taxman 316 (SC), Yogendra kumar Gupta vs. Income-tax Officer [2014] 51 taxmann.com 383 (SC), and Raymond Woolen Mills Ltd. vs. Income-tax Officer [1999] 236 ITR 34 (SC).

28. We have heard the rival contentions and perused the material available on record. Both the parties have relied upon a number of decisions rendered by the Hon'ble Supreme Court and by various Hon'ble High Courts regarding conditions precedent for assumption of jurisdiction by the Assessing officer u/s

147 of the Act. We have gone through these decisions as well as other authorities on the subject, and we find that in these decisions, the Courts have laid down certain cardinal tests which need to be fulfilled for assumption of jurisdiction u/s 147 and have reiterated the same from time to time considering the facts and circumstances of the particular case. These cardinal tests provide that before assuming jurisdiction u/s 147, the Assessing Officer must form a prima facie opinion on the basis of material/information in his possession that there is an escapement of income, the opinion formed may be subjective but the reasons recorded or the information available on record must show that the opinion is not a mere suspicion, the documents/material/information available on record must be tangible, specific and not vague and must be evident from reading of the reasons showing a nexus/linkage with the formation of belief and the fact that they are germane and relevant to the subjective opinion formed by the Assessing Officer regarding escapement of income in the hands of the assessee. The reasons are required to be read as they were recorded by the Assessing officer. No substitution or deletion is permissible. No additions can be made to those reasons. No inference can be allowed to be drawn on the basis of reasons not recorded. It is for the Assessing officer to disclose and open his mind through the reasons recorded by him and he has to speak through the reasons and the reasons so recorded should reflect his independent application of mind and not that of any third party/investigating agency/authority. In cases where the first proviso applies, there is an additional requirement that there should be failure or omission on the part of the assessee in disclosing full and true material facts and the Assessing officer should record the exact and precise nature of failure on part of the assessee and its linkage thereof with the escapement of income.

29. In the instant case, the assessee has challenged the assumption of jurisdiction by the Assessing Officer u/s 147 of the Act and it has been contended that the reopening has been done solely on the basis of information received from DCIT, Central Circle-03, Jaipur and there is no independent

application of mind by the Assessing Officer and it is therefore a case of borrowed satisfaction and not his own satisfaction which has been recorded by the Assessing Officer after due application of mind. It was further submitted that there is no tangible material in possession of the Assessing Officer for arriving at the finding that the income has escaped assessment in the hands of the assessee and therefore, no nexus has been established between the material and formation of belief that the income has escaped assessment in the hands of the assessee. It has been further contended that given the fact that the entire reassessment proceedings have been based on the information received from DCIT, Central Circle-03, Jaipur during the course of search u/s 132, the Assessing Officer should have taken recourse to section 153C and not section 147 for carrying out the present reassessment proceedings.

30. In this regard, we refer to the reasons recorded by the Assessing Officer before issuance of notice u/s 148 of the Act. In the reasons so recorded, the Assessing Officer refers to the information received from the office of DCIT, Central Circle-03, Jaipur pursuant to search and seizure action carried out in case of Ramesh Manihar Group u/s 132 of the Act and the same read as under:-

*"2. Brief details of information collected/received by the A.O: Information has been received from the office of DCIT, Central Circle-3, Jaipur that search & seizure action u/s 132 of the IT Act, 1961 was carried out in the case of Ramesh Manihar Group on 07.01.2016. The group has been indulging in cash loan financing on a large scale. During the course of search, voluminous data comprising of excel sheets in the 18 pen-drives seized during the course of search action at the main office of the Ramesh Manihar Group at 303, Ratna Sagar, MSB Kaa Rasta, Johari Bazar, Jaipur, which consisted details of cash loans financed by the Ramesh Manihar Group was found. It was found that the persons of the*

*Ramesh Manihar group, being Shri Ramesh Chand Maheshwari and Shri Manmohan Krishan Bagla were engaged as finance brokers for arranging cash loans between various borrowers and lenders which were not reflected in the books of accounts and that the brokerage received for such unrecorded cash transactions was also not offered for taxation by the group. It has also been found that the figures in the aforesaid data was suppressed by five zeroes, as is evident from the corroboration of entries found in the excel sheets with the documents seized. As per information, following information was noticed regarding Shri Prakash Chand Kothari, who paid cash loan to various persons through Ramesh Manihar Group during the year under consideration:*

| Date       | T  | @     | AT  | From | To         |
|------------|----|-------|-----|------|------------|
| 27.07.2010 | 6  | 9.00  | 200 | PCK  | V. Chordia |
| 02.08.2010 | 12 | 9.00  | 400 | PCK  | PoongliaJi |
| 07.01.2011 | 6  | 10.00 | 100 | PCK  | A. Kala    |
| 11.01.2011 | 6  | 8.50  | 500 | PCK  | PoongliaJi |
| 12.01.2011 | 6  | 9.00  | 200 | PCK  | NKB        |
| 13.01.2011 | 6  | 10.00 | 100 | PCK  | NIRAJ      |
| 15.01.2011 | 6  | 8.50  | 500 | PCK  | RCB        |
| 15.01.2011 | 6  | 9.00  | 100 | PCK  | RMR        |
| 21.01.2011 | 6  | 10.00 | 100 | PCK  | SNR        |
| 27.01.2011 | 6  | 9.00  | 100 | PCK  | V. Chordia |
| 03.02.2011 | 6  | 10.00 | 100 | PCK  | S. Singhal |
| 16.02.2011 | 6  | 10.00 | 100 | PCK  | RSD        |

*In this information, it is found that the assessee has paid amount of Rs.25,00,00,000/- on account of cash loan and interest applicable accordingly."*

31. In the reasons so recorded, the Assessing Officer has further stated that from the perusal of information, it is found that the assessee has paid cash loan of Rs. 25 crores out of his income from undisclosed sources in A.Y 2012-13 and received interest accordingly. The Assessing Officer has further stated that though the assessee has filed a copy of annual report, audited profit & loss account and balance-sheet along with return of income in the original assessment proceedings wherein various information/material were disclosed, however, requisite full and true disclosure of all material facts necessary for assessment has not been made as the assessee has not furnished the copy of cash book for the year under consideration and source of advance payment of loan in cash and which is not shown in the loans and advances given by the assessee in his balance-sheet attracting Explanation 1 of section 147 of the Act. It was held by the Assessing Officer that the detailed enquiries conducted by the investigation wing and material available on the assessment record is self sufficient and accordingly, he formed reason to believe that the assessee has paid the loan amount of Rs. 25 crores out of his income from undisclosed sources and has failed to disclose fully and truly all material facts necessary for determination of income and therefore, he has reason to believe that income of Rs. 25 crores and interest received thereon has escaped assessment within the meaning of section 147 of the Act.

32. It is therefore manifest from the reasons so recorded by the Assessing Officer that he has basically relied upon the information received from the DCIT Central Circle -3, Jaipur and enquiries conducted by the Investigation wing. Further, given that the original assessment has been completed u/s 143(3) and more than four years have elapsed from the end of the impugned assessment and proviso to section 147 applies, with a view to satisfy the additional condition that there should be failure or omission on the part of the assessee in disclosing full and true material facts, he has considered the assessee's assessment records and thereafter, has concluded that there was no necessity

to make further inquiries as the information available on record is self-sufficient.

33. The question that arises for consideration is whether the information so received from the DCIT Central Circle -3, Jaipur constitute tangible material in possession of the Assessing officer and enquiries so conducted by the Investigation wing, and admittedly not conducted by the Assessing officer himself as a sequel to the information so received, provides the necessary nexus between the tangible material and formation of reasonable belief on part of the Assessing officer that income in the hands of the assessee has escaped assessment.

34. As we have noticed above, the information so received by the Assessing officer from DCIT Central Circle -3, Jaipur talks in general about the search and seizure action u/s 132 carried out in case of Ramesh Manihar Group and during the course of search, voluminous data comprising of excel sheets in pen drives were seized from the office of this said group. It has been further stated that the said group was indulging in cash loan financing on a large scale and were engaged as finance brokers for arranging cash loans between various borrowers and lenders and the data so seized relate to such unrecorded cash transactions. Thereafter, talking specifically about the assessee, it has been stated in the said information that certain transactions have been noticed regarding the assessee, Shri Prakash Chand Kothari wherein the assessee has paid cash loans of Rs 25 crores to various persons through the said group and has earned interest on the said amount. If we look at the data so provided in form of a table in the information so received from DCIT Central Circle-3 Jaipur and as recorded in the reasons by the Assessing officer, we find that it list down certain transactions on various dates and has various columns with heading "T", "@", "AT" and certain figures have been stated under each heading corresponding to various dates, and thereafter, has two columns with heading "from" and "TO" wherein under column "from", "PCK" has been stated

and under column "TO", certain names again in abbreviated form has been stated. On perusal of the said data, it is not discernible as to what kind and nature of transactions the said data depicts as everything is in abbreviated form, what "T" stand for, what "@" stand for, what "AT" stand for, what "PCK" stand for, what is the linkage of "PCK" with other persons whose name are also written in abbreviated form, and how this data and so called transactions are related to the assessee and how the figures so depicted represent and add up to a figure of Rs 25 crores in cash are again not discernable even from close reading of the said data. Therefore, in our considered view, the said data *per se* cannot constitute tangible material in possession of the Assessing officer unless the same is analysed and examined thoroughly and necessary linkage is established with the assessee. In this regard, useful reference can be drawn to the decision of the **Hon'ble Supreme Court** in case of **ITO vs Lakhmani Mewal Das** reported in 103 ITR 437 wherein the Hon'ble Supreme Court has laid down the following legal proposition (pg 448):

*"As stated earlier, the reasons for the formation of the belief must have a rational connection with or relevant bearing on the formation of the belief. Rational connection postulates that there must be a direct nexus or live link between the material coming to the notice of the Income-tax Officer and the formation of his belief that there has been escapement of the income of the assessee from assessment in the particular year because of his failure to disclose fully and truly all material facts. It is no doubt true that the court cannot go into the sufficiency or adequacy of the material and substitute its own opinion for that of the Income-tax Officer on the point as to whether action should be initiated for reopening assessment. At the same time we have to bear in mind that it is not any and every material, howsoever vague and indefinite or distant, remote and farfetched, which would warrant the formation of the belief relating to escapement of the income of the assessee from assessment. The fact that the words 'definite information' which were there in section*

*34 of the Act of 1922, at one time before its amendment in 1948, are not there in section 147 of the Act of 1961, would not lead to the conclusion that action can now be taken for reopening assessment even if the information is wholly vague, indefinite, far-fetched and remote. The reason for the formation of the belief must be held in good faith and should not be a mere pretence.*

*The powers of the Income-tax Officer to reopen assessment, though wide, are not plenary. The words of the statute are 'reason to believe' and not 'reason to suspect'. The reopening of the assessment after the lapse of many years is a serious matter. The Act, no doubt, contemplates the reopening of the assessment if grounds exist for believing that income of the assessee has escaped assessment. The underlying reason for that is that instances of concealed income or other income escaping assessment in a large number of cases come to the notice of the income-tax authorities after the assessment has been completed. The provisions of the Act in this respect depart from the normal rule that there should be, subject to right of appeal and revision finality about orders made in judicial and quasi-judicial proceedings. It is, therefore, essential that before such action is taken the requirements of the law should be satisfied. The live link or close nexus which should be there between the material before the Income-tax Officer in the present case and the belief which he was to form regarding the escapement of the income of the assessee from assessment because of the latter's failure or omission to disclose fully and truly all material facts was missing in the case. In any event, the link was too tenuous to provide a legally sound basis for reopening the assessment. The majority of the learned judges in the High Court, in our opinion, were not in error in holding that the said material could not have led to the formation of the belief that the said material could not have led to the formation of the belief that the income of the assessee-respondent had escaped*

*assessment because of his failure or omission to disclose fully and truly all material facts. We would, therefore, uphold the view of the majority and dismiss the appeal with costs."*

35. In the reasons so recorded, the Assessing officer has further stated that detailed enquiries have been conducted by the Investigation Wing and it has been found that these transactions pertain to the assessee where the assessee has paid cash loans to various persons through Ramesh Manihar Group during the year under consideration. Here, the question is not about the reliance placed by the Assessing officer on the enquiry conducted by the Investigation Wing which the Assessing officer is well within his jurisdiction to place reliance upon but the question is how the Investigation wing has arrived at the finding that the data so found pertains to the assessee only and the transactions relate to cash loans provided by the assessee through Ramesh Manihar Group and whether the basis of arriving at such a finding has been gone into by the Assessing officer prior to recording of the reasons and whether the same is evident from the reading of the reasons so recorded by the Assessing officer. The said question becomes more relevant and critical to our mind in view of the fact that the data so shared by DCIT Central Circle-3 Jaipur and in possession of the Assessing officer is not tangible and specific rather it is vague and is in abbreviated form and unless the same is analysed and examined thoroughly and necessary linkage is established with the assessee, the same cannot be relied upon. However, we find that the reasons so recorded are totally silent about it in terms of the findings of the Investigation Wing and how the AO has analysed the same and reached to a reasonable brief that such enquiries conducted by the Investigation Wing are self-sufficient to decipher the exact nature of the transactions and its linkage with the assessee and by virtue of it, there is a potential escapement of income. We therefore find that it is a case where the reasons have been recorded merely on the basis of information received from DCIT Central Circle-3, Jaipur and so called enquiry conducted by the Investigation wing, in a mechanical

manner without bringing on record the findings of the Investigation Wing which could have provided the tangible material and its nexus with the formation of belief that the transactions so reflected in the data pertains to the assessee which has escapement assessment. It is therefore a case where there is neither any tangible material in possession of the AO nor any nexus/connection has been established by the AO with the assessee by analyzing the data so collected during the course of search and received by him. The reasons so recorded are clearly silent on this and as we have stated above, the Assessing officer has to speak his mind through the reasons so recorded by him and nothing more can be inferred or supplemented in the reasons so recorded. In this regard, useful reference can be drawn to the decision of the **Hon'ble Delhi High Court** in case of **Meenakshi Overseas Pvt Ltd** (supra) wherein the Hon'ble High Court held as under:

*"19. A perusal of the reasons as recorded by the AO reveals that there are three parts to it. In the first part, the AO has reproduced the precise information he has received from the Investigation Wing of the Revenue. This information is in the form of details of the amount of credit received, the payer, the payee, their respective banks, and the cheque number. This information by itself cannot be said to be tangible material.*

*20. Coming to the second part, this tells us what the AO did with the information so received. He says: "The information so received has been gone through." One would have expected him to point out what he found when he went through the information. In other words, what in such information led him to form the belief that income escaped assessment. But this is absent. He straightaway records the conclusion that "the abovesaid instruments are in the nature of accommodation entry which the Assessee had taken after paying unaccounted cash to the accommodation entry given (sic giver)". The AO adds that the said*

*accommodation was "a known entry operator" the source being "the report of the Investigation Wing".*

*21. The third and last part contains the conclusion drawn by the AO that in view of these facts, "the alleged transaction is not the bonafide one. Therefore, I have reason to believe that an income of Rs. 5,00,000 has escaped assessment in the AY 2004-05 due to the failure on the part of the Assessee to disclose fully and truly all material facts necessary for its assessment... "*

*22. As rightly pointed out by the ITAT, the 'reasons to believe' are not in fact reasons but only conclusions, one after the other. The expression 'accommodation entry' is used to describe the information set out without explaining the basis for arriving at such a conclusion. The statement that the said entry was given to the Assessee on his paying "unaccounted cash" is another conclusion the basis for which is not disclosed. Who is the accommodation entry giver is not mentioned. How he can be said to be "a known entry operator" is even more mysterious. Clearly the source for all these conclusions, one after the other, is the Investigation report of the DIT. Nothing from that report is set out to enable the reader to appreciate how the conclusions flow therefrom.*

*23. Thus, the crucial link between the information made available to the AO and the formation of belief is absent. The reasons must be self evident, they must speak for themselves. The tangible material which forms the basis for the belief that income has escaped assessment must be evident from a reading of the reasons. The entire material need not be set out. However, something therein which is critical to the formation of the belief must be referred to. Otherwise the link goes missing.*

*24. The reopening of assessment under Section 147 is a potent power not to be lightly exercised. It certainly cannot be invoked casually or mechanically. The heart of the provision is the formation of belief by the AO that income has escaped assessment. The reasons so recorded have to be based on some tangible material and that should be evident from reading the reasons. It cannot be supplied subsequently either during the proceedings when objections to the reopening are considered or even during the assessment proceedings that follow. This is the bare minimum mandatory requirement of the first part of Section 147 (1) of the Act.*

*25. At this stage it requires to be noted that since the original assessment was processed under Section 143 (1) of the Act, and not Section 143 (3) of the Act, the proviso to Section 147 will not apply. In other words, even though the reopening in the present case was after the expiry of four years from the end of the relevant AY, it was not necessary for the AO to show that there was any failure to disclose fully or truly all material facts necessary for the assessment.*

*26. The first part of Section 147 (1) of the Act requires the AO to have "reasons to believe" that any income chargeable to tax has escaped assessment. It is thus formation of reason to believe that is subject matter of examination. The AO being a quasi judicial authority is expected to arrive at a subjective satisfaction independently on an objective criteria. While the report of the Investigation Wing might constitute the material on the basis of which he forms the reasons to believe the process of arriving at such satisfaction cannot be a mere repetition of the report of investigation. The recording of reasons to believe and not reasons to suspect is the pre- condition to the assumption of jurisdiction under Section 147 of the Act. The reasons to believe must demonstrate link between the tangible material and the*

*formation of the belief or the reason to believe that income has escaped assessment."*

*"36. In the present case, as already noticed, the reasons to believe contain not the reasons but the conclusions of the AO one after the other. There is no independent application of mind by the AO to the tangible material which forms the basis of the reasons to believe that income has escaped assessment. The conclusions of the AO are at best a reproduction of the conclusion in the investigation report. Indeed it is a 'borrowed satisfaction'. The reasons fail to demonstrate the link between the tangible material and the formation of the reason to believe that income has escaped assessment.*

*37. For the aforementioned reasons, the Court is satisfied that in the facts and circumstances of the case, no error has been committed by the ITAT in the impugned order in concluding that the initiation of the proceedings under Section 147/148 of the Act to reopen the assessments for the AYs in question does not satisfy the requirement of law."*

36. In the instant case as well, we find that after recording the information received from the office of DCIT Central Circle-3 Jaipur, in the second part of the reasons so recorded, the Assessing officer has stated as to what analysis he has done with the information so collected/received and he says that "from the perusal of the information, it is found that the assessee has paid cash loan of Rs 25,00,00,000/- out of his income from undisclosed in A.Y 2011-12 and received interest accordingly." What analysis he has done to arrive at the belief that the information so received pertains to the assessee, the nature of transactions are in nature of cash loans only and not otherwise, who are the persons to whom these alleged cash loans have been provided and their identities and whereabouts, and we find that there is nothing which has been stated in the reasons so recorded and apparently, the basis of such conclusions

and not just the reasons is the enquiry conducted by the Investigation Wing and as we have noted above, nothing from the report of the Investigation Wing is set out in the reasons and thus, the crucial link between the information and formation of belief that income has escaped assessment is clearly absent in the instant case and the ratio laid down in the aforesaid decision rendered by the Hon'ble Delhi High Court squarely applies in the instant case.

37. In the reasons so recorded, we find that the Assessing officer has further stated that the transactions so reflected in the data relates to cash loan provided by the assessee to various persons through Ramesh Manihar Group and since the same has not been reflected in the loans and advances account in his balance sheet and no cash book has been produced in the original assessment proceedings, there is a failure on part of the assessee to disclose fully and truly all material facts necessary for determination of income. In our view, in order to establish failure on part of the assessee to reflect the transactions in his books of accounts, firstly, it has to be prima facie established by the Revenue that the transactions infact pertains to the assessee and he has carried out these transactions of cash loans through Ramesh Maniar Group and he has reasons to believe that income has escaped assessment. Therefore, where the Revenue has not been able to establish, even prima facie, basis any tangible material that the transactions pertains to the assessee or the necessary nexus has been established with the assessee and formation of belief that income in the hands of the assessee has escaped assessment has no sound basis and foundation, as we have noted above, escapement of income cannot be linked merely on account of failure on part of the assessee to reflect truly and fully all material facts as the said condition is an additional condition and a condition which is subservient to satisfaction of the first condition which the Assessing officer has failed to fulfill in the instant case. We are therefore of the view that it would not be necessary for us to examine any further as to whether the escapement of income has happened on account of failure on the part of the assessee to disclose fully and truly all

material necessary for his assessment and the contents raised in this regard are thus left open.

38. Looking at the matter from another perspective, it is a matter of record that the information which has been received by the Assessing officer from the DCIT Central Circle-3, Jaipur has been collected during the course of search action u/s 132 in case of Ramesh Manihar Group. Where the Assessing Officer was so sure and clear that the enquiries made by the Investigation wing and the information so collected during the course of search action in case of Ramesh Manihar Group shows that certain transactions of cash loans have been found which are pertaining to the assessee, the question is what precluded the Assessing Officer from taking action u/s 153C of the Act instead of section 148 of the Act. After the amendment made by the Finance Act with effect from 01.06.2016 where any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to person other the person who has been searched, the action under section 153C can be taken which is notwithstanding anything contained in section 147 and section 148 of the Act. The Id PCIT/D/R has contended that there are conditions specified in section 153C which needs to be fulfilled and only in such cases where the conditions so specified are fulfilled, the Assessing officer can take recourse to section 153C of the Act. It was submitted that in the instant case, the conditions specified in section 153C are not fulfilled and hence, basis receipt of information, the Assessing officer recorded the reasons for escapement of income and initiated the proceedings u/s 147 by issuance of notice u/s 148 of the Act. In this regard, we refer to the provisions of section 153C which read as under:

*"Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,-*

*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or*

*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to, a person other than the person referred to in section 153A, then the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A”*

39. On perusal of the aforesaid provisions, it is noted that firstly, the Assessing officer of the searched person has to record satisfaction that any books of account or documents etc, seized during the course of search pertains or pertain to, or any information contained therein, relates to any other person other than the person who has been searched. Once such a satisfaction is recorded, the books of account or documents or assets seized are required to be handed over to the Assessing Officer having jurisdiction over such other person. Thereafter, the Assessing Officer having jurisdiction over such other person has to record his own satisfaction that the books of account or documents seized have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of section 153A. Once the said satisfaction is recorded, he can then proceed against each such other person and issue notice and assess or

reassess the income of the other person in accordance with the provisions of section 153A of the Act.

40. In the instant case, the fact that the Assessing officer has not invoked the provisions of section 153C, it shows that there was no satisfaction which has been recorded by the Assessing officer having jurisdiction over Ramesh Maniar Group that any books of account or documents etc, seized during the course of search pertains or pertain to, or any information contained therein, relates to the assessee and in absence of satisfaction so recorded, the books of account or documents seized during the course of search were not handed over to the Assessing Officer having jurisdiction over the assessee. In absence of satisfaction so recorded and handing over of the seized material by the Assessing officer of the searched person, the Assessing officer could not by himself have invoked the provisions of section 153C of the Act. It is also manifest that in absence of any such satisfaction that documents so found and seized during the course of search pertains to the assessee or any information contained therein relates to the assessee, no linkage or nexus has been established with the assessee and what has been received by the Assessing officer is pure raw data in abbreviated form and information which *per se* cannot constitute as tangible material, as we have noted earlier, and unless and until the said data and information is properly analysed and examined and necessary linkage and nexus established with the assessee, the same cannot form the basis for initiating action u/s 147 in hands of the assessee. It cannot be a case that since action could not be taken under section 153C, the Assessing officer is free to initiate action u/s 147 of the Act as the Courts have held from time to time that reopening of assessment proceedings is a potent power which cannot be casually and mechanically invoked and lightly exercised by the Assessing officer and the invocation of such powers is based on satisfaction of certain cardinal tests and principles as we have discussed above and which have not been fulfilled in the instant case.

41. In light of above discussions and following the decisions referred supra, we are of the considered view that in the peculiar facts and circumstances of the present case, the assumption of jurisdiction and initiation of the proceedings under Section 147 of the Act to reopen the assessment proceedings does not satisfy the requirement of law and is hereby set-aside.

42. In the result, ground no. 1 of the assessee's appeal is allowed. Ground no. 2 of the assessee's appeal was not pressed during the course of hearing, hence, the same is dismissed as not pressed. Ground no. 3 is also dismissed in light of aforesaid discussions. In the result, the appeal of the assessee is partly allowed.

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43. We now refer to Revenue's grounds of appeal challenging the deletion of additions made by the Id CIT(A) and the contentions advanced by the respective parties in this regard.

44. The Id PCIT/D/R took us through the findings of the Assessing officer and submitted that during the course of search as well as in post search proceedings, statements of Shri Ramesh Chand Maheshwari were recorded u/s 132(4) as well as under section 131 of the Act in which he has admitted that Ramesh Manihar Group was involved in cash loan financing transactions on a large scale and amounts were taken in cash from the lenders and the same was advanced to the borrowers in cash, and they earned commission on these transactions. It was further submitted that various incriminating documents were found and seized by the Investigation wing of the department, which includes loose papers, pen drives etc. On analysis of the seized documents particularly pen drives, it has been noted by the Assessing officer that one pen drive is having names in short/code word 'Jagat.xlsx' that names of the lenders as well as borrowers were found in code name or maybe say in short name

likewise 'Prakash Chand Kothari' the assessee as 'PCK'. This short name is again verifiable with another pen drive namely 'from & to group.xlsx', where name of the assessee 'PCK', is mentioned along with his full name address in the seized documents. Accordingly, it was established that the assessee was the only person who has given his unaccounted cash for lending through the Ramesh Manihar Group. On further examination of these pen drives, it was also found that amount of transaction was mentioned after suppressing 'five zeros' i.e. Rs. 25,00,00,000/- was mentioned as 2500 in the form of different entries. In these pen drives, it was also mentioned, as for which period and on what rate of interest, the amount was advanced to the borrowers. It was accordingly submitted that based on such corroboration, the excel sheet notings extracted from the Jagat. XIs from the PEN drive in possession of Ramesh Manihar revealed that these are related to Shri Prakash Chand Kothari (PCK).

45. It was further submitted by the Id PCIT/D/R that Sh. Ramesh Chand Maheshwari in his statement dated 07.01.2016 recorded on oath u/s 132(4) of the Act and his subsequent statement dated 08.11.2017 recorded u/s 131 of the Act has admitted that he was involved in cash loan financing transactions on a large scale. It was further submitted that Ramesh Manihar Group have filed their application before the Income Tax Settlement Commission and have surrendered the income so earned as commission on account of these un-recorded or unaccounted transactions and due taxes has also been paid. It was submitted that basis the said application filed and admission by the Ramesh Manihar Group, the Assessing officer has rightly stated that the assessee also made transactions regarding lending its unaccounted money through said group and advanced the same out of books of accounts to earn interest income which was also not recorded in the books of accounts. It was accordingly submitted that the excel sheet notings extracted from the Jagat. XIs from the PEN drive in possession of Sh. Ramesh Chand Maheshwari thus stand corroborated by his statement recorded on oath u/s 132(4) of the Act and

subsequent statement recorded u/s 131 of the Act as well as the application moved by his Group before the Settlement Commission.

46. Regarding assessee request to provide cross examination of Sh. Ramesh Chand Maheshwari whose statements were recorded and relied upon by the Assessing officer, it was submitted that the Assessing Officer rightly stated that the right of cross examination is not an absolute right and depends upon facts and circumstances of the each case and in the instant case, the assessee has been allowed ample opportunity but he has failed to furnished any evidence contradicting the information available with the Revenue and no substantive material has been produced by the assessee. It was alternatively submitted that where the Bench so decide that the assessee be provided an opportunity of cross-examination, the matter may be remanded to the file of the Assessing officer to provide such an opportunity and merely on this ground, the additions cannot be deleted and assessment proceedings set-aside.

47. It was accordingly submitted by the Id PCIT that the Assessing Officer has rightly held that the assessee advanced a sum of Rs. 25 crores in cash which is not recorded in his books of accounts through Ramesh Manihar Group and same was brought to tax in the hands of the assessee. Further, considering the period under consideration as well as amount advanced and taking rate of interest @1% per month, addition towards interest of Rs. 90,58,625/- was also made in the hands of the assessee.

48. It was submitted that the Id CIT(A) has not appreciated the entirety of facts and circumstances of the case, the data seized during the course of search, the statement recorded during search and post-search proceedings in right perspective and in a summarily manner has deleted the additions made by the Assessing officer. He accordingly supported the findings of the Assessing officer and submitted that the order of the Id CIT(A) be set-aside and that of the AO be sustained.

49. In his submissions, the Id A/R submitted that firstly, the contention of the Id PCIT/DR that the Id CIT(A) has passed the order in a summarily manner is not correct. It was submitted that detailed submissions were filed before the Id CIT(A) and the matter was heard at length by the Id CIT(A) and after appreciating the entirety of facts and circumstances of the case and considering various authorities on the subject including the decisions of the Hon'ble Supreme Court, the Id CIT(A) has passed a detailed, speaking and a well-reasoned order. The Id A/R accordingly supported the findings and the order of the Id CIT(A).

50. The Id A/R further submitted that the Assessing officer, on the basis of extracts of excel sheets and statements recorded during the course of search has failed to point out any basis of allegation of involvement of the assessee in providing cash loans. It was submitted that even identities of the persons alleged to have received cash loans from the assessee through Ramesh Manihar group was not established and thus, the second leg of the alleged transaction could not be proved. It was submitted that extensive search was conducted on 06.05.2010 on KGK Group of which assessee is a part and no unaccounted income, cash or hundis etc. were found. It was submitted that Ramesh Manihar nowhere in his statements stated the name of the assessee and even no opportunity of cross-examining Ramesh Manihar was provided to the assessee.

51. It was further submitted that various discrepancies existed in the extracts of the excel sheet provided by the AO such as there was disconnect between the dates mentioned in different columns (Column No. 1 and Column No. 14 of the excel sheet), dates in Column No. 14 are not in chronological order, Column No. 7 and Column No. 8 are subsequently added by the Department which did not form part of the original format maintained by Ramesh Manihar Group and seized and forming part of reasons recorded.

52. It was further submitted that another set of extracts of the excel sheets relied upon by Id. AO was nothing but prepared for the purpose of sending invitation cards and even in these excel sheets, it was submitted that Ramesh Manihar in response to Question No. 20 and Question No. 30 confirmed having prepared these details for the purpose of sending invitation cards. These excel sheets referred to Ankoot, Office, RCM List and XYZ and not w.r.t any transaction allegedly undertaken by the assessee. In the excel sheet, 2610 records have been maintained. It is certainly not the case of the Id. AO that Ramesh Manihar acted as a broker for all of these 2610 individuals for lending money in cash to other persons. What information has been recorded in other worksheets is not clear. The screen shot of the excel sheet, highlighting assessee's name was taken on 22.10.2018, whereas the search was conducted on 07.01.2016. Whether such screenshot was taken by the Id. AO or by Central Circle-3 or by Investigation Wing or by any other person/Department is also not clear.

53. It was further submitted that following references from the statement of Ramesh Manihar recorded during search may be noted which indicate no involvement of the assessee in providing cash loans:

| Q. No. | Averments made by Ramesh Manihar  |
|--------|---|
| 12     | RM acted as a broker in providing loans through cheque and RTGS between the lenders and borrowers.  |
| 13     | Loans were not given in cash and all the transactions were through banking channels.  |
| 15     | <ul style="list-style-type: none"> <li>• Dealings in cash was done by him only on his personal account, out of his own funds.</li> <li>• RM earned interest thereon ranging from 0.8 to 1% per month, in cash, which was applied for the purpose of further lending.</li> </ul> |
| 17     | Business of lending in cash, on his personal account, was   |

|    |   |
|----|---|
|    | done by him from last 4 to 5 years, as on the date of search.   |
| 25 | RM never collected any identification proof of persons with whom transactions were undertaken by him.   |
| 31 | <ul style="list-style-type: none"> <li>• Excel sheets were prepared and maintained by the receptionist for the purpose of sending invitation cards.</li> <li>• Such information had no link with the regular business carried out by RM.</li> </ul> |

54. It was submitted that in the extracts of the statement recorded u/s 131, as set out in the AO order at Pages 11 and 12, Ramesh Manihar has not specified the name of the assessee or any transaction done through him in cash. Even copy of such statements recorded, u/s 131 on 08.11.2017 was not provided to the assessee during the course of assessment proceedings.

55. It was further submitted that the Id. AO wrongly relied on the extracts of the excel sheet maintained by Ramesh Manihar Group and seized during search on 07.01.2016 for the reason that Id. AO did not comply with the provisions of section 65A and 65B of the Evidence Act, 1872 and no satisfaction recorded by AO that the output of the pen-drives/ computer records were analyzed on "as is" basis by the Department and there was no risk of being tempered by anyone. In support, reliance was placed on the decision of Hon'ble Supreme Court in the case of Anvar P.V. v. P.K. Basheer [2014] SSC Online SC 732 (SC) wherein it was held that *"An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under Section 65B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible"*

56. It was further submitted that in Chuharmal (1988) 172 ITR 250 (SC), the Hon'ble Supreme Court pointed out that although rigors of rule of evidence contained in the Evidence Act were not applicable to the Income-tax Act, but

the general principles of evidence are applicable to income-tax proceedings. Further, reliance was placed on following decisions to submit that addition cannot be made on the basis of excel sheets or loose sheets or pen drives:

- V.C. Shukla [1998] 3 SCC 410
- Common Cause vs. UOI [2017] 394 ITR 220 (SC)
- ACIT vs Katrina Rosemary Turcotte [2017] 190 TTJ 681 (Mum)

57. It was further submitted that the fact that the application of Ramesh Manihar Group has been accepted by the Settlement Commission considering him to be a money broker, has no impact on the case of the assessee. It was submitted that admission of Ramesh Manihar's petition by Settlement Commission no way establishes that PCK is no one else but the assessee, Shri Prakash Chand Kothari. In support, reliance was placed on the decision of the Coordinate Mumbai Benches in case of Sh. Anil Jaggi vs ACIT [2018] 168 ITD 612 (Mum.)(Trib.).

58. It was further submitted that authenticity of the data, allegedly contained in the Pen-Drives seized from Ramesh Manihar Group has to be proved independently. Unless the entries are corroborated by independent, credible, tangible and clinching material, the same cannot be used against the assessee, treating the same as "gospel truth". It was submitted that Hon'ble Supreme Court, in the case of Arjun Panditrao Khotkar Vs. Kailash Kushanrao Gorantyal and Ors. (*in Civil Appeal Nos. 20825-20826 of 2017, 2407 and 3696 of 2018 vide its order dated 14.07.2020*) confirmed its earlier view in the case of Anvar P.V. v P.K. Basheer (*supra*) apropos admissibility of electronic recorded as evidence and held that a certificate under Section 65B(4) of the Evidence Act, 1872 is mandatory, and a condition precedent to the admissibility of evidence by way of electronic record. The *non-obstante* language of Section 65B(1) makes it clear that when it comes to information contained in an electronic record, admissibility and proof thereof must follow the drill of Section 65B, which is a special provision in this behalf. Requirement under Section

65B(4) is not necessary if the original computer/laptop etc in which the data/information, relied upon, itself is produced and conditions under Sections 65B(2) and 65B(4) must be satisfied cumulatively.

59. It was further submitted that in case of K. Natwar Singh (*ITA No. 3258,3290,4168/Del/2013*) and Jagat Singh (*ITA No. 3036, 3037, 3038 and 3039/Del/2015*), having similar factual matrix, wherein pen-drives were seized from one Shri Chetan Gupta allegedly containing details of approx. 148 people, whose money and wealth, allegedly, was administered by the said Shri Chetan Gupta, additions were made in the case of persons, based on entries in such pen-drives/ computer records, however, such additions were deleted by the appellate authorities. Further, reliance was placed on the decision in case of DCIT vs Mahabir Prasad Gupta (*ITA No. 713 & 714/DEL/2011 dated 23.11.2012*) where the Tribunal held that the Revenue could not establish that name of the person recorded in the diary as 'MPG' meant Mahabir Prasad Gupta only i.e. assessee and additions were deleted. It was submitted that the said decision was approved by the Hon'ble Delhi High Court (*in ITA No. 814/2015 dated 20.10.2015*) and also followed subsequently by the Hon'ble Delhi High Court in case of Sant Lal [2020] 317 CTR 483 (Del).

60. It was submitted that it is a trite law that no addition can be made on the basis of documents found from third party without examining the third party and linking the contents of the documents obtained from such third party with the assessee and in support, reliance was placed on following decisions in case of Bangodaya Cotton Mills Ltd. v. CIT (2011) 330 ITR 104 (Cal), DCIT v. Mahendra Ambalal Patel (2010) 40 DTR 243 (Guj), Prakash Chand Nahtav. CIT (2008) 301 ITR 134 (MP), CIT v. Salek Chand (2008) 300 ITR 426 (All), SMC Share Broker Ltd. (2007) 288 ITR 345 (Delhi), CIT v. JMD Computers & Communications (P.) Ltd.(2009) 180 Taxman 485 (Delhi), Krishna Textiles v. CIT (2009) 310 ITR 0227 (Guj) and CIT v. A.N. Dyaneswaran (2008) 297 ITR 135 (Mad).

61. It was further submitted that the Id. AO has made the addition invoking the provisions of Section 69. For invoking the provisions of Section 69 heavy burden lies on the Id. AO to prove that investment has taken place, and the investment is owned by the assessee. It was submitted that there is the difference of burden under Section 68 *vis-à-vis* Section 69. If a credit entry is found in books of the assessee, entire burden lies on the assessee to prove identity, credit-worthiness and genuineness of the said creditor. As against this, if any investment is alleged to be in the name of the assessee which as per the Department is not recorded in the books of the assessee, the burden is on the Department to first prove its allegation by way of impeccable evidences. It is well settled that the burden is on the person who makes allegation and to discharge such burden the said person has to lead positive evidences. Mere fact that there were certain entries found from records of third party, it is not sufficient to make additions on grounds that assessee had made investment. It was submitted that even the assessee has not been identified nor is there any allegation by Ramesh Manihar that in the Pen-Drive alleged to be his, there were deposits received by him from the assessee. It was submitted that without examining the persons, who allegedly received loans, and without obtaining due confirmations from them, even the factum of investment is not proved. What would be the case of the Department, if the so-called alleged loan takers refuse to ever having received loan from the assessee? Without agreeing, if the loans given is not proved, what is the point in tracing and taxing the person who allegedly has given the loan. It was submitted that the present case is similar to a situation, wherein, an allegation is made on the assessee to have made investment in land, without even identifying specific piece of land, which has been allegedly purchased by the assessee. This situation can very well arise, wherein search is conducted by the Department, as in the present case, on some broker, dealing in land transactions. It was submitted that Hon'ble Gujarat High Court in the case of Ushakant Patel (2006) 282 ITR 553 (Guj) has held that the burden of proof that the investment in the asset not recorded in the books of account is on the revenue.

62. It was submitted that unsubstantiated material found in the Pen-Drive cannot be considered as conclusive evidence so as to make additions, towards unexplained investments, in the hands of the assessee. Undisputedly no other material has been brought to the fore by the Department, suggesting any such loan having been given by the assessee to certain other alleged person.

63. It was submitted that inspite of specific request, neither Ramesh Manihar was examined by the Id. AO nor his cross examination was allowed to the assessee. No addition can be made without providing adequate opportunity of cross examination of a person on the basis of whose statements additions made in the name of the assessee and in support, reliance was placed on the Hon'ble Supreme Court decision in case of Andaman Timber Industries v. CCE(2015) 281 CTR 0241 (SC), CIT v. Ashwani Gupta [2010] 191 Taxman 51 (Delhi), CIT v. SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) and State of Kerala v. K.T. Shaduli Yusuff (1977) 39 STC 478 (SC). Similarly, inspite of specific request, Id. AO did not examine the persons who, according to the Id. AO, had received loans from the assessee through Ramesh Manihar Group.

64. It was submitted that Hon'ble Bombay High Court in the case of CIT v. Lavanya Land (P) Ltd. (2017) 297 CTR 204(Bom.) (HC) held that if the entries on loose sheet of paper, found during search, are not corroborated by any other evidence, no addition can be made. Similarly, in another case of Aarti Colonizers Company, certain incriminating material in the form of data stored in electronic medium was found in search conducted on the partners of the assessee firm. On the basis of such electronic evidences, additions were made in the hands of the assessee firm. Such additions were subsequently deleted by the Raipur Bench of the Tribunal (*ITA No. 178 to180/RPR/2014 dated 01.07.2019*) and it was observed by the Tribunal that no material was found to show that the amount contained in the data was paid by the assessee firm at any point of time. Resultantly, in the absence of any corroborative evidences no addition can be made.

65. It was further submitted that the Id AO, without any basis, alleged that assessee earned interest, of Rs. 90,58,625, on the loans advanced to different persons through RMG. Since the assessee did not provide any loan, in cash, to any person through RMG, there was no question of any interest being earned by the assessee.

66. It was accordingly submitted that the Id CIT(A) has rightly accepted the contentions of the assessee and deleted the additions holding that Ramesh Manihar was never confronted by the Id. AO or the Investigation Wing as to what "PCK" stands for, against the name "PCK", no address or telephone number is found to have been recorded, no evidence or basis to suggest "PCK" was no one else but the assessee, no evidence to suggest that assessee had advanced loans in cash through Ramesh Manihar, evidences as relied upon by Id. AO do not relate to the assessee, in the statements recorded of Ramesh Manihar, there is no reference to "PCK" being considered as "Prakash Chand Kothari", during the assessment proceedings, Id. AO could not point out any specific portion of the statement of Ramesh Manihar which could suggest involvement of the assessee in providing cash loans, in case of uncorroborated entries kept by third party, no tax liability can be fastened on the assessee and no case could thus be made out to prove that the entries found during the search on Ramesh Manihar Group relate to the assessee. The Id A/R accordingly supported the order and findings of the Id CIT(A) and submitted that the appeal filed by the Revenue be dismissed.

67. We have heard the rival contentions and perused the material available on record. The case of the Revenue is that the assessee had advanced a sum of Rs. 25 crores by way of cash loans through Ramesh Manihar Group to various persons which is not recorded in his books of accounts and the same was brought to tax as unaccounted income. It was also held that the assessee has advanced the said amount on various dates for different periods of time, accordingly, considering the rate of interest @1% per month, interest of Rs.

90,58,625/- was determined and the same was also brought to tax in the hands of the assessee. The case of the Revenue therefore is that it is the unaccounted money which belongs to the assessee and which has been advanced by the assessee by way of cash loans through Ramesh Manihar Group and the same was thus brought to tax. Besides, the interest on such money advanced by way of cash loans has been determined applying rate of interest of 12% and the same has also been brought to tax.

68. Here, first and foremost issue that arise for consideration is regarding on whom the initial onus lies which needs to be discharged. Whether it is Revenue or the assessee who has to discharge the initial burden of proof that such unaccounted money belongs to the assessee and secondly, the same has been advanced by the assessee by way of cash loans through Ramesh Manihar Group to third parties and he has earned interest thereon and the same has remain unaccounted in the books of accounts.

69. In this regard, it is noted that during the course of assessment proceedings, the assessee was issued a show cause as to why the addition of Rs. 25 crores should not be made as unaccounted income along interest @ 1% per month. In response to the said show cause notice, the assessee stated that he, at no point of time, during the relevant previous year or otherwise, has given any amount in cash, as loan or otherwise, through any person, including Sh. Ramesh Chand Maheshwari of Ramesh Manihar Group. It was further submitted by the assessee that from the documents so provided, the assessee is unable to understand as to how the Assessing Officer has inferred that he has provided cash loans to different persons through Sh. Ramesh Chand Maheshwari. The reply so furnished by the assessee was examined by the Assessing Officer and as per the Assessing Officer, reply of the assessee is of routine nature having no evidence to contradict the information available with the Revenue and duly incorporated in the reasons for reopening of the case and the assessee has failed to substantiate the onus cast upon him about the

impugned transactions of Rs. 25 crores. During the course of hearing, there is reiteration on part of the Id PCIT/D/R that initial onus lies on the assessee which he has failed to satisfy and reliance has been placed on the findings of the Assessing officer in this regard.

70. The Id A/R in his submissions has however stated that the addition has been made by the Assessing officer by way of undisclosed investment in form of cash loans invoking the provisions of Section 69 and therefore, the burden lies on the Assessing officer to prove that the investment by way of cash loans has infact taken place and the amount so invested belongs to the assessee and the burden is on the Revenue to first prove the said allegations by leading positive evidence. In this regard, our reference was drawn to the provisions of Section 69 of the Act which reads as under:

*"Where in the financial year immediately preceding the assessment year, the assessee has made investments which are not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be the income of the assessee of such financial year."*

71. On perusal of the aforesaid provisions, it is observed that it talks about a situation where in any financial year, the assessee has made investments which are not recorded in his books of accounts and in the instant case, whether the assessee has made investment by way of cash loans and whether the same has not been recorded in his books of accounts, it has to be determined by the Assessing officer and a finding is to be recorded bringing cogent evidence on record that money so invested belongs to the assessee and the same has been advanced by way of cash loans through Ramesh Manihar group. And once it is established that these two conditions are satisfied regarding money so invested

belongs to the assessee and making investment by way of cash loans and not recording it in his books of accounts, in such a situation, an opportunity may be provided to the assessee calling for his explanation about the nature and source of such investment. And where either no explanation has been furnished by the assessee or the explanation so offered is not found satisfactory in the opinion of the Assessing officer, the said investment may be deemed to the income of the assessee for such financial year. Looking at it from another perspective, we find that where in response to show-cause notice, the assessee had categorically denied making any such investment through Ramesh Manihar Group and then, in such a scenario, how can the assessee lead any evidence in support of a transaction which he denied having executed and undertaken at first place. Therefore, we agree with the contentions advanced by the Id A/R that the initial onus lies on the Assessing officer to establish through leading positive evidence that the assessee has infact invested the money by way of cash loans through Ramesh Manihar Group and therefore, we believe that merely stating that the same has not been recorded in the books of accounts so maintained by the assessee is not sufficient enough to discharge the initial burden cast on the Assessing officer.

72. In order to determine whether the onus cast on the Assessing officer has been satisfied or not and basis of his findings, we refer to the information and other material/documentation available with the Assessing officer prior to initiation of the reassessment proceedings as well as analysis/examination thereof during the course of reassessment proceedings and besides, other information/documentation relied upon by the Assessing officer during the course of reassessment proceedings to arrive at his findings and which forms the basis of subject addition of undisclosed investment in the impugned order. These include information received from DCIT Central Circle-3 Jaipur prior to recording of reasons and issuance of notice u/s 148, copy of extracts of excel sheets/data found in 18 pen drives during the course of search u/s 132 from the premises of Shri Ramesh Manihar and relevant to the assessee, copy of

statement of Shri Ramesh Chand Maheshwari alias Shri Ramesh Manihar recorded during the course of search u/s 132(4) dated 7.01.2016, copy of statement of Shri Ramesh Chand Maheswari alias Shri Ramesh Manihar subsequently recorded u/s 131 dated 8.11.2017.

73. Firstly, we refer to the information so received by the Assessing officer from DCIT Central Circle -3, Jaipur prior to recording of reasons and issuance of notice u/s 148, it talks in general about the search and seizure action u/s 132 carried out in case of Ramesh Manihar Group and during the course of search, voluminous data comprising of excel sheets in pen drives were seized from the office of this said group. It has been further stated that the said group was indulging in cash loan financing on a large scale and were engaged as finance brokers for arranging cash loans between various borrowers and lenders and the data so seized relate to such unrecorded cash transactions. Thereafter, talking specifically about the assessee, it has been stated in the said information that certain transactions have been noticed regarding the assessee, Shri Prakash Chand Kothari wherein the assessee has paid cash loans of Rs 25 crores to various persons through the said group and has earned interest on the said amount. If we look at the data so provided in form of a table in the information so received from DCIT Central Circle-3 Jaipur and as recorded in the reasons by the Assessing officer, we find that it list down certain transactions on various dates and has various columns with heading "T", "@", "AT" and certain figures have been stated under each heading corresponding to various dates, and thereafter, has two columns with heading "from" and "TO" wherein under column "from", "PCK" has been stated and under column "TO", certain names again in abbreviated form has been stated. On perusal of the said data, it is not discernible as to what kind and nature of transactions the said data depicts as everything is in abbreviated form, what "T" stand for, what "@" stand for, what "AT" stand for, what "PCK" stand for, what is the linkage of "PCK" with other persons whose name are again written in abbreviated form, and how this data and so called transactions are related to

the assessee and how the figures so depicted represent and add up to a figure of Rs 25 crores are again not discernable even from close reading of the said data and said data is unclear, vague and in abbreviated and codified form and therefore the said data *per se* on a standalone basis cannot constitute as tangible and cogent material/evidence in possession of the Assessing officer unless the same is analysed and examined thoroughly and necessary linkage is established with the assessee.

74. Now, let's look at as to how the Assessing officer has examined and analysed the said data further during the course of reassessment proceedings. The Assessing officer has referred to and compared the aforesaid data with data found in other pen drives as well as statements of Ramesh Chand Maheshwari recorded u/s 132(4) during the course of search and post search proceedings u/s 131 of the Act given that the said data has been found in pen drives from the premises of Ramesh Manihar Group during the course of search. Apparently, the aforesaid data was found in pen drive "Jagat.xlsx" where name of lenders and borrowers were admittedly stated in code name or abbreviated form and it has been claimed by the Revenue that "PCK" stands for the assessee, Shri Prakash Chand Kothari. The said data was then compared with data in other pen drives namely "from and two group.xlsx", "copy of New Dir.xls", data in Ankoot file where name of Prakash Chand Kothari, KGK Jewellers, address and phone number has been stated and basis such exercise, the Assessing officer has reached the final conclusion and recorded a finding that "PCK" stands for the assessee, Shri Prakash Chand Kothari and the transactions stated in the first excel file so found in the pen drive "Jagat.xlsx" pertains to the assessee. The Assessing officer has further stated that on examination of these pen drives, it is found that the amount of transactions were mentioned after suppressing five zeros and different individual entries totaling to Rs 2500 actually means and reflect a total figure of Rs 25 crores. The Assessing officer has thereafter referred to the statement of Shri Ramesh Chand Maheshwari recorded u/s 132(4) during the course of search and in

particular, question no. 16, 17, 18 and 19 and the response to the said questions submitted by Shri Ramesh Chand Maheshwari has been considered and reproduced in the reassessment order. The Assessing officer has also referred to the statement of Shri Ramesh Chand Maheshwari recorded u/s 131 during the course of his own assessment proceedings and also the application filed by his Ramesh Manihar Group before the Settlement Commission where they surrendered their commission income on such unrecorded and unaccounted transactions and due taxes have been paid. Basis the same, the AO has arrived at a finding that "PCK" stands for the assessee and he has also advanced cash loans worth Rs 25 crores through Shri Ramesh Manihar Group and has earned interest thereon which has been brought to tax.

75. In this regard, as we have noted earlier, the proceedings have been initiated under section 147 and not under section 153C as no satisfaction has been recorded by the Assessing officer of Ramesh Manihar Group that seized documents pertains to the assessee or any information contained therein relates to the assessee and the original seized pen drives found during the course of search have not been handed over to the Assessing officer by Assessing officer of the Ramesh Manihar Group. Therefore, what has been received by the Assessing officer in the instant case is only the information in form of extracts and print out of the excel sheets containing the aforesaid data in various pen drives found during the course of search in case of Ramesh Manihar Group. Here, it is relevant to note that presumption available under section 132(4A) in terms of authenticity and correctness of contents of such data/information found in the pen drives can be drawn against the person in whose case the search has been authorized and from whose possession or control such pen drives have been found during the course of search. Therefore, in the instant case, the presumption lies against Ramesh Manihar Group, and not against the assessee. In such a case, the burden lies on the Assessing officer by leading corroborative evidence that the data/information so found in the pen drives relates to the cash loan transactions belongs to the

assessee and the same have actually been undertaken by the assessee through Ramesh Manihar Group and the contents therein are found as correct and authentic and stand duly corroborated by independent evidences.

76. The assessee has also challenged the reliance on such extracts and print outs of the excel sheets stating that the AO has not complied with the provisions of section 65A and 65B of the Evidence Act, 1872 and no satisfaction has been recorded by the AO that the output of the pen drives/computer records were analysed on "as is" basis by the Department and there was no risk of the data being tempered by anyone and which has been relied upon by the Assessing officer. In his submissions, the Id PCIT/D/R submitted that there is a well laid down procedure and protocols are strictly followed by the department regarding seized documents and it is unlikely that the search data can be tempered with by any officials of the Revenue department and once, the information has been received from another Assessing officer, there is a presumption that such data and information is shared on "as is" basis and therefore, where there is no basis for raising any suspicion in the mind of the Assessing officer, no further action has been taken regarding verifying the authenticity of the data so received and recording any satisfaction in this regard. It was accordingly submitted that it is merely an apprehension on the part of the assessee and the same cannot be a basis for not relying on the data so collected and received by the Assessing officer and which forms part of the assessment records.

77. We find that though Evidence Act is not strictly applicable to the income tax proceedings, however the general principles so laid down therein can be applied by leading certain positive evidence which can authenticate the data which has changed hands apparently from the Investigation Wing to the Assessing officer of the searched person and then, finally to the Assessing officer who has placed reliance on the same and has passed the impugned order. It may be an apprehension on part of the assessee that the data while

shared/handed over to the Assessing officer might have been either modified, altered or tempered with, however, where such an apprehension has been raised by the assessee and more so, it would also be interest of Revenue where there is heavy reliance placed by the Revenue on such data, such apprehension so raised by the assessee needs to be appropriately addressed by leading positive evidence and recording of satisfaction by the Assessing officer which we find has not happened in the instant case.

78. Having said that, let's examine whether data so found in the pen drives and received by the Assessing officer stand corroborated by the Shri Ramesh Chand Maheshwari in his statement recorded under Section 132(4) at the time of search conducted on 27.01.2016. In reply to question no. 12, he has stated that through his two firms, namely Amarnath Associates and Amarnath Enterprises, loan financing through cheque/RTGS has been undertaken on commission basis and in reply to question no. 15, he has stated that cash loan financing is done jointly with Manmohan Bagla in their private capacity and his companies/firms have no relationship with such cash loan transactions. In reply to question no. 16, he has further stated that whatever amount was given as cash loans was his's and Manmohan Bangla's own money which was given on interest and which on receipt, is further given on interest to various parties. Thereafter, in subsequent questions, he has explained since how long these cash loan transactions have been undertaken by them and how the accounts are maintained which has been stated by him to be maintained on computer, pen drives and slips which remains in his possession. Further, questions no. 30 and 31 were asked specifically about the pen drives and the data so found in the pen drives and we deem it appropriate to reproduce the same as under:

*"प्रश्न 30 तलाशी के दौरान आपके केबिन से 18 पैन ड्राइव्स मिली है जो कि AS Exh-1 से AS Exh.18 तक अंकित की गई है। इन PEN Drives में कई Excel Files जैसे कि उदाहरण के तौर पर A44xX.AS Exh.1 File name NOV JAGAT, Annex. AS Exh. 2 File name AT-UPT030-NOV FOR UPDATE व Annex. AS Exh.8 File name AX-UPTO 30-NOV FOR UPDATE पाई गई है। उपरोक्त लिखित तीनों EXCEL Files के प्रिंट आउटस*

उदाहरण के तौर आपको दिखाए जा रहे हैं। कृपया इनमें अंकित ENTRIES को विस्तार पूर्वक समझाइए?

उत्तर मैंने उपरोक्त तीनों EXCEL फाईलों के प्रिंट आउटस देख लिए हैं। इनमें दर्ज प्रविष्टियों की जानकारी मैं पूर्व में पूछे गए प्र.संख्या 20,21,22,23,24,25 व 26 के उत्तर में पहले ही बता चुका हूँ। यह सभी transactions एक ही प्रकृति के हैं और कैश लोन के लेन देन से संबंधित हैं और इनमें अंकित राशियाँ 1000/- के रूप में हैं जैसे 50 का मतलब 50,000/- रूपये 200 का मतलब 2,00,000/- रूपये है। अतः मेरा जबाब उपरोक्त प्र. के उत्तरों (20 से 26 तक) जैसा ही माना और समझा जावे। और सभी 18 PAN DRIVES में एक ही प्रकार ही यानी कैश लोन की प्रविष्टियाँ दर्ज हैं।

प्रश्न 31 आपके द्वारा कैश लोन के लेन-देन से संबंधित सभी दस्तावेजों में अंकित दर्ज विभिन्न नाम जिनमें से कुछ कोड भाषा में भी हैं, यह बताया गया है कि यह लोग छोटे-मोटे विक्रेता/या व्यापारी हैं। इस संबंध में आपको बताया जाता है कि आपके OFFICE जो कि 203, रतनासागर, जौहरी बाजार जयपुर में स्थित है, वहाँ से सर्वे की कार्यवाही के दौरान रिसेप्शनिस्ट (Receptionist) के कम्प्यूटर से एक Excel फाईल मिली है जिसमें कि कई व्यापारियों के नाम व पते लिखे गए हैं। यह फाईल "copy of New Update 2015 Neha के नाम से मिली है। इस फाईल में लिखे हुए नाम और आपके कैश लोन से संबंधित बरामद दस्तावेजों Annex.AS.Exh.1 से 18 और Exh.20 इत्यादि में लिखे हुए नामों से मिलते हैं और ऐसा लगता है कि एक ही व्यक्ति का नाम सभी कैश लोन से संबंधित दस्तावेजों में दर्ज है। उदाहरण के तौर पर

| Receptionist कम्प्यूटर की फाईल<br>.....   | Cash loan से संबंधित दस्तावेजों<br>में नाम<br>..... |
|---|---|
| (1) Rajesh Tambi<br>C/O KL Tambi & co.,<br>1839, 12, Gangour Ka Rasta,<br>Johari Bazar, Jaipur          | R Tambi   |
| (2) Kamal Chand Surana<br>C/o Surana Jewellers,<br>B-7E, Surana Enclave,<br>Ram Singh Road, Jaipur      | K Surana  |
| (3) Rajesh Dhadda,<br>C/o R.K. Jewellers,<br>304, Ratna Sagar<br>MSB Ka Rasta, Johari<br>Bazar, Jaipur. | R. Dhadda   |

इसी तरह से आपको कई उदाहरण दिखाए जा रहे हैं। इस बारे में कृपया अपनी टिप्पणी दीजिए?

उत्तर 31 यह एक महज इतेफाक है। Receptionist के computer की फाईल में अंकित नाम व पते Greeting Card, Invitation Card वगैरह भेजने के लिए लिखे गए है। इनका व्यापार व Account से कोई संबंध नहीं है।”

79. As noted above, in reply to Q. No. 30 & 31, he stated that all these transactions found in the pen drives are of similar nature and pertains to cash loan transactions. Further, regarding names in code word and names as found in various pen drives/excel files found in the receptionist's computer, he has stated that the name and address so found in excel files in the receptionist computer was prepared for the purpose of sending greetings/invitation cards and has no linkage with the accounts and business dealing. Finally, in reply to Q. No. 36, we find that he has put forth his willingness to surrender the undisclosed investment in the form of cash loans and also the incidental interest income as part of his income. We therefore find that in his statement recorded u/s 132(4), Shri Ramesh Chand Maheshwari has talked about loan financing through formal banking channels and loan financing in form of cash. As far as loan financing in cash is concerned which is under examination before us, the Investigation officer has asked him series of questions and confronted him with the pen drives so seized during the course of search and Shri Ramesh Chand Maheshwari has stated clearly and consistently that loan financing has been done jointly with Manmohan Bangla in their personal capacity where their own money is lent on interest to various parties from time to time and has explained the modalities of such cash financing and how the accounts thereof are maintained in computers and pen drives. Therefore, we are unable to understand as to how the Assessing officer has reached to a conclusion that basis such statement recorded u/s 132(4), which has also been reproduced in the assessment order and relied upon by him, that Shri Ramesh Chand Maheshwari and his partner Shri Manmohan Bagla were involved in cash loan transactions where the amounts were taken in cash from the lenders and the same was advanced to the borrowers in cash and have earned commission income on these transactions, and has recorded a consequential

finding that since name of "PCK" is found in the excel sheets, it represent the assessee only and the assessee also made his transactions of lending unaccounted money through the said group and earned interest income thereon. We therefore find that there is a clear disconnect between the findings of the AO and the statement of Ramesh Chand Maheshwari recorded on oath u/s 132(4) of the Act, and data so found in the pen drives which is claimed by the AO as relating to cash loan financing by the assessee through Ramesh Manihar cannot be held to be corroborated by the statement of Shri Ramesh Chand Maheshwari recorded under Section 132(4) of the Act.

80. Now, coming to the another statement of Shri Ramesh Chand Maheshwari recorded under Section 131 on 8.11.2017 which has been relied upon by the Assessing officer and we refer to response of Shri Ramesh Chand Maheshwari in response to various questions. We find that in this statement recorded u/s 131 on 8.11.2017, after a gap of almost 21 months from the earlier statement which was recorded u/s 132(4) on 27.01.2016, when Shri Ramesh Chand Maheshwari was confronted with his earlier response to question no. 15 in statement recorded u/s 132(4), there has been a change in his stand where he stated that cash loan financing is undertaken in their personal capacity where they acted as a mediator/facilitator. This is unlike his earlier statement where he had stated in response to question no. 15 that cash loan financing is done jointly with Manmohan Bagla in their personal capacity and in reply to question no. 16, he has stated that whatever amount was given as cash loans was his and Manmohan Bangla's own money which is given on interest and which on receipt, is again given on interest. We therefore find that there has been a change in stand of Shri Ramesh Chand Maheshwari where even in respect of cash loan financing, he has stated that he acts as a mediator and facilitator between the lenders and borrowers and thus earns commission income instead of interest income on amount advanced in their personal capacity as

stated earlier. Basis such statement and filing of petition before the Settlement Commission where these cash loan financing transactions have been claimed and shown as transactions undertaken by Shri Ramesh Chand Maheshwari on commission basis, the AO has taken cognizance of the same and held that since name of "PCK" is found in the excel sheets, it represent the assessee only and the assessee also made his transactions of lending unaccounted money through the said group and earned interest income thereon. We therefore find that there is a total disconnect and variance between the two statements and change of stand of Shri Ramesh Chand Maheshwari in his statement recorded u/s 132(4) and the statement subsequently recorded u/s 131 of the Act after a gap of almost 21 months and the Assessing officer in the instant case has effectively placed reliance on the subsequent statement recorded u/s 131 ignoring the earlier statement recorded u/s 132(4) of the Act.

81. Without getting into the background and basis of such change in stand of Shri Ramesh Chand Maheshwari which is a matter for Revenue and appropriate authorities to ponder and examine, and is in any case beyond the scope of impugned matter under consideration, the question that arises for consideration is whether the Assessing officer can be held justified in placing reliance on such shifting stand of Shri Ramesh Chand Maheshwari in his own two statements which put a question mark on reliability of his statements and can it be said that the data so found in the pen drives relates to cash loan financing of various lenders stand corroborated by the statement of Shri Ramesh Chand Maheshwari recorded under Section 131 of the Act. The assessee has also challenged the same stating that such statement was never confronted to him during the course of reassessment proceedings and even an opportunity of cross-examination of Shri Ramesh Chand Maheshwari so demanded was not provided to him.

82. To our mind, in the facts of the present case, where there is shifting stand of Shri Ramesh Chand Maheshwari in his two statements and there is heavy reliance placed by the Revenue on the latter statement recorded u/s 131, it is imperative that the assessee be allowed an opportunity to seek a copy of the said statement and file his objections and secondly and equally important, an opportunity to cross examine Shri Ramesh Chand Maheshwari which has been recognized time and time by the Courts as an important facet through which the principle of natural justice can be implemented and is duly supported by various authorities quoted at the Bar. In absence of such an opportunity, no reliance can be placed on such statement more so where in his statement, Shri Ramesh Chand Maheshwari did not categorically referred the name of the assessee or that the assessee provided cash loans through his Group to different persons. Therefore, the finding of the AO that data so found in the pen drives relates to cash loan financing by the assessee through Ramesh Chand Maheshwari stand corroborated by the statement of Shri Ramesh Chand Maheshwari recorded under Section 131 of the Act cannot be accepted.

83. Further, the Id AR has stated at the Bar that even before the settlement Commission, Shri Ramesh Chand Maheshwari has not given any names and identity of the lenders and borrowers and any admission of the Ramesh Chand Maheshwari before the Settlement Commission therefore doesn't establishes that PCK is no one else but the assessee, Shri Prakash Chand Kothari. In view of what we have found and stated earlier, we are not persuaded by the findings of the Assessing officer that merely because Shri Ramesh Chand Maheshwari and his Group has filed an application before the Settlement Commission where they have surrendered their commission income on such unrecorded and unaccounted cash loan financing transactions and due taxes have been paid, the same should by default form the basis for determining the nature and character of transactions by way of cash loans in the hands of the

assessee routed through Ramesh Manihar Group as the said admission is a unilateral admission on part of Ramesh Chand Maheshwari and the assessee cannot be compelled to accept the same in absence of any clinching and irrefutable evidence that the money has infact been paid by the assessee and routed through Ramesh Manihar Group for onward lending and without providing an opportunity of cross-examination. The assessee is not privy to the application filed before the Settlement Comission and proceedings before the Settlement Commission and therefore, the findings of the Settlement Commission cannot be said to bind the assessee and for that matter, the Assessing officer who has to record his own independent findings considering the facts and circumstances of the present case. We therefore agree with the findings of the Id CIT(A) that mere admission by one person before the Settlement Commisison cannot bind the another person in absence of any nexus between the person admitting and the other person.

84. We find that similar view has been taken by the **Coordinate Mumbai Benches** in case of **Anil Jaggi vs ACIT (supra)**. In that case, payment of on-money by assessee, Anil Jaggi, was noticed in the course of search in the Hiranandani Group in respect of purchase of certain properties. The Coordinate Bench after appreciating the entirety of facts and circumstances held that the findings of the Assessing officer that assessee had paid "on money" for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group and the information as emerges from the print out of the pen drive falls short of material facts and remain uncorroborated and mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjan Hiranandani in his application before the Settlement Commission falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inference as regards the investment made by

the assessee for purchase of the property under consideration and additions made by lower authorities were deleted and the relevant findings of the Coordinate Bench read as under:

*"14. We shall now take up the case of the assessee on merits and deliberate on the validity of the addition of Rs. 2.23 crore made by the A.O on the ground that the assessee had made a payment of "on money" for purchase of flats from M/s Lakeview developers. We have perused the facts of the case and the material available on record on the basis of which the addition of Rs. 2.23 crore had been made in the hands of the assessee. We have further deliberated on the material placed on record and the contentions of the Id. A.R to drive home his contention that no payment of any "on money" was made by the assessee for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee had paid "on money" of Rs. 2.23 crore for purchase of property under consideration is based on the contents of the pen drive which was seized from the residence of an ex-employee of Hiranandani group. We have perused the print out of the pen drive (Page 42 of APB) and find ourselves to be in agreement with the view of the Id A.R that though against the heading "Amount of on money paid" the name, address and PAN No. of the assessee is mentioned alongwith the details of the property purchased by him, viz. Flat no.2501 in "Somerset" building from Lakeview Developers (a Hiranandani group concern), however, the same would not conclusively prove suppression of investment and payment of "on money" by the assessee for purchase of the property under consideration. We find that the information as emerges from the print out of the pen drive falls short of certain material facts, viz. date and mode of receipt of 'on money', who had paid the money, to whom the money was paid, date of agreement and who had prepared the details, as a result*

*whereof the adverse inferences as regards payment of "on money" by the assessee for purchase of the property under consideration remain uncorroborated. We further find that what was the source from where the information was received in the pen drive also remains a mystery till date. We find that Sh. Niranjani Hiranandani in the course of his cross-examination had clearly stated that neither he was aware of the person who had made the entry in the pen drive, nor had with him any evidence that the assessee had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjani Hiranandani in his statement recorded on oath in the course of the Search & seizure proceedings had confirmed that the amounts aggregating to Rs. 475.60 crore recorded in the pen drive were the on-money received on sale of flats, which was offered as additional income under Sec. 132(4) and thereafter offered as such for tax in the petition filed before the Settlement commission. We are of the considered view that there is substantial force in the contention of the Id. A.R that mere admission of the amounts recorded in the pen drive as the additional income by Sh. Niranjani Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee would not lead to drawing of adverse inferences as regards the investment made by the assessee for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee for purchase of the property under consideration when pitted against the 'market value' fixed by the stamp valuation authority is found to be substantially high, further fortifies the veracity of the claim of the assessee that his investment made towards purchase of the property under consideration was well in order. We are of the considered view that though the material acted upon by the department for drawing of adverse inferences as regards payment of "on money" by the assessee formed a strong basis for doubting the investment made by the*

*assessee for purchase of the property under consideration, but the same falling short of clinching material which would have irrefutably evidenced the said fact, thus, does not inspire much of confidence as regards the way they have been construed by the lower authorities for drawing of adverse inferences in the hands of the assessee. We thus are of a strong conviction that as the material relied upon by the lower authorities does not corroborate the adverse inferences drawn as regards the investment made by the assessee, therefore, the same cannot conclusively form a basis for concluding that the assessee had made payment of "on money" for purchase of the property under consideration. We thus in the backdrop of our aforesaid observations are of the considered view that the adverse inferences drawn by the A.O as regards payment of "on money" of Rs. 2.23 crore by the assessee for purchase of Flat No. 2501 from M/s Lakeview Developers are based on of premature observations of the A.O, which in the absence of any clinching evidence cannot be sustained. We thus are unable to subscribe to the view of the lower authorities and set aside the order of the CIT (A) sustaining the addition of Rs. 2.23 crores in the hands of the assessee."*

85. We therefore find that the Assessing officer has merely relied upon extracts of certain uncorroborated excel sheets, found during the course of search in case of Ramesh Manihar Group. Such excelsheets do not point out to the fact of assessee having given loans, in cash, to different persons through Ramesh Manihar Group. Nothing concrete is discernible from these excel sheets. The Assessing officer has failed to corroborate the excel sheets with independent evidences. Unless such corroborative evidences were brought on record, the present additions are not justified. Nowhere in the excelsheets found during the course of search in case of Ramesh Manihar Group and relied upon by the AO, it could be established that "PCK" as mentioned in those documents stand for the assessee only. No trail of documents or corroborative

evidences could be established in this regard. The extracts of the excel sheets on which reliance had been placed were found from the computers of employees of Shri Ramesh Manihar. Those employees were never examined independently by the AO to find out whether "PCK" as mentioned in such excel sheets represent assessee only. There is no positive confirmation or concrete evidence available with the AO, in the form of acceptance by the parties alleged to have received loans that they have actually received loans, in cash, which was provided by the assessee through Ramesh Manihar Group. Leaving aside a positive confirmation from the recipients of the loan, the AO has not been able to establish even the identity of the persons alleged to have received loans from the assessee. There is shifting stand of Shri Ramesh Chand Maheshwari in his two statements recorded u/s 132(4) and u/s 131 of the Act. We find that in his latter statement recorded u/s 131, he has stated that cash loan financing is undertaken in their personal capacity where they acted as a mediator/facilitator. This is unlike his earlier statement u/s 132(4) where he had stated that cash loan financing is done jointly with Manmohan Bagla in their personal capacity and whatever amount was given as cash loans was his and Manmohan Bangla's own money which is given on interest and which on receipt, is again given on interest. We therefore find that there has been a change in stand of Shri Ramesh Chand Maheshwari where even in respect of cash loan financing, he has stated that he acts as a mediator and facilitator between the lenders and borrowers and thus earns commission income instead of interest income on amount advanced in their personal capacity as stated earlier. Even no question was even put to Shri Ramesh Chand Maheshwari as to what "PCK" stand for and there is no response by him either in his entire statement which suggests that the assessee has advanced cash loan through him. Therefore, the data so found in the excel sheets doesn't stand corroborated by his statements as well. Even where the AO wishes to place reliance on such statement, no opportunity of cross examining Shri Ramesh Chand Maheshwari was provided to the assessee inspite of specific request made by the assessee during the course

of assessment proceedings. The Id CIT(A) has rightly held that relying upon the statement and not providing cross examination to find out any involvement of the person affected by such statement is a gross violation of principles of natural justice which renders such reliance a nullity and if such statement is discarded, there remain no evidence to hold that the appellant has given any such advance to the tune of Rs. 25 crores. Merely extracts of excel sheet do not provide any evidence of the allegation made by the AO against the assessee. Thus, mere fact that there were certain entries found from record of third party is not sufficient to make addition on the ground that assessee had made unexplained investments. The Id CIT(A) has rightly held that though cognizance may be taken in respect of entries by third-party in the assessment of other person so as to initiate inquiry for assessment, yet when there is no finding that such entries are in fact pertaining to such third person only which should be emanating from the entries itself or from the person who has recorded such entry, no cognizance can be taken so as to fasten tax liability on such third person.

86. In this regard, we find that under similar fact pattern, Coordinate Benches of the Tribunal have taken a similar view and reference can be drawn to decision of the **Coordinate Mumbai Benches** in case of **Katrina Rosemary Turcotte** (supra). In this case, on the basis of a print out taken from the computer back-up of Ms. Sandhya Ramchandra, assessee's manager and assessee's agent Matrix India, it was concluded by the Assessing Officer that the assessee has received an amount of Rs. 2,50,000 in cash for appearing as a host at an ICC event in Sidney. The Coordinate Bench deleted the additions holding that the addition was made on the basis of a print out taken from the computer of a third party who happened to be an employee of Matrix and there are no other corroborative evidence brought on record to prove the fact that the payment mentioned in the seized material was actually received by the assessee and relevant findings read as under:

*"8. We have heard rival contentions and perused the material available on record. Undisputedly, on the basis of a print out taken from the computer back-up of Ms. Sandhya Ramchandra, it was concluded by the Assessing Officer that the assessee has received an amount of Rs. 2,50,000 in cash for appearing as a host at an ICC event in Sidney. It is very much clear that apart from this document, there was no other evidence before the Assessing Officer to indicate that the assessee has received cash amount in question. It is a fact that in course of search as well as post search proceedings, the assessee was confronted with seized material and the assessee categorically stated to have neither appeared as a host in the said event nor received any cash from Matrix. In fact, an Affidavit was also filed on behalf of Matrix categorically stating that no such cash payment of Rs. 2,50,000 was made to the assessee. Thus, from the aforesaid facts, it is to be seen that the addition was made on the basis of a print out taken from the computer of a third party who happened to be an employee of Matrix and there are no other corroborative evidence brought on record to prove the fact that the payment mentioned in the seized material was actually received by the assessee. On the contrary, the passport submitted by the assessee clearly established the fact that neither she had travelled to Sidney in relevant period nor hosted the ICC event for which she was supposed to receive cash payment. It is further relevant to observe, even Ms. Sandhya Ramchandra, from whose computer such print out was taken had stated before the Departmental Authorities that she was not aware of the fact mentioned in the said Annexure as it was for a period prior to her appointment in Matrix. In these circumstances, simply relying upon a untested / unverified document and without any other corroborative evidence to demonstrate that the assessee has actually received cash payment of Rs. 2,50,000 for hosting an event in Sidney, the addition, in our view, is unsustainable. Therefore, we uphold the order of the learned Commissioner (Appeals) on this issue by dismissing the ground raised."*

87. Similarly, in case of **Aarti Colonizer Company** (supra), the matter came up before the **Coordinate Raipur Benches** of the Tribunal where it was held that the addition has been made by the assessing officer on the basis of the screenshot of journal entry dt. 4-9-2007 taken from the tally data in the pen drive found during the course of search and the printout of the details of land which has been reproduced by the assessing officer and other than these two materials, since no evidence has been brought on record by the Assessing officer and since nothing was found during search establishing any investment/payment made by the assessee, the two evidences relied upon by the Assessing officer, on a standalone basis cannot form the basis for invoking section 69. Therefore, it was held that provisions section 69 are not attracted as neither the Assessing officer discharged the initial burden cast upon him to prove investment nor any material has been brought on record to this effect and additions were held to be rightly deleted by the Id CIT(A) and the relevant findings of the Coordinate Bench read as under:

*"8. The learned counsel of the assessee submitted before us that in assessment year 2008-09, addition of Rs. 10,06,43,054 comprises of two additions, one of Rs. 7,32,98,821 and the other of Rs. 2,73,44,233. The facts relating to both the additions are different and therefore both these additions need to be adjudicated at length. We observe that the addition of Rs. 7,32,98,821 has been made by the assessing officer on the basis of the screenshot of journal entry dt. 4-9-2007 taken from the tally data in the pen drive and the printout of the details of land which has been reproduced by the assessing officer on page Nos. 2 and 3 of the assessment order as table 1. Other than these two materials, there is no other basis for making addition, which is undisputed fact as per record also accepted by the learned Commissioner Departmental Representative. The assessing officer has made addition invoking section 69. As held in CIT v. Naresh Khattar (HUF) (supra) and CIT v. Dinesh Jain HUF (supra), the initial burden is on the Revenue to establish that there*

*is any investment, which has not been recorded in books and in respect which the assessee is not able to give satisfactory explanation to the assessing officer. As rightly contended by learned Authorised Representative of the assessee, neither the journal entry nor the details of land were reproduced in table 1 on page Nos. 2 and 3 of the assessment order to establish that any investment was made by die assessee firm. The journal entry dt. 4-9-2007 is only an accounting entry passed for introducing the land as capital contribution by the partners who purchased the lands and therefore, this cannot be considered as evidence of investment. It is undisputed that neither during search nor during the assessment proceedings, any material was found to show that the amount contained in the journal entry was paid by the assessee firm to anyone at any time. Therefore, only on the basis of journal entry, section 69 could not have been invoked. As regards the details of land given on page Nos. 2 and 3 of assessment order as table 1, it merely contains some details about different lands and it does not contain even a whisper about any investment or payment made by anyone. We observe that the inference has been drawn by the assessing officer only on the basis of the three figures mentioned at the end of the table, on page No. 3 of the assessment order. This, in our considered view, cannot be considered to be evidence of payment/investment. It is undisputed that during search or thereafter during the assessment proceedings, no material was found or brought on record evidencing that the three figures referred to above represent any actual investment/payment by the assessee. As rightly contended by the learned Authorised Representative of the assessee, that the details given in the chart are not evidence of any payment/investment. Since no evidence has been brought on record by the assessing officer and since nothing was found during search establishing any investment/payment made by the assessee, the two evidences relied upon by the assessing officer, on a standalone basis, in our considered view, cannot form basis for invoking*

*section 69. Therefore, we hold that provisions section 69 are not attracted as neither the assessing officer discharged the initial burden cast upon him to prove investment nor any material has been brought on record to this effect.*

*8.1 A perusal of the journal entry dt. 4-9-2007, which has been one of the basis for addition, shows that through this journal entry, the lands was purchased by the two persons named in the journal entry and was being introduced as their capital contribution in the partnership firm. Since, these journal entries have been relied upon by the assessing officer. Thus, it has remained undisputed that the lands were not purchased by the assessee but by the two persons as named in the journal entry. When the lands were not purchased by the assessee firm, any question of payment of "on money" does not arise in the case of assessee firm. As rightly contended by learned Authorised Representative of the assessee, that all the lands, except one, described in the assessment order on page Nos. 2 and 3, were purchased prior to formation of the assessee firm. We observe that in para 3 of the assessment order, the assessing officer has himself mentioned that the assessee firm was formed on 4-9-2007. As evident from different entries of land given in table 1 in the assessment order, the date of purchase in all the cases, except in one case, falls prior to 4-9-2007. In other words, the seized material itself shows that the lands were purchased prior to formation of the assessee firm, in this background also, we fail to see how any case can be made out of payment of "on money" by the assessee. There is yet another convincing reason that in all the three years under appeal, there were no sales affected by the assessee firm and the business of the assessee firm had not even started, which is also evidenced by the profit & loss account of the three years placed at page Nos. 309, 311 and 337 of the paper book. These profit & loss accounts have remained undisputed by the assessing officer. We are inclined to*

*agree with the argument of learned Authorised Representative of the assessee that when the source of revenue for the assessee was not there, it cannot be perceived that the assessee could have earned any undisclosed income and made any undisclosed investment. In CIT v. Smt. P.K. Noorjahan (supra), on behalf of the Revenue, it was argued that the word "may" in section 69 should be read as "shall" against which Hon'ble Supreme Court observed that it was unable to agree. Hon'ble Supreme Court thereafter held that the use of the word "may" clearly indicates that the intention of Parliament in enacting section 69 was to confer a discretion on the Income Tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income Tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In that case, the Tribunal held that the discretion had not been properly exercised by the Income Tax Officer and the AAC in taking into account the circumstances in which the assessee was placed. Hon'ble Supreme Court observed that it did not find any error in the said finding recorded by the Tribunal. In Smt. Rajabai B Kadam v. Asstt. CIT (supra) it was found that the assessee, who was a minor, was found carrying cash of Rs. 1,18,500 by the police Department. The assessee thereafter died. In pursuance to the reassessment notice, his mother filed return declaring nil income and she could not explain the money which was recovered from her minor son. Co-ordinate Bench held that there is no material on record to suggest that the minor could earn said money just within a period of 2 months after leaving his school. It was in these facts and circumstances that the addition was held to be not justified, relying upon the decision of Hon'ble Supreme Court in the case of Smt. P.K. Noorjahan (supra). If we apply*

*the ratio of aforesaid two decisions to the facts of the present case, we find that when the source of income/revenue for the assessee was missing in the sense that the business had not even started during all the three years and since during search, nothing was found to establish that the assessee had any undisclosed income from any other source, the discretion vested in the assessing officer should have been exercised in favour of the assessee and the addition should not have been made. We also observe that the assessing officer has not made any enquiry whatsoever from different vendors of the lands and not even from the two persons named in the journal entry, who, as per the journal entry, introduced their lands as capital contribution in the partnership firm. In absence of any enquiry whatsoever, no addition could have been made only on the basis of inference. It is a settled position of law that for making addition under section 69, there has to be some material establishing actual investment and therefore it is not justified to invoke the section merely on the basis of inference.*

*8.1.1 In view of all the above reasons, we hold that the assessing officer was not justified in making addition of Rs. 7,32,98,821 on account of the lands described on page Nos. 2 and 3 of the assessment order. We, therefore, deem it proper to confirm the findings of learned Commissioner (Appeals) on this issue and hold that he was justified in deleting the addition.*

*8.2. Next the addition of Rs. 2,73,44,233 comprised in the total addition of Rs. 10,06,43,054, we observe that the addition has been made by the assessing officer on the basis of printout of tally data found in the pen drive seized from the residence of Shri Kishore Atlani. The printout contains details of 32.68 acres of land and the details have been reproduced as table 2 in the assessment order, on page Nos. 4 and 5. We observe that apart from this printout found during search, no other*

*corroborative material in the form of cash book ledger etc. was found during search. A perusal of the details shows that the lands were purchased over a period of three years, from different persons. It is not the case of assessing officer that details of payment of individual lands were also found during search. What is to be noted is, apart from the chart found, no other corroborative evidence was found during search. It is not the case of assessing officer that any books of accounts and other details supporting the entries in the printout were found during search or brought on record during the assessment proceedings. It is not also the case of assessing officer that any other details in respect of different lands like details of payment to the persons etc. were found during search. Although it is stated that tally data was found in the pen drive, corresponding books of accounts in such tally data were not found as there is no reference of any such corroborative books in the assessment order. We agree with the argument of learned Authorised Representative of the assessee that if any unaccounted investment was made in respect of so many lands, from so many persons that too spread over a period of three years, some other corroborative material like account of the parties, details of individual payments etc. must also have been maintained and found during search and in absence of any such corroborative material, the contents of the pen drive/chart does not inspire confidence. It is also worth noting that there is no finding of fact recorded by the assessing officer about any unaccounted assets or unaccounted expenses or excess cash found during search. Considering all the facts, it comes out that apart from the printout in the form of chart, there is no other evidence in support of the addition made by assessing officer and the chart, by itself, does not constitute any material/evidence to establish unaccounted payment. As held by us earlier, for invoking section 69, the initial burden is on the Revenue to establish that any unaccounted investment was made by the assessee.*

*This mandatory requirement of law is missing in the present case and so the addition is not justified.*

*8.2.1 It is seen that the details of the lands are contained in the printout obtained from the pen drive. When complete details were available with the assessing officer, the assessing officer could have conducted independent enquiry from the vendors, which also does not appear to have been done. On the contrary, the assessee submitted affidavit of two vendors before the assessing officer and the assessing officer did not even cross-examine them to verify the facts. In absence of any cross examination of the deponents of the two affidavits, the contents of the affidavit become conclusive.*

*8.2.2 While considering the explanation of assessee about the entries in the pen drive being fake, made by one Shri Ajay Atlani, it is noteworthy to consider that no enquiry whatsoever appears to have been conducted either from the said Shri Ajay Atlani or from Shri Kishore Atlani, from whose residence the pen drive was found. The assessee explained the circumstances under which the entries were made in the tally data in the pen drive by Shri Ajay Atlani. All these facts and assertions have remained uncontroverted. The assessee explained some of the contents of the tally data in pen drive to demonstrate that the entries found in pen drive are fake. Before us, during the course of hearing, learned Authorised Representative of the assessee filed a summarised form of his explanation in the form of a chart. The explanation given to the assessing officer was to the effect that some of the entries in the pen drive do not match with the entries in regular books in the sense that in some cases, payments are mentioned to be made in cash in the pen drive while such payments are established to have been made through cheque in the regular books; that land situated at Labhandi is shown to have been sold to one Shri Suresh G. Atlani while actually, the land was*

*sold to one Shri Vijay Kumar Motwani through registered sale deed, copy whereof has been placed at page Nos. 161 to 176 of paper book; that likewise, some entries were found in the pen drive which mentions that the payments were made through Bank of Baroda and State Bank of India, Pandri Tarai Branch while the assessee explained that nobody in the group of assessee had any account in any branch of Bank of Baroda and that the cheque number in respect of payment made through State Bank of India did not relate to any bank account held by the concerned person in that bank and similarly other many discrepancies were pointed out before the assessing officer. All these explanations were rejected by the assessing officer without giving any reason whatsoever. However, for rejecting the explanation of assessee, it was incumbent upon the assessing officer to have given detailed reasons for not accepting the same and in absence of any reason given, we do not approve the action of the assessing officer."*

88. Similarly, in case of **Mahabir Prasad Gupta** (supra), the matter came up before the **Coordinate Delhi Benches** of the Tribunal. In this case, during the course of search at the premises of Brij Mohan Gupta, a diary containing entries in coded language was found and basis the said entries, the Assessing officer has held that the assessee has advanced loan of certain sum through Shri Brij Mohan Gupta and addition was made under section 69 as undisclosed investment. The Coordinate Bench held that the Revenue could not establish that name of the person recorded in the diary as 'MPG' meant Mahabir Prasad Gupta only i.e. assessee and following its earlier decision in case of Atul Gupta having similar fact patten, deleted the addition and relevant findings of the Coordinate Bench read as under:

*"7. We have heard the rival contentions and gone through the record carefully. We find that similar issue was considered by the ITAT in a number of cases. The findings recoded in the case of Atul Gupta read as under:*

"16. We have duly considered the rival contentions and gone through the record carefully. The issue for our adjudication is whether the narration found in the diary of Shri Brij Mohan Gupta recovered during the course of search carried out at his premises in 2004 is a conclusive evidence against the assessee to hold that assessee made investment in advancing the loan to certain parties through Shri Brij Mohan Gupta. The revenue in order to prove its case is harping upon the narrations available in the diary, statement of Shri Ram Avtar Singla and Shri Brij Mohan Gupta. We have perused the seized material available on page 46 of the assessee's paper book. On this page, there are various entries against the names of various persons, they are in abbreviated form or in a coded form. At the bottom of the page against "Atul", there are certain entries, namely, 4, 4, 2, 1 & 1.5 totalling to 12.50 are available. No doubt, this is a narration made by Shri Ram Avtar Singla in his handwritings. Shri Ram Avtar Singla has explained what for the latter mentioned in abbreviated form stands for e.g. HD means Hanuman Dass. KMF, Krishan Kumar Manoj Kumar, Karol Bagh, New Delhi. Learned Investigating Officer at the time of recording the statement of Shri Ram Avtar Singla almost put every abbreviated letter to Shri Ram Avtar Singla. He was able to give the complete form but not the address. With regard to the assessee, no question was put. The revenue failed to establish a live link between the information noted in abbreviated form by Shri Ram Avtar Singla and the assessee. The revenue could not establish that Atul noted in this diary is as Atul Kumar Gupta i.e. the assessee.

Thus, neither the diary was found from the premises of the assessee nor it is in the handwriting of the assessee, any third person may write the name of any person at his sweet will then an

*assessee cannot be burdened with liability on the basis of such writing. That can be starting point of investigation but revenue has to establish that it is the assessee who has paid the money to certain concerns without recording them in the books of account. Learned First Appellate Authority has discussed this aspect while deleting the addition and we do not see any reason to interfere in his findings. The findings in all the other assessment years are almost similar except variation in the quantum of additions. Therefore, all the appeals of the revenue are de void of any merit and they are dismissed."*

*8. There is no disparity on facts. The revenue could only able to lay its hands on the diary of Shri Brij Mohan Gupta where names of persons were recorded in coded words e.f. 'HD' means Hamamm Dass, R.K. means Ram Kumar. The revenue could not establish that 'MPG' means Mahabir Prasad Gupta only i.e. 'assessee'. The revenue has not placed on record statements of Shri Brij Mohan Gupta or Ram Avtar Singal or Rajiv Gupta before us. Therefore, in our opinion, the issue in dispute is squarely covered in favour of the assessee by the orders of the ITAT passed in the case of other persons i.e. Ashok Prasad Gupta, Atul Gupta, Dev Dutt Prasad etc.*

*9. On due consideration of all these material, we do not find any merit in this appeal. It is dismissed."*

89. In light of aforesaid discussions and following the decisions cited supra, we are of the considered view that in the peculiar facts and circumstances of the case present case, there is no basis for making the addition in the hands of the assessee of Rs. 25,00,00,000/- made on account of cash loans and consequent interest charged thereon amounting to Rs. 90,58,625/- and for the reasons cited supra, we affirm the findings of the Id CIT(A) deleting the said

additions. We make it clear that our findings are based on appreciation of peculiar facts and circumstances of the present case and therefore should not be taken as binding precedent in other cases which need to be examined in light of respective facts and circumstances. The grounds of appeal no 1-3 taken by the Revenue are thus dismissed.

90. Ground no. 4 relating to deletion of Rs 50,05,578/- on account of Long Term Capital Gain has become infructuous in view of subsequent decision of the Id CIT(A) passed u/s 154 of the Act and which any way is subject matter of our adjudication in ITA No. 66/JP/2020 in subsequent paragraphs. Similarly, we find that the assessee has also sought to raise additional grounds of appeal relating to long term capital gains of Rs 50,05,578/- and since the assessee has filed separate appeal as well which is registered as ITA No. 66/JP/2020, the same have again become infructuous and are not admitted.

91. In the result, the appeal of the Revenue is dismissed.

**ITA No. 66/JP/2020**

92. In this appeal, the assessee has challenged the order passed u/s 154 by the Id CIT(A) for A.Y 2011-12 and has taken the following sole ground of appeal:-

*"In the facts and circumstances of the case and in law, Id. CIT(A), while passing the order under section 154, has erred in not considering the submissions of the assessee, already placed on record w.r.t the addition made by the Id. AO of Rs. 50,05,578/- on account of Long Term Capital Gain, in the Income Tax Computation Form. The action of the Id. CIT(A) is illegal, unjustified, arbitrary, against the facts of the case and also against the principles of natural justice. Relief may please be granted by deleting the said addition of Rs. 50,05,578/-."*

93. The Id. AR submitted that the assessee had filed his return of income on 29.09.2011 declaring total income of Rs.1,10,86,623/- and assessment was completed vide order passed u/s 143(3) dated 31.03.2016 wherein returned income of Rs. 1,10,86,623/- was accepted. It was further submitted that the

pursuant to notice u/s 148 of the Act, the assessee filed his return of income on 17.04.2018 wherein he has declared his income at Rs. 1,10,86,623/- as originally returned and assessed. It was further submitted that in the order passed u/s 147 read with section 143(3) dated 25.12.2018, the Assessing Officer has made addition of Rs. 25,90,58,625/- as against the returned income of Rs. 1,10,86,623/- and assessed income was determined at Rs. 27,01,45,250/-. It was submitted that there was no discussion in the assessment order as well as no addition was made by the Assessing Officer while passing the order u/s 147 read with section 143(3) in respect of Long Term Capital Gain amounting to Rs. 50,05,578/- and only addition was in relation to alleged cash loans and alleged interest income of Rs 25,90,58,625/-. It was submitted that in the Income Tax Computation Form attached with the assessment order, the Assessing Officer had inadvertently included a figure of Rs. 50,05,578/- towards Long Term Capital Gains and which was also brought to tax in the hands of the assessee. It was further submitted that assessee took specific ground of appeal before the Id. CIT(A) and the said ground of appeal was initially not adjudicated upon by the Id CIT(A). Subsequently, the Revenue moved an application u/s 154 before the Id. CIT(A) and the Id. CIT(A) has passed the impugned rectification order u/s 154 wherein the ground of appeal has been dismissed. It was submitted that against the said findings and order of the Id. CIT(A), the assessee has filed the present appeal before the Tribunal and given the fact that the Assessing Officer has not given any finding in respect of any capital gains which has escaped taxation while passing the order u/s 147 read with section 143(3), it is a clear mistake which has happened while computing total income by the Assessing Officer and which has wrongly been upheld by the Id CIT(A). Hence, the Assessing Officer may be directed to provide the necessary relief to the assessee by way of deletion of additions towards the so called capital gains of Rs. 50,05,578/-.

94. Per contra, Id. PCIT/DR drawn our reference to the order of the Id. CIT(A). It was submitted that during the course of appellate proceedings, a

report from the Assessing Officer was called and in the said report, the Assessing Officer has stated that the assessee himself while filing the return of income u/s 148 of the Act has taken capital gains of Rs. 50,05,578/- in the computation of total income. Hence, the basis the said report of the AO, in the absence of any further submission by the assessee, the Id. CIT(A) has upheld the action of the Assessing Officer. Accordingly, it was submitted that there was no infirmity in the impugned order so passed by the Id. CIT(A). Hence, the ground of appeal so taken by the assessee be dismissed.

95. We have heard the rival contentions and perused the material available on record. We have gone through the return of income filed by the assessee in response to notice issued u/s 148 and find that in the computation of income filed along with the return of income, the assessee has offered long term capital gains on sale of shares amounting to Rs 23,19,214/- and has also claimed long term capital loss on transfer of immovable property amounting to Rs 23,91,888/-, and after setting off long term capital gains against long term capital loss, the assessee has claimed carry forward of long term capital loss of Rs 72,673/-. The findings of the Assessing Officer in the remand report that the assessee himself while filing the return of income u/s 148 of the Act has taken capital gains of Rs. 50,05,578/- in the computation of total income is therefore not based on tax filings made by the assessee or any other independent material available on record. Further in the order passed u/s 147 read with section 143(3), it is an admitted fact that the issue of capital gains didn't arise for consideration during the course of reassessment proceedings and there is no finding which has been recorded by the Assessing Officer disputing the figures as reported by the assessee in his return of income under the head "long term capital gains". We therefore find that it is a clear mistake on the part of the Assessing Officer while computing the total income wherein the Long Term Capital Gains amounting to Rs. 50,05,578/- has been inadvertently brought to tax in the hands of the assessee. The Assessing Officer is hereby directed to

delete the said amount of Rs. 50,05,578/- and the ground of appeal taken by the assessee is allowed. In the result, appeal of the assessee is allowed.

96. In the result, the appeal of the Revenue in ITA No. 1298/JP/2019 is dismissed, the appeal of the assessee in ITA No. 1190/JP2019 is partly allowed and appeal in ITA No. 66/JP/2020 filed by the assessee is allowed in light of aforesaid directions.

Order pronounced in the open Court on 12/10/2021.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 12/10/2021

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant – Shri Prakash Chand Kothari, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-02, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 1190 & 1298/JP/2019 & 66/JP/2020}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar