

आयकर अपीलीय 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. 33/JP/2020
निर्धारण वर्ष / Assessment Years : 2011-12

Deputy Commissioner of Income Tax, Central Circle-1, Jaipur.	बनाम Vs.	M/s Dangayach Hotels Pvt. Ltd. C-59, C-Scheme, Jaipur, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCC 7176 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 03/JP/2020
(Arising out of ITA No. 33/JP/2020)
निर्धारण वर्ष / Assessment Years : 2011-12

M/s Dangayach Hotels Pvt. Ltd. C-59, C-Scheme, Jaipur, Jaipur	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle-1, Jaipur.
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राजस्व की ओर से / Revenue by : Shri B. K. Gupta (CIT)
निर्धारिती की ओर से / Assessee by : Shri S.R. Sharma (C.A) &
Shri R.K. Bhatra (C.A)

सुनवाई की तारीख / Date of Hearing : 27/07/2021
उदघोषणा की तारीख / Date of Pronouncement : 22/10/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the Revenue and the cross objection by the assessee company against the order of the Id. CIT(A)-4, Jaipur dated 03.10.2019 for the assessment year 2011-12.

2. In ITA No. 33/JP/2020, the Revenue has taken the following grounds of appeal:-

"1. The Ld. CIT(A), has erred in law and on facts (independently & severally) in granting relief to the assessee company.

2. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A)-4, Jaipur is justified in ignoring the transactions found in the pen drive and deleting the addition of Rs. 4,40,00,000/- made by the AO on account of unexplained cash loans provided by the assessee company.

3. Whether on the facts and in the circumstances of the case and in law the Id. CIT(A)-4, Jaipur is justified in ignoring the transactions found in the pen drive and deleting the addition of Rs. 6,16,000/- made by the AO on account of unaccounted interest earned by the assessee company.

3. In its Cross-objection No. 03/JP/2020, the assessee company has taken the following sole ground of appeal:-

"That on the facts and in the circumstances of the case, the Ld. CIT(A) is wrong, unjust and has erred in law in not adjudicating various legal contentions specifically reliance on judgment of Hon'ble ITAT, Jaipur Bench in case of Navratan Kothari (ITA No. 425/JP/2017) on applicability of Sec. 153C of the I.T. Act, 1961 in case of the respondent."

4. The facts of the case are that the assessee company filed its original return of income on 12.09.2011 declaring total income of Rs. 10,65,040/- which was taken up for scrutiny and thereafter, the assessment was completed u/s 143(3) r/w section 153A of the Act vide order dated 26.03.2015 wherein the assessed income was determined at Rs 17,76,790/-. 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 to believe that income has escaped assessment in the hands of the assessee company and notice u/s 148 of the Act was issued on 31.03.2018 after taking requisite approval of the competent authority and duly served on the assessee company on the same date.

5. Thereafter, on receipt of and in compliance to the notice issued u/s 148 of the Act, the assessee company filed its return of income on 11.04.2018. 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 company. The assessee company filed its objections which were disposed off vide order dated 18.10.2018. Thereafter, the assessee company was issued a show cause dated 30.11.2018 as to why the amount of Rs 4,40,00,000/- advanced through Ramesh Manihar Group in cash @ 0.70% per month be not treated as undisclosed income for the year under consideration. In response to the show-cause notice, the assessee company filed its written submission dated 5.12.2018 which was examined by the Assessing Officer and as per the Assessing Officer,

reply of the assessee company is of routine nature having no evidence to contradict the information available with the Revenue and the assessee company has failed to substantiate the onus cast upon him about the cash loan transactions of Rs 4,40,00,000/-.

6. 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 recorded wherein 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 company 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 'Hari Mohan Dangayach' the assessee company as 'HMD'. This short name is again verifiable with another pen drive namely 'from & to group.xlsx', where full name of the assessee 'Hari Mohan Dangayach', is mentioned along with his promoter company name of Green Fire Exports, Dangayach Hotels P. Ltd, Kamlesh Dangayach, Serveall Land Developers P. Ltd, Emsaru Constructions P. Ltd., Green Star Constructions P. Ltd., Serve All

Land Developers Pvt. Ltd. Further, PAN No. of the company was also written in the excel file. On further examination of these pen drives, it was also found that amount of transaction was mentioned after suppressing 'five zeros' i.e. Rs. 4,40,00,000/- was mentioned as 440.00 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.

7. The Assessing Officer, thereafter, referred to the statement of Sh. Ramesh Chand Maheshwari recorded u/s 131 of the Act dated 08.11.2017 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 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 company also made transactions with the said group and has advanced loans which were out of books to earn interest income and none of these transactions were recorded in the books of the assessee company.

8. Regarding assessee company's 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 company has been allowed ample opportunity but it has failed to furnish any evidence contradicting the information available with the Revenue and no substantive material has been produced by the assessee company.

9. It was accordingly held by the Assessing Officer that the assessee company i.e, M/s Dangayach Hotels Pvt. Ltd. through its director, Shri Hari Mohan Dangayach (HMD) advanced a sum of Rs. 4,40,00,000/- in cash, through Ramesh Manihar Group @ 8.4% per annum, which is not recorded in its books of accounts and since the assessee company has not furnished the source of such cash investment, it was brought to tax in the hands of the assessee company u/s 69 of the Act. Further, it was held that the assessee company has advanced the said amount for a period of two months, addition towards interest of Rs. 6,16,000/- was also made in the hands of the assessee company as unexplained cash credit u/s 68 of the Act. The assessment was accordingly completed u/s 147 read with section 143(3) of the Act at the total income of Rs. 4,63,92,790/- as against the returned income of Rs. 17,76,790/- by making addition of Rs 4,46,16,000/-.

10. Being aggrieved, the assessee company 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 company'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 company. The Id. CIT(A) also dismissed the ground taken on behalf of the assessee company relating to issuance of notice U/s 148 without obtaining proper sanction u/s 151 stating that A/R of the assessee company 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 company is not in appeal before us. However, another ground of appeal taken by the assessee company relating to initiation of proceedings u/s 148 as against 153C was not adjudicated upon and against the same, the assessee company is in cross-objection before us.

11. On merits of the additions made by the AO and grounds of appeal so taken by the assessee company challenging such addition, the Id. CIT(A) firstly referred to the statement of Sh. Ramesh Chand Maheshwari recorded u/s 132(4) during the course of search at his premises on 07.01.2016 and stated that though the Assessing Officer has reproduced 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. Ramesh Chand Maheshwari as to what 'HMD' stand for and against the name 'HMD', 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 'HMD' is inferred as to the appellant herein is not forthcoming. The name of appellant as individual 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 'HMD' 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 in 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 company. In said statement also, there is no reference to 'HMD' being considered as 'Dhangyanch Hotels

Pvt. Ltd'. 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.

12. 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.

13. 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 'HMD' stand for nor is it discernible from the seized record any reference to the appellant herein against the entries stated to be of Rs. 4.4 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 company 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. 4.4 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 company 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. 4.4 crores being considered as an amount advanced by way of cash loans and not recorded in the books of accounts and consequent addition towards interest which was presumed to have been earned 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.

14. In the aforesaid factual matrix of the matter, 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 company's ground of appeal in its cross-objection challenging the reopening of assessment and assumption of jurisdiction by the Assessing officer u/s 147 of the Act against section 153C of the Act and the contentions advanced by the respective parties in this regard.

15. It was submitted by the Id A/R that the entire re-assessment proceedings were based on the information received by the Assessing officer from DCIT, Central Circle, 3 during the course of search u/s 132 and Assessing Officer should have taken recourse to section 153C which overrides section 147, for carrying out impugned re-assessment proceedings in the case of the assessee company. It was submitted that the sole basis appearing from the reasons recorded for reopening the case of assessee company u/s 148 was the incriminating documents/material found during the course of search from a third party, Ramesh Manihar Group for which it is alleged that same pertains or pertain to or information contained therein relates to assessee company. Thus the notice is based on the seized material

and accordingly no proceedings U/s 148 can be initiated thereon. The notice issued U/s 148 is wrong and bad in law. The reassessment notice on the basis of material found in search can be issued through recourse to Section 153C only and not by invoking provisions of Section 147/148. The provisions of Section 153C are over-riding in nature and contain non obstante clause for Sections 139, 147, 148, 149, 151 and 153 of the Act. It was submitted that Section 147 and 153C are not interchangeable but are mutually exclusive sections, it is not the choice of the Revenue to invoke either of the two sections at its whims and fancies. The scope of the two sections has been legislated differently with a definite purpose. 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, has not adjudicated the aforesaid legal contentions so raised by the assessee company on applicability of Sec. 153C of the I.T. Act, 1961 in the instant case and in light of the aforesaid submissions, the contentions so advanced may be accepted and the whole of the reassessment proceedings may be set-aside as the same were wrongly initiated under section 148 instead of section 153C and thus, violating the extant provisions of law.

16. In his submissions, the Id PCIT/D/R submitted 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 by the Assessing officer 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 company 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 submitted that even though the Id CIT(A) has not disposed off the assessee's contentions and ground of appeal so taken in this regard, however, similar contentions were raised by the assessee during the reassessment proceedings while filing its objections to the reasons so recorded before the Assessing officer and the latter has disposed off the said contentions vide its order dated 18.10.2018 holding that no such satisfaction of the Assessing officer of the searched person was recorded and the pen drives seized during the search doesn't pertain to the assessee but Shri Ramesh Manihar who has also owned up the same and only information was disseminated to the jurisdictional Assessing officer and on that basis, proceedings u/s 148 were initiated

after recording of reasons to believe that income has escaped assessment. 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).

17. We have heard the rival contentions and perused the material available on record. 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. The question that has been raised for our consideration is what precluded the Assessing Officer from taking action u/s 153C of the Act instead of section 148 of the Act where the Assessing Officer was of the belief 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 company. 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.

18. In this regard, we refer to the provisions of section 153C as amended by the Finance Act with effect from 01.06.2016 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"

19. 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.

20. 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 company 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 company. 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. Therefore, the mere fact that proceedings have been initiated basis receipt of information from DCIT Central Circle -3 Jaipur and the incriminating documents/material found during the course of search from a third party, Ramesh Manihar Group, it cannot be said that the Assessing officer has to necessarily exercise jurisdiction under section 153C of the Act as the same is subject to satisfaction of various conditions as we have discussed supra and which have not been fulfilled in the instant case. We are therefore of the considered view that in the peculiar facts and circumstances of the present case, there is no infirmity in action of the Assessing officer in not initiating the proceedings u/s 153C of the Act. In the result, sole ground of appeal in assessee company's cross objection is dismissed.

ITA No. 33/JP/2020

21. 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.

22. 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 'Hari Mohan Dangayach' the assessee company as 'HMD'. This short name is again verifiable with another pen drive namely 'from & to group.xlsx', where name of the assessee company 'HMD', is mentioned along with his full name of the assessee company 'Hari Mohan Dangayach' is mentioned along with his promoter company name Green Fire Exports, Dangayach Hotels P. Ltd, Kamlesh Dangayach, Serveall Land Developers P. Ltd, Emsaru Constructions P. Ltd., Green Star Constructions P. Ltd. Serve All Land Developers Pvt. Ltd. Accordingly, it was established that the assessee company M/s Dangayach Hotels Ltd was the only person which has given its unaccounted cash through its director, Shri Hari Mohan Dangayach 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. 4,40,00,000/- was mentioned as 440 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 the assessee company.

23. 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 company 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.

24. Regarding assessee company 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 company 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 company. It was alternatively submitted that where the Bench so decide that the assessee company 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.

25. It was accordingly submitted by the Id PCIT that the Assessing Officer has rightly held that the assessee company advanced a sum of Rs. 4.4 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 company. Further, considering the period under consideration as well as amount advanced and taking rate of interest @ 0.70% per month, addition towards interest of Rs. 6,16,000/- was also made in the hands of the assessee company.

26. 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 and correct 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.

27. 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).

28. It was submitted by the Id A/R that in course of reassessment proceedings, the assessee company vide letter dated 25-10-2018 requested the A.O. to provide copy of the statements of Ramesh Manihar & Others, and certified copy of alleged transactions allegedly pertaining to assessee company on which reliance was placed by A.O. and vide letter dated 05-12-2018 asked A.O. to provide opportunity to examine Shri Ramesh Manihar. The A.O. thereupon provided only a copy of statement of Ramesh Manihar dated 07-01-2016 recorded in course of proceedings U/s 132 but certified copy of document for alleged transactions allegedly pertaining to assessee company and copy of statement of Ramesh Manihar recorded on 8-11-2017 U/s 131 by DCIT, C.C – 3, Jaipur was not supplied. The A.O. also did not allow cross examination of Ramesh Manihar by assessee company.

29. It was submitted by the Id A/R that the assessee company, while absolutely denying of giving any cash loan to any one, asked A.O. from details of alleged notings of cash loan given in notice U/s 148 that how from such details involvement of assessee company in providing loans in cash through RMG is proved. The identities of person allegedly receiving loan has also not been given. Thus when there is no identity of any persons who received such cash loan than how it could lead to conclusion that assessee company has given any cash loan. If the assessee company had given any cash loan there must be some recipient of such loan with identity with evidence of acceptance of loan by him. Thus A.O. failed to establish the identity of the persons alleged to have received loans in cash from the assessee company. The A.O. is required in law to corroborate such information by examining these individuals and prove the fact that they were actually in receipt of cash loans from the assessee company which A.O. failed to do hence it is not justified in concluding that assessee company has provided cash loans. It is thus submitted that allegation of providing cash loan by assessee company is baseless and frivolous. The A.O. states in para 4.2 of assessment order that recipient of cash loan (borrowers) are well known persons/business group but no identities of recipient of cash loans are given. As far as name of assessee company and its directors Hari Mohan Dangayach and Kamlesh Dangayach and names of other group companies may have been prepared for collecting such information for any other object or purpose. In the statement of Ramesh Manihar dated 07-01-2016, he clearly admitted in reply to Q. No. 20 and 31 that such list of names was prepared for the purpose of sending invitations card.

30. It was submitted by the Id A/R that in the details of alleged transactions supplied in reasons recorded u/s 147, it is verifiable that nowhere name of assessee company is mentioned. In the details in column 'From' under the abbreviation 'HMD' is mentioned. The inference drawn by the A.O. on his own on the basis of alleged noting on the alleged seized papers under the head 'HMD' as Dangayach Hotels Pvt. Ltd. That in the reasons recorded itself, it is mentioned that HMD means Hari Mohan Dangayach. Further in the another table under the head "Name appearing in From & To Group.Xls (File containing details of loans arranged through cheque)" name of various companies/persons including name of assessee company is mentioned. It is submitted that the heading of above column itself mentioned that loans arranged through cheque. Thus nowhere it is mentioned/suggests that assessee company given the alleged cash loan. There is no other supporting and/or corroborating evidence to substantiate the alleged observation/inference drawn by the A.O. It is also submitted that on the basis of above said information, the addition of Rs. 4.40 Crore in case of Shri Hari Mohan Dangayach was also proposed by issue of notice U/s 148. In A.Y. 2012-13 from such details found from Ramesh Manihar for subsequent financial year, notice U/s 148 in the name of Hari Mohan Dangayach has also been issued. It is submitted that department itself is not sure that by whom alleged cash loans were advanced.

31. It was further submitted that no addition can be made without any corroborative evidence of material found in course of search from third party. In this connection, the assessee company places reliance on the decision of Amritsar Bench of the ITAT in case of I.T.O. vs. Balram

Jakhar [2005] 98 TTJ (Amritsar) which was rendered on the basis of Hon'ble Supreme Court decision in famous case of Jain Hawala diaries reported as CBI v. V.C. Shukla AIR 1998 SC 1406 wherein it was held as under:-

"Provisions of Section 34 of the Evidence Act, was considered for the purposes of the expression "entries in books of account", "books of account". In this case, which is also known as 'Jain Hawala Diaries case', the Supreme Court came to the conclusion that entries in notebooks are admissible evidence u/s 34 of the Evidence Act but loose sheets of papers are not "books" and hence entries in loose sheets of papers are not admissible evidence at all. Apex Court came to the conclusion that entries in books of accounts has "probative value" and "corroborative evidence", the Court on the facts came to the conclusion that entries made in Jain Hawala Diaries though admissible u/s 34, but truthfulness, thereof, was not proved by any independent evidence."

"there are no evidence against the assessee company except diary, note book and loose sheet with regard to payment and evidence of such a nature could not be converted into legal evidence against the assessee company. Therefore, the very foundation of initiation of reassessment proceedings disappeared in the instant case and, accordingly, the addition would also not survive."

32. It was submitted that the Hon'ble Supreme Court also held the same view in another judgment in case of Common Cause & ors. V. UOI in Interlocutory Application No. 3 & 4 in Writ Petition 505 of 2015 dt. 11/1/2017) relying on the case of V.C. Shukla 1998 (3) SCC 410, that the value of entries 'in the books of account', that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, It has been held even then independent evidence is necessary as to trustworthiness of those

entries which is a requirement to fasten the liability. It is open to any unscrupulous person to make any entry any time against anybody's name unilaterally on any sheet of paper or computer excel sheet. Even if it were to be assumed that the appearance of names in the seized papers is reason enough for the Assessing officer to re-open assessment, in the absence of any other information, it is definitely not enough information to make an addition. The assessment order clearly reflect the approach of the Assessing officer. It is based completely on hypothesis and conjunctures wherein a fanciful discussion regarding the role of cash dealings relating to purchase and sale of properties is discussed. In Para 18, the Assessing officer goes on record to admit that the addition is not based upon irrefutable evidences and that the traces and it is imprints in whatever form which ought to be appreciated and a conclusion drawn therefrom. Therefore, the Assessing officer has sought to make addition in the hands of the assessee company admittedly upon the basis of the 'traces and imprints' that are clearly at best circumstantial. The evidentiary value of the entire material relied upon by the Assessing officer is suspect and despite carrying out through investigation, the Assessing officer in the re-assessment proceedings has failed to uncover any damning evidence against the Appellant. It was further held that from the above submitted facts, it is evident that the said details given in reasons recorded give no indication even by which it could lead to the presumption that there is any connection of the assessee company with the said alleged notings on alleged lose papers allegedly found from Shri Ramesh Manihar not there is any indication or legal corroborative material that the said alleged notings pertain to assessee company. As

submitted above, the statement of Shri Ramesh Manihar was neither recorded in assessee company's presence nor any opportunity to cross examination is allowed and as such the said statement does not have any evidentiary value to reopen the assessee company's case. Thus these notings allegedly so made by Ramesh Manihar cannot be used for making any presumption or cannot be a material to be used against assessee company. In the case of Prarthana Construction Pvt. Ltd. Vs. DCIT (2001) 70 TTJ (Ahd.)122, it was held that the department cannot be justified in resting its case on loose papers and documents found from the residence of third party even if such documents contain narration of transaction with assessee company. The same view was taken by ITAT, Jaipur Bench, Jaipur in case of Ambeshwar Grih Nirman Sahkari Samiti Ltd. Vs. DCIT (2003) 78 TTJ 94. In case of Shri L.K. Advani Vs. Central Bureau of Investigation 1997 CRI, L.J. 2559, it was held that "there is another aspect of the matter. It has been observed above that the entries in the book of account by themselves are not sufficient enough to fasten the liability on the head of a person against whom they are produced. They are not a substantive piece of evidence. The said entries in the books of account can be used only by way of corroboration to other pieces of evidence which is led by a party. Admittedly there is no evidence with the prosecution besides the alleged entries in the diaries and in the loose sheets as conceded by the Learned counsel for the C.B.I. Thus the alleged entries in the books of account by themselves are of no avail to the prosecution."

33. It was further submitted that no completed assessment can be opened merely on the basis of alleged noting in loose papers. In

assessee company's case as per reasons recorded it is apparent and evident and an accepted fact by the Assessing officer that the loose papers were found in the possession of Shri Ramesh Manihar and hence the primary onus of explaining the documents lies upon him and not the assessee company. In any case the impugned noting in loose papers and corresponding figures ascribed upon it can at best be described as 'dumb' documents that suffer from the lack of corroboration. The assessee company relies upon the Judgments of the Hon'ble Delhi High Court in CIT Vs. Vatika Landbase [2016] 383 ITR 320 (Delhi) which state that the documents like projection statements found during search can be at best termed as 'Dumb Documents' which in the absence of corroboration cannot be relied upon as substantive evidence and in CIT v. S.M. Aggarwal [2007] 293 ITR 43 (Delhi), it was held that seized documents without corroborative evidence are to be considered 'Dumb Documents' that cannot be relied upon and made basis of addition. Similar propositions have been laid down by the Hon'ble ITAT, Jaipur Bench in the case of DCIT v. Countrywide Buildstate (P) Ltd. v. [2013] 59 SOT 11 (Jaipur-Trib) and DCIT v. Rajat Agarwal [2012] 144 TTJ 753 (Jaipur – Trib). Thus extracts of the excel Sheet and details from pen-drives are nothing but dumb documents, not admissible as evidence and on the basis of which, no addition can be made in the hands of assessee company.

34. It was further submitted that in assessee company's own case, a massive search and seizure action u/s 132 of the Act was carried out by the Income-tax department on 25-04-2012, where no such incriminating documents / information relating to alleged loans through

Sh. Ramesh Manihar were found by the investigation / search team, as alleged in the reasons recorded for issuing a notice under section 148 of Income Tax Act to the assessee company. The facts and submissions are verifiable from the assessment order passed u/s 153A r.w.s. 143 (3) of the I. T. Act, 1961.

35. It was further submitted by the Id A/R that computer record cannot be relied without ensuring its source and authenticity. It was submitted that Assessing officer has not recorded any satisfaction that all the requisite steps were taken to ensure that data output of Pen Drives / computer records seized during the search were analyzed on as it is basis and has not been tempered by anyone. In Anvar P.V. v. P.K. Basheer [2014] SSC Online SC 732 (SC), Hon'ble Supreme Court held that in case of electronic devices, such as CD, VCD, chip, when produced as digital evidence, the same is required to be accompanied by certificate in terms of Section 65B of Evidence Act at time of taking document. If that certificate is not produced, secondary evidence pertaining to electronic record is inadmissible. The Court observed that "Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65A, can be proved only in accordance with the procedure prescribed Under Section 65B. Section 65B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the Section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic

media produced by a computer shall be deemed to be a document only if the conditions mentioned Under Sub-section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document, i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions Under Section 65B (2).”

36. It was submitted that the Apex Court held that these safeguards are taken to ensure the ‘source and authenticity’, which are “the two hallmarks pertaining to electronic record sought to be used as evidence. The importance of following this procedure was emphasized by the fact that electronic records are more susceptible to tampering, alteration, transposition, excision, etc. and in absence of these safeguards, the whole trial based on proof of electronic records can lead to “travesty of justice’.

37. It was submitted that in *ACIT vs. Katrina Rosemary Turcotte (ITA Nos. 3092/Mum./2015 to 3097/Mum./2015 decided on 11.10.2017)*, the ITAT Mumbai held that addition made on the basis of a print out taken from the computer of a third party without there being 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 company, was not sustainable. 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 to 180/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.

38. It was further submitted that Shri Ramesh Manihar in his statement recorded u/s 132 (4) in course of search in answer to Q. No. 12 stated that he acted as a broker in providing loans through cheque and RTGS between the lenders and borrowers. On specific question being asked with regard to the mode in which money is transferred between the lenders and borrowers, Ramesh Manihar specifically stated that such loans are not given in cash and all the transactions are through banking channels. Ramesh Manihar in answer to Q. No. 15 stated that none of his concerns are engaged in transactions in cash. He further stated that whatever dealing in cash is done by him is only on his personal account, along with one of his close associate Sri Manmohan Krishna Bagla. While explaining the modus operandi of the transactions, in cash, Ramesh Manihar categorically mentioned that whatever loan is given in cash, is out of his own funds. He stated interest thereon ranging from 0.8 to 1% per month is also received in cash. Such interest income is also applied for the purpose of further lending. Ramesh Manihar in response to Q. No. 17 stated that such 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. Ramesh Manihar at Q. No. 25 stated that he never collected any identification proof of persons

with whom transactions were undertaken by him. Thus, the possibility of Ramesh Manihar giving loan in cash to different persons out of his own cash accumulation but mentioning name of some other persons to come clean at any point of time cannot be ruled out. In the reply to question number 31 Ramesh Manihar expressly stated that the excel sheets consisting the details of different persons such as name, address, phone numbers etc. were only prepared for the purpose of sending invitation cards. The same has been prepared and maintained by the receptionist. That the same has no link what so ever with the regular business carried out by him, including any records maintained thereon. Ramesh Manihar in his statements u/s 132 (4) specifically admitted cash loans belonging to him. Therefore, when Ld. A.O. is treating the amount belonging to assessee company, heavy onus lies on Ld. A.O. to prove the same.

39. It was further submitted that the A.O., in his order, at page 9, placed the extract of the statement of Ramesh Manihar recorded U/s 131 on 08.11.2017. These extracts are only part of some questions and these are only such parts as suited to Ld. A.O. In fact in said statement also Ramesh Manihar stated that whatever was told by him in answer to question No. 15 and 17, he still stands by it. It is reiterated that in answer to such questions, recorded during search U/s 132 (4), Ramesh Manihar stated that whatever loan have been given by him in cash has been given on his personal account and that such money lending was done to small traders and was carried out by him from last 4 to 5 years.

40. It was further submitted that it can even be possibility that Ramesh Manihar engaged in the business of providing loans in cash to different persons on his personal account, in order to save himself and pre-empting any possibility of action from the Income Tax Department against him, he managed the record keeping in manner which can support his story. This even finds support from the fact that at the first instance when he was questioned by the Income Tax Department, u/s 132(4), he accepted to have provided loans in cash to different persons on his own account. Ld. A.O. made addition for the reason that Shri Ramesh Manihar accepted to have acted as a broker for receiving and providing loan in cash and as a result surrendered such amount of brokerage before the Settlement Commission. However, Ld. A.O. failed to prove the fact that how any stance taken by RMG before the Settlement Commission would result in involvement of assessee company providing cash loan. In support, reliance was placed on the decision of the ITAT Mumbai in case of Sh. Anil Jaggi vs ACIT [2018] 168 ITD 612 (Mum.)(Trib). Thus, the entire case made out by A.O. is hypothetical and fails due to the inherent contradictions in it and thus the consequential conclusions drawn by Ld. A.O. against the assessee company are baseless and unsustainable. In this connection, we rely on the judgment of Hon'ble Supreme Court in case of CIT Vs. Jagdish Prasad Mohan Lal Joshi (2018) 99 taxmann.com 288 wherein on a statement of a person that he made unaccounted payments to assessee company the A.O. made addition in hands of assessee company the Hon'ble High Court deleted the addition by holding that no corroborative evidence had been produced or brought on record to substantiate fact

of alleged payment. The SLP filed by department was dismissed by Hon'ble Supreme Court.

41. It was further submitted that in course of assessment proceedings, assessee company specifically made a request to A.O. that cross examination of Ramesh Manihar whose statement relied for making the impugned addition in the hands of assessee company which Ld. A.O. not allowed. It was submitted that it is settled law on the issue that no adverse inference can be drawn against the assessee company without providing cross examination opportunity to the concerned assessee company against whom an adverse inference is to be drawn by the department on the basis of third party statement. It was submitted that the assessee company has the right to cross examine the third party whose statement is relied by department is principle of natural justice and its denial is violation thereof. The Hon'ble Apex Court in case of Shree Ram Durga Prasad (RB) Vs. Settlement Commission (1989) 176 169,174 (SC) held that any order made in violation of principle of natural justice is void and nullity. As regards the non grant of opportunity to cross examine, the Hon'ble Supreme Court in case of Andaman Timber Industries vs. CCE 127 DTR 241 while dealing with the issue has held in para 5 to 8 as under:-

"5. We have heard Mrs. Kavin Gulati, learned senior counsel appearing for the assessee company, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

6. According to us, not allowing the assessee company to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the

impugned order is a serious flaw which makes the order nullity in as much as it amounted to violation of principles of natural justice because of which the assessee company was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee company disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee company. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee company. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the appellant themselves to explain as to why their expenses-factory prices remain static. It was not for the Tribunal to have guess work as to for what purposes the appellant wanted to cross-examine those dealers and what extraction the appellant wanted from them.

7. As mentioned above, the appellant had contested the truthfulness of the statements of these two witnesses and wanted to discredit either testimony for which purpose it wanted to avail the opportunity of cross-examination. That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was

passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view of the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice."

42. In the case of Ashwani Gupta [2010] 322 ITR 396 (Delhi), addition was made on the basis of the statement of a third party and seized documents. Neither the seized documents were provided to the assessee company nor was any opportunity of cross-examination of the adverse party given. Hon'ble Delhi High Court, following its own judgment in case of SMC Share Brokers Ltd. [2007] 288 ITR 345 (Delhi) deleted the addition on the ground that there was violation of the principles of natural justice.

43. The ITAT Jaipur Bench, Jaipur in case of Pramod Jain, Jaipur vs DCIT, Cir-3, Jaipur and other connected case vide its order dated 31-01-2018 (ITA No.(S) 368 to 372/JP/17) following the judgment of Hon'ble Supreme Court in case of Andman Timber Industries held that without giving opportunity of cross examination the assessment completed is a nullity. Therefore, the statement of witness cannot be sole basis of the assessment without given an opportunity of cross examination and consequently it is a serious flaw which renders the assessment order a nullity. In view of above facts and position of law, it was submitted that the Ld. CIT(A) was right in deleting the impugned

addition of Rs. 4,40,00,000/- made by Ld. AO. Thus, it is requested to that order of Id. CIT(A) on this ground may kindly be upheld.

44. We have heard the rival contentions and perused the material available on record. The case of the Revenue is that the assessee company had advanced a sum of Rs 4.4 crores by way of cash loans, through Ramesh Manihar Group to various persons, which is not recorded in its books of accounts and the same was brought to tax as unaccounted income u/s 69 of the Act. It was also held that the assessee company has advanced the said amount on various dates for different periods of time, accordingly, considering the rate of interest @0.70% per month, interest of Rs. 6,60,000/- was determined and the same was also brought to tax in the hands of the assessee company. The case of the Revenue therefore is that it is the unaccounted money which belongs to the assessee company and which has been advanced by the assessee company 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 8.4% p.a. and the same has also been brought to tax.

45. Here, first and foremost issue that arise for consideration is whether it is Revenue or the assessee company who has to discharge the initial onus that such unaccounted money belongs to the assessee company and secondly, the same has been advanced by the assessee company by way of cash loans through Ramesh Manihar Group to third

parties and it has earned interest thereon and the same has remain unaccounted in assessee company's books of accounts.

46. In this regard, it is noted that during the course of reassessment proceedings, the assessee company was issued a show cause as to why the addition of Rs. 4.4 crores should not be made as unaccounted income along interest @ 0.70% per month. In response to the said show cause notice, the assessee company stated that on verification of the statement of Sh. Ramesh Manihar Group and details so provided, the assessee company is unable to understand as to how the Assessing Officer has inferred on the basis of the alleged seized papers under the head "HMD" that the same meant and be read as Dangayach Hotels Pvt Ltd. It was further submitted that nowhere in the alleged seized documents, it is mentioned or suggested that assessee company has given alleged cash loans to different persons through Sh. Ramesh Chand Maheshwari. The reply so furnished by the assessee company was examined by the Assessing Officer and as per the Assessing Officer, reply of the assessee company 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 company has failed to substantiate the onus cast upon it about the impugned transactions of Rs. 4.4 crores. During the course of hearing, there is reiteration on part of the Id PCIT/D/R that initial onus lies on the assessee company which it has failed to satisfy and reliance has been placed on the findings of the Assessing officer in this regard.

47. 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 by the assessee company and the amount so invested belongs to the assessee company 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 company 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 company 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 company of such financial year."

48. On perusal of the aforesaid provisions, it is observed that it talks about a situation where in any financial year, the assessee company has made investments which are not recorded in his books of accounts. In the instant case, whether the assessee company 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 has to be recorded bringing cogent evidence on record that money so invested belongs to the assessee company and the same has been advanced by way of cash loans through Ramesh Manihar

group to third parties. And once it is established that these two conditions are satisfied regarding money so invested belongs to the assessee company and making investment by the assessee company by way of cash loans and not recording in its books of accounts, in such a situation, an opportunity may be provided to the assessee company calling for its explanation about the nature and source of such investment. And where either no explanation has been furnished by the assessee company 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 company for such financial year. Looking at it from another perspective, we find that where in response to show-cause notice, the assessee company had categorically denied making any such investment through Ramesh Manihar Group and then, in such a scenario, how can the assessee company lead any evidence in support of a transaction which it 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 positive evidence that the assessee company has infact invested the money by way of cash loans through Ramesh Manihar Group and the amount so invested belongs to the assessee company and therefore, we believe that merely stating that the same has not been recorded in the books of accounts so maintained by the assessee company is not sufficient enough to discharge the initial burden cast on the Assessing officer.

49. 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 found relevant to the assessee company, 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.

50. Firstly, we refer to the information so received by the Assessing officer from DCIT Central Circle -3, Jaipur vide letter dated 29.03.2018 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 certain transactions, it has been stated that these transactions have been noticed regarding the assessee company wherein the assessee company has paid cash loans of Rs 25 crores to various persons through Ramesh Manihar 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 also 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", "HMD" 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 "HMD" stand for, what is the linkage of "HMD" with other persons whose name are again written in abbreviated form, and how this data and so called transactions are related to the assessee company and how the figures so depicted represent and add up to a figure of Rs 4.4 crores in form of cash transactions are again not discernible even from close reading of the said data. Thereafter, it has been stated that the details of the aforesaid lender are as per Annexure 2 of the supplementary report and the same has been reproduced in form of another table, under the heading "codework in master Jagat.xlsx", "HMD" has been written; under the heading "name of the lender", Hari Mohan" has been written; under the heading "related data

of the lender”, “Jagdish ji” has been written; under the heading “From and To” Group.xlsx”, name of following entities namely Green Fire Exports, Dangayach Hotels P. Ltd, Kamlesh Dangayach, Serveall Land Developers P. Ltd, Emsaru Constructions P. Ltd., Green Star Constructions P. Ltd., Serve All Land Developers Pvt. Ltd have been stated; thereafter, mobile number and two PAN numbers have been stated. We find that the said data and information so contained therein is unclear, vague, in abbreviated and codified form and points mainly to a person by name of “HMD” whose name found mention in both the tables and not the assessee company 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 establishing the fact that it is the assessee company which has lent its money in cash through Ramesh Manihar Group unless the same is analysed and examined thoroughly and necessary linkage is established with the assessee company.

51. 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 and the pen drives have been owned up by him. 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 "HMD" stands for the "Hari Mohan Dangayach". The said data was then compared with data in other pen drives namely "from and two group.xlsx", where full name of the assessee "Hari Mohan Dangayach" is mentioned along with his promoter company names of Green Fire Exports, Dangayach Hotels P. Ltd, Kamlesh Dangayach, Serveall Land Developers P. Ltd, Emsaru Constructions P. Ltd., Green Star Constructions P. Ltd., Serve All Land Developers Pvt. Ltd. Further, Pan No. of the assessee company was also written in the excel file. 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 440 actually means and reflect a total figure of Rs 4.4 crores. The Assessing officer has thereafter referred to the statement of Shri Ramesh Chand Maheshwari recorded u/s 132(4) and subsequently u/s 131 during the course of his assessment proceedings and also the application filed by 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 reached his final conclusion and recorded a finding that the assessee i.e, M/s Dangayach Hotels Pvt. Ltd" through its director Shri Hari Mohan Dangayach (HMD) had advanced a sum of Rs 4.4 crores in cash which is not recorded in its books of accounts through Ramesh Manihar group @ 0.70% interest and the same was thus brought to tax.

52. 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 company or any information contained therein relates to the assessee company 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. In fact, it has been an admitted position of the Revenue, as we have noted earlier, that no such satisfaction of the Assessing officer of the searched person was recorded and the pen drives seized during the search doesn't pertain to the assessee but Shri Ramesh Manihar who has also owned up the same and only information was disseminated to the jurisdictional Assessing officer. Therefore, what has been received by the jurisdictional Assessing officer in the instant case is only the information in form of extracts and print out of certain 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 company. 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 relating to the assessee

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

53. The assessee company 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 company 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.

54. 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 company 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 company 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 company 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.

55. 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 है। कृपया इनमें अंकित ENTRIES को विस्तार पूर्वक समझाइए?"

उत्तर मैंने उपरोक्त तीनों EXCEL फाईलों के प्रिंट आउटस देख लिए है। 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 है और कैश लोन के लेन देन से संबंधित है और इनमें अंकित राशियाँ 1000/- के रूप में है जैसे 50 का मतलब 50,000/- रुपये 200 का मतलब 2,00,000/- रुपये है। अतः मेरा जबाब उपरोक्त प्र. के उत्तरों (20 से 26 तक) जैसा ही माना और समझा जावें। और सभी 18 PAN DRIVES में एक ही प्रकार ही यानी कैश लोन की प्रविष्टियाँ दर्ज है।

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 है, यह बताया गया है कि यह लोग छोटे-मोटे विक्रेता/या व्यापारी है। 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

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

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 हैं। इनका व्यापार व Account से कोई संबंध नहीं है।”

56. 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) 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 "HMD" is found in the excel sheets, it represent the assessee company through its director, Shri Hari Mohan Dangayach (HMD) and the assessee company has made the transactions of lending unaccounted money through the Ramesh Manihar 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 company through Ramesh Manihar cannot thus be held to be corroborated by the statement of Shri Ramesh Chand Maheshwari recorded under Section 132(4) of the Act.

57. 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 "HMD" is found in the excel sheets, it represent the assessee company through its director Shri Hari Mohan Dangayach (HMD) and the assessee company 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.

58. 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 company has also challenged the same stating that such statement was never confronted to it during the course of reassessment proceedings and even an opportunity of cross-examination of Shri Ramesh Chand Maheshwari so demanded was not provided by the Assessing officer.

59. 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 company be allowed an opportunity to seek a copy of the said statement and file its objections and secondly and equally important, be allowed 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 company or that the assessee company 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 company through Ramesh Chand Maheshwari stand corroborated by the statement of Shri Ramesh Chand Maheshwari recorded under Section 131 of the Act cannot be accepted.

60. 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 HMD is no one else but the assessee company. 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 company routed through Ramesh Manihar Group as the said admission is a unilateral admission on part of Ramesh Chand Maheshwari and the assessee company 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 company and routed through Ramesh Manihar Group for onward lending and without

providing an opportunity of cross-examination. The assessee company is not privy to the application filed before the Settlement Commission and proceedings before the Settlement Commission and therefore, the findings of the Settlement Commission cannot be said to bind the assessee company and for that matter, the jurisdictional 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 Commission cannot bind the another person in absence of any nexus between the person admitting and the other person.

61. 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 company, 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 company 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 company would not lead to drawing of

adverse inference as regards the investment made by the assessee company 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 company 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 company 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 company. 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 company for purchase of flats from M/s Lakeview Developers. We find that the genesis of the conclusion of the A.O that the assessee company 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 company 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 company 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 company 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. Niranjana 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 company had paid any cash towards purchase of flat. We have deliberated on the fact that Sh. Niranjana 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. Niranjana Hiranandani, falling short of any such material which would inextricably evidence payment of "on money" by the assessee company would not lead to drawing of adverse inferences as regards the investment made by the assessee company for purchase of the property under consideration. We rather hold a strong conviction that the very fact that the consideration paid by the assessee company 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 company 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 company formed a strong basis for doubting the investment made by the assessee company 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 company. 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 company, therefore, the same cannot conclusively form a basis for concluding that the assessee company 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 company 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 company."

62. 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 excel sheets do not point out to the fact of assessee company 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 excel sheets found during the course of search in case of Ramesh Manihar Group and relied upon by the AO, it could be established that "HMD" as mentioned in those documents stand for the assessee company. 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 "HMD" as mentioned in such excel sheets represent assessee company. 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 company 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 company. 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 "HMD" stand for and there is no response by him either in his entire statement which suggests that the assessee company has advanced cash loan through Ramesh Manihar Group. Therefore, the data so found in the excel sheets doesn't stand corroborated by Shri Ramesh Chand Maheshwari's statements as well. Even where the AO wishes to place reliance on such statement recorded u/s 131, neither a copy of said statement was provided to the assessee company nor an opportunity of cross examining Shri Ramesh Chand Maheshwari was provided to the assessee company inspite of specific request made by the assessee company 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. 4.4 crores. Merely extracts of excel sheet do not provide any evidence of the allegation made by the AO against the assessee company. 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 company 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.

63. 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 company's manager and assessee company's agent Matrix India, it was concluded by the Assessing Officer that the assessee company 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 company 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 company 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 company has received cash amount in question. It is a fact that in course of search as well as post search proceedings, the assessee company was confronted with seized material and the assessee company 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 company. 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 company. On the contrary, the passport submitted by the assessee company 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 company 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."

64. 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 company, 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 company 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 company is not able to give satisfactory explanation to the assessing officer. As rightly contended by learned Authorised Representative of the assessee company, 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 company 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 company 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 company. As rightly contended by the learned Authorised Representative of the assessee company, 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 company, 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 company but by the two persons as named in the journal entry. When the lands were not purchased by the assessee company firm, any question of payment of "on money" does not arise in the case of assessee company firm. As rightly contended by learned Authorised Representative of the assessee company, 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 company firm. We observe that in para 3 of the assessment order, the assessing officer has himself mentioned that the assessee company 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 company firm, in this background also, we fail to see how any case can be made out of payment of "on money" by the assessee company. There is yet another convincing reason that in all the three years under appeal, there were no sales affected by the assessee company firm and the business of the assessee company 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 company that when the source of revenue for the assessee company was not there, it cannot be perceived that the assessee company 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 company as the income of the assessee company 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 company 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 company 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 company, who was a minor, was found carrying cash of Rs. 1,18,500 by the police Department. The assessee company 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 company 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 company had any undisclosed income from any other source, the discretion vested in the assessing officer should have been exercised in favour of the assessee company 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 company 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 company. 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 company 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 company 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 company 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 company 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 company 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 company explained that nobody in the group of assessee company 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 company, 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."

65. In light of aforesaid discussions and considering the entirety of facts and circumstances of the present case and following the decisions cited supra, we are of the considered view that there is no basis for making the addition in the hands of the assessee company of Rs. 4.4 crores on account of cash loans advanced through Ramesh Manihar Group and consequent interest charged thereon amounting to Rs. 6,16,000/- and for the reasons cited supra, we affirm the findings of the Id CIT(A) deleting the said additions as we do not find any justifiable basis to interfere with the same. 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. In the result, the appeal of the Revenue is dismissed.

In the result, both the appeal filed by the Revenue and cross-objections filed by the assessee company are dismissed in light of aforesaid directions.

Order pronounced in the open Court on 22/10/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/10/2021

*Santosh

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

1. अपीलार्थी / The Respondent- DCIT, Central Circle-1, Jaipur.
2. प्रत्यर्थी / The Appellant- M/s Dangayach Hotels Pvt. Ltd. Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 33/JP/2020 & CO No. 03/JP/2020 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar