

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER
(Virtual hearing)**

**IT(SS)A No.18/Ind/2020
Assessment Year: 2012-13**

Om Builders, Bhopal
PAN – AABFO 3338 A ... Appellant
Vs.
ACIT, Central-II, Bhopal ... Respondent

**IT(SS)A Nos.62 & 63/Ind/2020
Assessment Years: 2013-14 & 2014-15**

ACIT, Central-II, Bhopal ... Appellant
Vs.
Om Builders, Bhopal
PAN – AABFO 3338 A ... Respondent

**IT(SS)A Nos.64 & 65/Ind/2020
Assessment Years: 2013-14 & 2014-15**

ACIT, Central-II, Bhopal ... Appellant
Vs.
Om Construction, Bhopal
PAN – AANFM 7932 L ... Respondent

ITA No.268/Ind/2020
Assessment Year: 2014-15

ACIT, Central-II, Bhopal ... Appellant

Vs.

M/s. Sainath Builders & Colonisers, Bhopal

PAN – AAACO 8862 H ... Respondent

Revenue by	Shri S.S. Mantri, CIT-DR
Assessee by	Shri S.S. Deshpande, CA
Date of Hearing	28.09.2021
Date of Pronouncement	26.11.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the respective assessee and the appeals filed at the instance of the Revenue are directed against the orders of Ld. Commissioner of Income Tax(Appeals)-3, Bhopal [in short Ld. CIT(A)] dated 01.1.2020, 02.1.2020 & 20.3.2020, respectively, which are arising out of the assessment orders dated 22.3.2016, 22.3.2016 & 18.3.2016, respectively, framed by ACIT, Central-II, Bhopal. Both the parties submitted that as the instant appeals relate to the assessee(s) from same Signature Group wherein search was conducted u/s 132(4) of the Act on 29.01.2014 and the issues

raised in various grounds and facts involved are mostly common, all these appeals may be disposed of by a common order for the sake of convenience and brevity.

Om Builders, Bhopal

In IT(SS)A No.18/Ind/2020 for the assessment year 2012-13, the assessee has raised the following grounds of appeal:

- “1. On the facts and in circumstances of the case, ld. CIT(A) has erred in confirming the additions in the years when no proceedings were pending for assessment as on the date of search.
2. On the facts and in circumstances of the case, ld. CIT(A) has erred in confirming the addition of Rs.3,50,000/- on account of unexplained unsecured loan.”

In IT(SS)A No.62/Ind/2020 for the assessment year 2013-14, the Revenue has raised the following grounds of appeal:

- “1. On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.2,85,50,000/- made by the Assessing Officer on account of unexplained unsecured loan.”

In IT(SS)A No.63/Ind/2020 for the assessment year 2014-15, the Revenue has raised the following grounds of appeal:

- “1. On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.2,75,00,000/- made by the Assessing Officer on account of additional income surrendered by the assessee u/s 132(4) of the I.T. Act.

2. *On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.55,00,000/- made by the Assessing Officer on account of unexplained unsecured loan.”*

2. Facts as culled out from the orders of the Revenue Authorities are that the assessee is a partnership firm and filing the returns regularly. A search was conducted on the Signature Group on 29.1.2014 and search action was also taken against the assessee which commenced on 29.1.2014 and concluded on 31.1.2014. Statement u/s 132(4) of Ms. Rekhi Dwivedi, the In-charge of the accounts department was recorded on 30.1.2014 and 31.1.2014. Statements were also recorded of Mr. Deepak Hariramani (looking after Marketing) and Mr. Prabodh Mathur (the Architect of the project) on 30.1.2014. In the statements, questions were raised regarding various loose papers found and the books of account maintained by the assessee. The final panchnama was drawn on 31.1.2014 in the case of the assessee, thus, the search in the case of the assessee was completed at 11:30 pm on 31.1.2014. During the course of the statement recorded u/s 132(4) the assessee declared an additional income of Rs. 2,75,00,000/- for the A.Y. 2014-15. In the statement, Q.27 was asked as under:

“During the course of search at Bhopal and Raipur many loose papers have been found for which no satisfactory answer and explanations have been given. In relation to these papers, an opportunity is given for explanation after consulting the other partners/directors.”

The assessee gave a reply as under:

“I have seen the loose papers of Raipur situated projects which are run by Sainath Infrastructure Pvt. Ltd., Om Construction and Om Builders and seen the loose papers and statements. I have consulted the partners/directors. For these loose papers and for receipt of unaccounted money for sale of some units I offer a sum of Rs.11 crores in the three concerns as undisclosed income for F.Y.2013-14. Besides this I surrender the undisclosed income of Rs. 11 crores in the following concerns:

- a. Signature Developers*
- b. Signature Infrastructure*
- c. Signature Builders*
- d. Signature Builders and Colonisers.”*

In the statement, the Q.9 was asked as under:

“Do you take any payment from customers in cash other than the sale price mentioned in the registry and additional charges recovered?”

The assessee gave a reply as under:

“No. No additional payment is taken in cash in addition to above.”

Subsequently statement of Mr. Rajkumar Khilwani, one of the partners, was recorded on 02.02.2014 in which he surrendered

the income of Rs. 1100 Lakh on account of cash receipt outside the books of account jointly in the case of the assessee and in case of the firms M/s. Om Construction & M/s. Sainath Infrastructure P. Ltd. However, the same was not offered as income in the return filed. Thus, the statement of Shri Rajkumar Khilwani was recorded after the completion of the search and seizure at the premises of the assessee. However, while filing the returns, the assessee retracted from the said surrender and filed the returns on the basis of the accounts which are duly audited. In the course of the assessment proceedings, all the information as required by the AO from time to time was furnished. The assessee is in the business of real estate, builders and developers. The assessee during the relevant period was developing a residential complex in the name of Sapphire Green, Raipur. The expense incurred on the purchase of land and construction expenses on the project were the business expenses of the assessee. The assessee had maintained regular books of account in which all the expenses including the cost of construction were duly recorded. These books were presented before the AO during the course of assessment proceedings and were duly checked by him and no deficiency was found in the

books of account or the records maintained. It was submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. made the addition on the basis of the statement recorded during the course of the search. The ld. A.O. narrated number of documents found during the course of the search at Pg. 22-23 of the order. At pg. 28 in para 10.1, the ld. A.O. relied on the statement recorded u/s 132(4). On pg. 21, he stated that several incriminating documents were confronted for which the assessee was unable to explain. He, however, did not point out any incriminating loose paper, thus, on the sole ground of the declaration in the statement, the additions in question were made.

3. Being aggrieved, the assessee approached the ld. CIT(A) and the ld. CIT(A), except the addition of Rs.3,50,000/- for the assessment year 2012-13 in which the assessee is in appeal, deleted these additions relying on the decision of the various High Courts and the decision of this Bench in the case of Ultimate Builders in ITA 134/IND/2019. The Ld. CIT(A) observed that the additions have been made merely on the basis of the statement recorded without specific reference to any

incriminating material found during the course of the search suggesting any earning of unaccounted income.

4. Being aggrieved, the Revenue and the respective assessee are in appeals. Ld. CIT-DR relied upon the orders of the Assessing Officer whereas learned Counsel for the assessee submitted that no incriminating evidence was found during the course of search or afterwards during post search enquiry or pre assessment enquiries to suggest that the assessee has incurred any unrecorded expense. Therefore, the assessee was justified in retracting from the declaration made for additional income u/s 132(4). Further, in respect of unsecured loans, the learned Counsel for the assessee submitted that the necessary papers to establish genuineness of the transaction were filed. The assessee has proved beyond doubt the identity of the lender, credit worthiness and the genuineness. The ld. CIT(A) relied on various case laws and after considering the submissions of the assessee deleted the additions. In the remand report, the ld. A.O. has accepted the factual position and only in 2 cases has raised doubts about the genuineness of the transaction because of non-repayment. Thus, learned Counsel for the assessee submitted

that since the assesseees have established the genuineness of the transactions from all the sides, the Id. CIT(A) was right in deleting the additions.

5. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that in the course of the assessment proceedings all the information as required by the AO from time to time was furnished. The assessee is in the business of real estate, builders and developers. The assessee during the relevant period was developing a residential complex in the name of Sapphire Green, Raipur. The expense incurred on the purchase of land and construction expenses on the project were the business expenses of the assessee. The assessee had maintained regular books of account in which all the expenses including the cost of construction were duly recorded. These books were presented before the AO during the course of assessment proceedings and were duly checked by him and no deficiency was found in the books of account or the records maintained and no incriminating evidence was found during the course of search or afterwards during post search enquiry or pre assessment enquiries to

suggest that the assessee has incurred any unrecorded expense. Therefore, while filing the returns, the assessee retracted from the said surrender/the declaration made for additional income u/s 132(4) and filed the returns on the basis of the accounts which are duly audited. We find that entire records found were seized and a panchnama was prepared on 31.01.2014 which was the last panchnama drawn in the case of the assessee and no further panchnama was drawn. Subsequently statement of Mr. Rajkumar Khilwani, one of the partners was recorded on 02.02.2014 in which he surrendered the income of Rs. 1100 Lakh in the case of the assessee and in the case of other concerns. The same was not also offered as income in the return filed. Thus, the statement of Shri Rajkumar Khilwani was recorded after the completion of the search and seizure at the premises of the assessee. The said statement was recorded on 02.02.2014 during search and seizure operation at 18-19 Kolar Castle, Chuna Bhatti Square, Kolar Road, Bhopal in the case of Signature group, as such it can be concluded that the said statement was not in connection with the search operation carried on in the case of the assessee at Raipur. Thus the statement under consideration cannot be said to have been

recorded during the course of search in the case of the assessee. We find that it was also submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. made the additions simply on the basis of the statement recorded during the course of the search. The ld. A.O. narrated number of documents found during the course of the search at Pg. 22-23 of the order. None of these documents pertain to the assessee. At pg. 28 in para 10.1, the ld. A.O. merely relied on the statement recorded u/s 132(4). On pg. 21, he merely stated that several incriminating documents were confronted for which the assessee was unable to explain. He however, did not point out any incriminating loose paper. On the sole ground of the declaration in the statement the additions were made. We further find that the ld. CIT(A) deleted these additions relying on the decision of the various High Courts and the decision of ITAT Indore Bench in the case of Ultimate Builders in ITA 134/IND/2019. The Ld. CIT(A) observed that the additions were made merely on the basis of the statement recorded without specific reference to any incriminating material found during the course of the search suggesting any earning of unaccounted income. Thus, we are of the view that no addition

was warranted as the surrender was not made with reference to any loose paper seized during the course of search and was accordingly not in accordance with the provisions of section 132(4) as the Ld. AO failed to bring on record any specific instance of the assessee having earned any undisclosed income or having made any unexplained investment which could justify the addition under reference. The sole basis for making the addition is the statement made by one of the partners. The Ld. A.O. did not make any addition for the documents found. He simply made addition in various years in respect of unsecured loans u/s 68 which are already entered in the books. Further, we find that the question asked and the answer given in the statement recorded were both vague and general in nature and were not with reference to any specific document or asset found during the course of search which would indicate the acceptance of the assessee of earning of any unrecorded income. Rather the assessee has made a categorical unambiguous statement that the assessee has not earned any unrecorded income as is evident from the statement of Mr. Rajkumar Khilwani recorded as under:

Q-9: *Do you take any payment from customers in cash other than the sale price mentioned in the registry and additional charges recovered.*

A-9: *No. No additional payment is taken in cash in addition to above*

Thus, we are of the view that no addition can be made without finding any incriminating material merely on the basis of the declaration u/s 132(4). Our view is supported by the direct judgment of the this Indore Bench of Tribunal in the case of Shri Sudeep Maheshwari in ITA 524/IND/2013 pronounced on 13/02/2019 and in the case of M/s Ultimate Builders in ITA 134/2019 pronounced on 09/08/2019. The Tribunal further deleted similar additions in the case of Signature Builders in ITA 185&186/IND/2018 and in the case of Signature Infrastructure in ITA No (SS)187&188/IND/2018 vide order dated 08.1.2021. Copies of these decisions have been filed in the paper book. We find that the Tribunal has relied on the various judgments of the various High Courts specially the decision of the Hon. Jharkhand High Court in the case of *Shri Ganesh Trading co. v/s. CIT (2013) 257 CTR 159* and the decision of Hon. Gujrat High Court in the case of *Kailashben Mangarlal Choksi v/s. CIT (2008) 14 DTR 257*

(Guj). The relevant portion of the order dated 8.1.2021 passed in the case of *Signature Builders & in the case of Signature Infrastructure* (supra) is reproduced hereunder:

“17. Now we take up Ground No.3 raised for Assessment Years 2013-14 and 2014-15 in the case of *Signature Builders* vide ITA No.185&186/Ind/2018 through which common issue has been raised by the assessee contending that Ld. CIT(A) was not justified in confirming the addition made by the Ld. A.O for the amount declared by the assessee as additional income of Rs.25,00,000/- and Rs.3,00,00,000/- for Assessment Year 2013-14 and 2014-15 respectively in the statement given during the course of search u/s 132(4) of the Act.

18. Brief facts relating to this common issue as culled out from the records and as narrated by the Ld. Counsel for the assessee are that a search was conducted at the premises of the *Signature Group* on 29.01.2014 and also at the premises of the assessee firm. In the case of the assessee the search commenced on 29.01.2014 at 08.45 A.M and was concluded at 08.00 AM on 02.02.2014. The proceedings continued for 4 days (96 hours) without any break. The statement of Mr. Raj Kumar Khilwani commenced on 01/02/2014 and was concluded on 02/02/2014. During the course of the statement, the assessee declared the additional income of Rs.25,00,000/- for the A.Y. 2013-14 and Rs. 3 crores for the A.Y. 2014-15 (Pg.222-240 of PB at page 239). In the statement Q.27 was asked as “during the course of search at Bhopal and Raipur many loose papers have been found for which no satisfactory answer and explanations have been given. In relation to these papers, an opportunity is given for explanation after consulting the other partners/ directors. The assessee gave a reply as I have seen the loose papers of Raipur office and consulted the partners/ directors. For these loose papers and for receipt of unaccounted money for sale of some units I offer a sum of Rs.11 crores as undisclosed income for F.Y.2013-14 in the following firms

- a. *Signature Developers*
- b. *Signature Infrastructure*
- c. *Signature Builders*
- d. *Signature Builders and Colonisers*

19. The additional income disclosed in various cases has been mentioned by the ld. A.O. at Pg.9 of the order which included the amount of Rs.3,25,00,000/- in the case of the assessee.

20. It was submitted before the ld. A.O. that in absence of any incriminating paper, no addition can be made. However, the ld. A.O. has made the addition simply on the basis of the statement recorded during the course of the search. The ld. A.O. has narrated number of documents found during the course of the search at Pg. 14 & 15 of the order. None of these documents pertains to the assessee. In para 9 the ld. A.O. has merely relied on the statement recorded u/s 132(4). On pg.24 he has merely stated that several incriminating documents were

confronted for which the assessee was unable to explain. On the sole ground of the declaration in the statement the addition has been made. The ld. CIT(A) upheld these additions relying on the evidence and holding that the declaration made u/s 132(4) is binding on the assessee.

21. Now the assessee is in appeal before the Tribunal.

22. Ld. Counsel for the assessee submitted that no addition was warranted as the surrender has not been made with reference to any loose paper seized during the course of search and was accordingly not in accordance with the provisions of section 132(4) of the Act. The AO has failed to bring on record any specific instance of the assessee having earned any undisclosed income or having made any unexplained investment which could justify the addition under reference. The sole basis for making the addition is the statement made by one of the partners. The Ld. A.O. has made various additions for the documents found. Thus, all the loose papers and the investments have been considered by the A.O. and accordingly he has made the additions under various heads. After making the additions on the basis of various papers there remains no scope for making the addition on the basis of declaration made in the statement. It could be observed that the question asked and the answer given in the statement recorded were both vague and general in nature and were not with reference to any specific document or asset found during the course of search which would indicate the acceptance of the assessee of earning of any unrecorded income. Rather the assessee has made a categorical unambiguous statement that the assessee has not earned any unrecorded income. Reference in this regards may be made to the statement of Mr. Rajkumar Khilwani recorded on 01-02/02.2014

Q-9: Do you take any payment from customers in cash other than the sale price mentioned in the registree and additional charges recovered.

A-9: No. No additional payment is taken in cash in addition to above

23. It is further submitted that no addition can be made without finding any incriminating material merely on the basis of the declaration. In this connection the attention is drawn to the direct judgment of the Hon'ble Indore Tribunal in the case of Shri Sudip Maheshwari in ITA 524/IND/2013 pronounced on 13/02/2019 and in the case of M/s Ultimate Builders in ITA 134/2019 pronounced on 09/08/2019. The Hon'ble Tribunal has relied on the various judgments of the various High Courts specially the decision of the Hon. Jharkhand High Court in the case of Shri Ganesh Trading co. v/s. CIT (2013), 257 CTR 0159 and the decision of Hon. Gujrat High Court in the case of Kailashben Mangarlal Choksi v/s. CIT (2008) 14 DTR 257. Under these circumstances the additions sustained by the ld. CIT(A) are bad in law. In view of this, it is humbly prayed that the addition sustained by the Ld. CIT(A) deserves to be deleted.

24. Per contra Ld. Departmental Representative vehemently argued supporting the order of lower authorities and submitted that the statement given by various persons on behalf of the assessee company was the statement on oath given u/s 132(4) of the Act and there was no coercion or

undue influence and no pressure by the revenue authorities for making such surrender. Further there was no retraction within the reasonable time and the action of the assessee was an after thought. Ld. CIT(A) has rightly confirmed the addition and same needs to be upheld.

25. *We have heard rival contentions and perused the records placed before us and carefully gone through the decisions relied by Ld. Counsel for the assessee. Through Ground No.3 raised for Assessment Years 2013-14 & 2014-15 assessee has challenged the finding of Ld. CIT(A) confirming the addition of Rs.25,00,000/- and Rs.3,00,00,000/- made by the Ld. AO for Assessment Years 2013-14 & 2014-15 respectively for the amount declared by the assessee u/s 132(4) of the Act contending that the same is without corroborating with any incriminating material found during the course of search.*

26. *We observe that the search was conducted on Signature Group including the assessee on 29.1.2014. Certain loose papers were seized. Additional income of Rs.3,25,00,000/- (Rs. 25,00,000/- + Rs.3,00,00,000/-) was offered for Assessment Years 2013-14 and 2014-15 respectively. However in the return of income filed post search u/s 153A of the Act such additional income of Rs.25,00,000/- and Rs.3,00,00,000/- was not offered in the return of income. During the assessment proceedings it was submitted that various loose papers and documents narrated by the Ld. A.O found during the course of search does not pertain to the assessee. Since there was no such incriminating material relating to the assessee found during the course of search relating to the addition in question the alleged addition was made purely on the basis of the statement given u/s 132(4) of the Act.*

27. *We also observe that in the assessment order as well as order of the first appellate authority there is no mention of any incriminating material having its nexus with the alleged income declared u/s 132(4) of the Act. The Ld. A.O has failed to prove on record any specific instance with support of incriminating material found during the course of search which could show that the assessee has earned the alleged undisclosed income. It is not in dispute that various other additions have been made by the Ld. A.O for the undisclosed investment u/s 69B, undisclosed investment in projects of land and unexplained unsecured loan as well as unexplained cash u/s 69A of the Act. However specifically with regard to the addition of Rs.25,00,000/- and Rs.3,00,00,000/- made for the Assessment Years 2013-14 and 2014-15 the same is purely based on the statement given on oath u/s 132(4) of the Act by the authorised representative on behalf of the assessee which was collectively surrendered as additional income on behalf of various group concerns. But without the support of any incriminating material on which the revenue authorities were able to lay their hands, this addition totalling to Rs.3.25 crores (Rs.25,00,000/- + Rs.3,00,00,000/-) is based only on the statement given u/s 132(4) of the Act.*

28. *Now the moot question remains that “whether the Ld. A.O was justified in making the addition purely on the basis of statement given u/s 132(4) of the Act without proving on record any corroborative evidence or incriminating material found during the course of search which could have direct nexus with the alleged addition of Rs.3.25 crores”.*

29. We observe that similar issue came up before this Tribunal in another group concern M/s Ultimate Builders V/s ACIT ITA No.134/Ind/2019 order dated 09.08.2019. M/s Ultimate Builders was also subjected to search u/s 132 of the Act on 29.1.2014 being part of the same Signature group. From perusal of the impugned order of Ld. CIT(A) in the case of M/s Signature Builders observed at page 64 & 65, Ld. CIT(A) has given the brief details of the additional income admitted by the authorised person of M/s Signature group which is as follows;

S.No	Concern/F.Y	2012-13	2013-14	Total
1	Signature Infrastructure	50	300	350
2	Signature Builders	25	300	325
3	Signature Builders and Colonisers	25	300	325
4	Signature Developers		100	100
<i>Total</i>				1100
5	Om Builders		275	275
6	Om Construction	50	750	800
7	Sainath Infrastructure P Ltd		25	25
<i>Total</i>				1100
8	Ultimate Builders		225	225
9	Virasha Infrastructure		225	225
<i>Total</i>				450
10	M/s Sainath Colonizers Pvt. Ltd		110	110
11	Shri Anil Kered Khilwani		40	40
<i>Total</i>				150

30. From the above we find that in the case of M/s Ultimate Builders also additional income was surrendered in the statement given u/s 132(4) of the Act for which the addition was made by the Ld. A.O without corroborating it with any incriminating material and the addition was confirmed by Ld. CIT(A). When the matter travelled before this Tribunal the addition of Rs.2.25 crores was deleted by this Tribunal observing as follows:-

“9. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments referred to and relied by both the parties. The sole grievance of the assessee raised in Ground No.1 of the instant appeal is against the order of Ld. CIT(A) confirming the addition of Rs.2,25,00,000/- made by the Ld. A.O on account of undisclosed income surrendered during the course of search by the partner of the assessee firm.

10. At the cost of repetition we would like to recite and recapitulate the facts once more. The assessee is a partnership

firm engaged in real estate business. It is the part of Signature Group. Search action was initiated in the Signature Group and its associates on 29.1.2014. The assessee's association with the Signature group is on account of the common partners in various concerns. Assessee is separately assessed to tax. Search u/s 132(4) of the Act was initiated in the case of the assessee on 29.1.2014 and was concluded on 31.1.2014. This fact is proved on the basis of "panchanama" prepared by the officer of the search team which is placed at page 62-64. No surrender was made in the statements taken by the search team during the course of search from 29.1.2014 to 31.1.2014. There is no mention of any incriminating material referred by the Ld. A.O on the basis of which additions have been made.

11. *The search action in the case of Signature Group continued ever after 31.1.2014. On 02.02.2014, Mr. Vipin Chouhan who is the partner of the assessee firm gave a statement before the search team wherein he made surrender of Rs.2,25,00,000/- on behalf of the appellant firm and agreed to offer it to tax. In the very same statement he also made surrender on behalf of another firm M/s. Virasha Infrastructure in the capacity of a partner. In the very same statement he also made surrender on behalf of other companies of Signature Group. Ld. A.O during the course of assessment proceedings observed that the assessee has not offered surrendered income of Rs.2,25,00,000/- for tax and confronted the assessee. During the assessment proceedings u/s 143(3) of the Act, assessee made the retraction by submitting that no such undisclosed income was earned and therefore no such income was required to be offered to tax. However, Ld. A.O giving reference to the statement of Mr. Vipin Chouhan, partner of Ultimate Builders and also giving reference to the seized documents found during the search at Signature Group made addition for undisclosed income. When the matter came up before Ld. CIT(A) addition was confirmed. However the basis of addition was accepted to have been made only on the basis of the statement of Mr. Vipin Chouhan. No reference was made to any incriminating material having its bearing on the surrendered income. During the course of hearing before us Ld. Counsel for the assessee contended that during the course of search i.e. between 29.1.14 to 31.1.2014 no cash or unrecorded assets was found, no incriminating material was found and no income was offered to tax in the statement recorded u/s 132(4) of the Act of the person found to be in the possession and control of the books of premises. Relevant questions asked about the loose paper found were duly replied in the statement.*

12. *Ld. Counsel for the assessee further contended that since the search in the case of assessee was concluded on 31.1.2014 the alleged statement of the partner Mr. Vipin Chouhan taken on 02.02.2014 cannot be construed as a statement given during the course of search u/s 132(4) of the Act so far as relating to the assessee since the search in its case already concluded on 31.1.2014. He further submitted that no incriminating material was found during the course of search and as held by Hon'ble Tribunal in the latest decision in the case of ACIT(1) vs. Sudeep*

Maheshwari (supra) that “no addition was called for which has been made merely on the basis of the statement without correlating the disclosure made in the statement with the incriminating material gathered during the course of search”.

13. So the contention of the Ld. Counsel for the assessee can be summarised that the addition cannot be made merely on the basis of statement which too was taken after conclusion of the search and no correlation has been made with the incriminating material found during the course of search.

14. On the other hand Departmental Representative gave reference to various judgements referred above. She mainly placed emphasis on the judgment of Hon’ble High Court of Madras in the case of Kishore Kumar V/s DCIT (supra) holding that “when there was a clear admission of undisclosed income in the statement sworn in u/s 132(4) of the Act there is no necessity to scrutinise the documents”.

15. Now so far as the first contention of the assessee that the statement relied on by the revenue authorities cannot be construed as a statement given u/s 132(4) of the Act, we will like to first reproduce the provisions of Section 132(4) of the Act;

“(4) The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery to other valuable article or thing and any statement made by such person during such examination may thereafter be used in evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.

¹ *Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.”*

16. The above sub Section 4 of Section 132 of the Act starts with reference to “authorised officer”, which means that the Officer who is authorised to conduct search on the assessee. In the instant case it is stated before us that the authorised officer of the assessee and that of the other concerns of Signature Group are different.

17. After the word the authorised officer it reads “during the course of search or seizure, examination of both the person”. During the course of search is a period during which the search is initiated and concluded. In the instant case the search was initiated on 29.1.2014 and concluded on 31.1.2014 by a authorised officer for the assessee which is verifiable from the Panchanama framed by the search team. The statement of Mr. Vipin Chouhan was taken on 02.02.2014 by another authorised officer and this date is after the conclusion of the search in the case of the assessee on 30.01.2014.

18. *There may have been some force in the contention of the revenue authorities if the statement u/s 132(4) of the Act was taken during the course of search at the assessee's premises or during the continuation of search, the statement may have been recorded on other places but the fact is that so far as the assessee M/s. Ultimate Builders is concerned the search concluded on 31.01.2014 and before the conclusion of the search no surrender of undisclosed income was made in the statement recorded u/s 132(4) of the Act by the persons available at the assessee's business premises.*

19. *As regards the statement of Mr. Vipin Chouhan given on 02.02.2014 is concerned, we find that this statement contains the surrender for various group concerns and not specifically for the assessee M/s. Ultimate Builders. Reference was also given to other business concerns namely M/s. Virasha Infrastructure, Signature Infrastructure, Signature Builders and Signature Builders and Colonisers. Certainly the search in the case of concerns other than the Ultimate Builders did not conclude on 02.02.2014 but at that point of time on 02.02.2014 the search in the case of Ultimate Builders stood concluded two days before on 31.1.2014.*

20. *We therefore are of the considered view that the alleged statement given by Mr. Vipin Chouhan on 02.02.2014 may be construed as the Section 132(4) of the Act for all the other concerns named above except for the assessee i.e. M/s. Ultimate Builders. Therefore the statement referred to by the Ld. A.O on the basis of which the addition have been made in the hands of the assessee in our view cannot be construed as the statement u/s 132(4) of the Act.*

21. *Coming to the issue of addition made by the Ld. A.O on the basis of the statement but no reference been given to the incriminating material, we find that in the assessment order Ld. A.O has referred to various seized documents but none of them is directly related to the assessee. These seized documents are of the Signature Group and Ld. A.O has only mentioned the details of the seized document without uttering a word about their nexus with the business transaction carried out by the assessee or by pointing out assessee's connection with the seized document in name or otherwise. Thus it can be safely concluded that the addition made by the Ld. A.O was not on the basis on the incriminating material found during the course of search but only on the basis of statement of Mr. Vipin Chouhan given on 02.02.2014.*

22. *Recently the Co-ordinate Bench in the case of ACIT(1) VS. Sudeep Maheshwari (supra) in which the undersigned was also a co-author while adjudicating the issue that "whether addition can be made merely on the basis of statement given during the course of search without correlating the statement with incriminating material", we have decided the issue observing as follows:-*

"6. It is the case of the assessee that during the course of search & seizure, no incriminating material or undisclosed income or investments were found. It is stated that the assessee was

under mental pressure and tired. Therefore, to buy peace of mind, he accepted and declared Rs.3 crores in personal name. It is also stated that the case laws as relied by the A.O. are not applicable on the facts of the present case. The assessee has relied on the decision of the Hon'ble Supreme Court rendered in the case of Pullangode Rubber Produce Co. Ltd. 91 ITR 18 (SC), wherein the Hon'ble Court has held that admission cannot be said that it is conclusive. Retraction from admission was permissible in law and it was open to the person who made the admission to show that it was incorrect. However, reliance is placed on the judgement of the Hon'ble Gujarat High Court rendered in the case of CIT Vs. Chandrakumar Jethmal Kochar (2015) 55 Taxmann.com 292 (Gujarat), wherein it has been held that merely on the basis of admission that few benami concerns were being run by assessee, assessee could not be basis for making the assessee liable for tax and the assessee retracted from such admission and revenue could not furnish any corroborative evidence in support of such evidence. It was further urged by the assessee that admission should be based upon certain corroborative evidences. In the absence of corroborative evidences, the admission is merely a hollow statement. We have given our thoughtful consideration to the rival contentions of the parties. It is undisputed fact that the statement recorded u/s 132(4) of the Act has a better evidentiary value but it is also a settled position of law that the addition cannot be sustained merely on the basis of the statement. There has to be some material corroborating the contents of the statement. In the case in hand, revenue could not point out as what was the material before the A.O., which supported the contents of the statement. In the absence of such material, coupled with the fact that it is recorded by the Ld. CIT(A) that the assessee himself had surrendered a sum of Rs.69,59,000/- and Rs.75,00,000/- in A.Y. 2008-09 and 2009-10 respectively. The A.O. failed to co-relate the disclosures made in the statement with the incriminating material gathered during the search. Therefore, no inference is called for in the finding of the Ld. CIT(A) and is hereby affirmed. Ground raised by the revenue is dismissed.”

23. *Hon'ble Gujarat High Court in the case of Kailashben Mangarlal Chokshi vs. CIT - (2008) 14 DTR 257 (Guj.), held that merely on the basis of admission, the assessee could not have been subject to additions, unless and until some corroborative evidence is found in support of such admission.*

24. *Hon'ble Jharkhand High Court Shree Ganesh Trading Co. V/s Commissioner of Income-tax, Tax Case No.8 of 1999 order dated 03.01.2013 held as under;*

“4. *We considered the submissions of the learned counsel for the parties and perused the reasons given in the impugned orders as well as reasons given in the case of Kailashben Manharlal Chokshi (supra).*

5. *It appears from the statement of facts that there was a search in the business premises of the petitioner's firm as well as in the residential premises of its partner, Shri Sheo*

Kumar Kejriwal, on 24th September, 1987. During the course of search, the statement of Shri Sheo Kumar Kejriwal had been recorded under section 132(4) of the Income Tax Act and in the statement, he stated that he was partner in the Ganesh Trading Company, i.e. the present assessee-firm in his individual status and that he surrendered Rs. 20 lacs for the assessment year 1988-89 as income, on which tax would be paid. He further stated that other partners would agree to the same; otherwise it would be his personal liability. However, in the returns filed after search, the income of Rs. 20 lacs surrendered by Shri Sheo Kumar Kejriwal was not declared by the assessee-firm. On being asked to explain the reason for not showing the surrendered amount in the returns, it was submitted by the assessee that declaration made by the partner was misconceived and divorced from real facts. It was contended that the declaration was made after persuasion, which, according to the learned counsel for the assessee, Shri Binod Poddar, in fact, was because of coercion exerted by the search officers. In explanation, it was submitted that the firm or the individual had no undisclosed income. The assessee's said retraction was not accepted by any of the authorities below on the ground that the statement given by the assessee appears to be voluntarily given statement disclosing undisclosed income of Rs. 20 lacs. According to the learned counsel for the assessee, Shri Binod Poddar, the Assessing Officer had full jurisdiction to proceed for further enquiry and could have collected evidence in support of alleged admission of undisclosed income of the assessee.

6. *We are of the considered opinion that statement recorded under section 132(4) of the Income Tax Act, 1961 is evidence but its reliability depends upon the facts of the case and particularly surrounding circumstances. Drawing inference from the facts is a question of law. Here in this case, all the authorities below have merely reached to the conclusion of one conclusion merely on the basis of assumption resulting into fastening of the liability upon the assessee. The statement on oath of the assessee is a piece of evidence as per section 132(4) of the Income Tax Act and when there is incriminating admission against himself, then it is required to be examined with due care and caution. In the judgment of Kailashben Manharlal Chokshi (supra), the Division Bench of Gujarat High Court has considered the issue in the facts of that case and found the explanation given by the assessee to be more convincing and that was not considered by the authorities below. Here in this case also, no specific reason has been given for rejection of the assessee's contention by which the assessee has retracted from his admission. None of the authorities gave any reason as to why Assessing Officer did not proceed further to enquire into the undisclosed income as admitted by the assessee in his statement under section 134(2) in fact situation where during the course of search, there was no recovery of assets or cash by the*

Department. This fact also has not been taken care of and considered by any of the authorities that in a case where there was search operation, no assets or cash was recovered from the assessee, in that situation what had prompted the assessee to make declaration of undisclosed income of Rs. 20 lacs. Mere reading of statement of assessee is not the assessment of evidentiary value of the evidence when such statement is self-incriminating. Therefore, we are of the considered opinion that in the present case, a wrong inference had been drawn by the authorities below in holding that there was undisclosed income to the tune of Rs. 20 lacs.

7. In view of the above reasons, without answering the question about retrospective operation of the proviso to section 134(4), we are holding that the authorities below have committed error of law in drawing inference from the materials placed on record, i.e. admission of the assessee coupled with its retraction by the assessee. The Revenue may now proceed accordingly”.

25. *In the light of ratio laid down in various judgments referred above including one in the case of ACIT(1) Vs. Sudeep Maheshwari (supra) decided by us wherein also we, after referred various judgments of Hon'ble High Courts have held that additions cannot be sustained merely on the basis of statement given during the course of search without correlating the addition with the incriminating seized material. Therefore the decision relied by Ld. Departmental Representative laying down the ratio that addition can be made even on the basis of statement given during the course of search u/s 132(4) of the Act irrespective of the fact whether any incriminating material is found or not, will not support Revenue in the instant case.*

26. *In the given facts and circumstances of the case and respectfully following the judgements and decisions referred above we find that firstly the statement given by Mr. Vipin Chouhan u/s 132(4) of the Act on 02.02.2014 cannot be considered as the statement given u/s 132(4) of the Act in the instant case of the assessee firm since the search action in case of assessee was concluded on 31.1.2014 by the Authorised Officer. Secondly as regards to other business concerns referred by Mr. Vipin Chouhan in his statement given on 02.02.2014 and in case of such business concern wherein search action u/s 132 of the Act was continuing the said statement dated 02.02.2014 will be considered as the statement u/s 132(4) of the Act. Thirdly, no reference has been given by the Revenue Authorities to any incriminating material found during the course of search at the business premises of the assessee, which could be correlated to the alleged surrendered income earned by the assessee from undisclosed sources.*

27. *We therefore are of the considered view that the finding of Ld. CIT(A) needs to be set aside and the addition of Rs.2,25,00,000/- deserves to be deleted since it has been made*

on the basis of a statement not given u/s 132(4) of the Act and without referring to any incriminating material found during the course of search. Addition for undisclosed income of Rs.2,25,00,000/- is deleted. Accordingly Ground No.1 raised in the appeal by the assessee is allowed.”

31. *From perusal of the above finding of this Tribunal in the case of M/s Ultimate Builders (supra), we find that the common issue raised in Ground No.3 of M/s Signature Builders is identical to the issue raised and adjudicated in the case of M/s Ultimate Builders (supra). We therefore respectfully following the same and also in view of the identical fact that impugned addition of Rs.25,00,000/- and Rs.3,00,00,000/- made by the Ld. A.O was purely based on the statement given u/s 132(4) of the Act and there was no reference to any incriminating material found during the course of search which could support the impugned addition, we thus delete the addition of Rs.25,00,000/- for Assessment Year 2013-14 and Rs.3,00,00,000/- for Assessment Year 2014-15 and set aside the finding of both the lower authorities and accordingly allow Ground No.3 raised in assessee’s appeal for Assessment Years 2013-14 and 2014-15 raised in ITA No.185-186/Ind/2018.”*

6. On consideration of above in the light of ratio laid down in these decisions (supra), we find that a common statement of Shri Rajkumar Khilwani was recorded during the course of the search in which he offered the various undisclosed incomes in various concerns of Signature Group. On the basis of this statement recorded u/s 132(4), the ld. A.O. made the additions in the cases of Ultimate Builders, Signature Builders and Signature Infrastructure and these additions have been deleted by the Tribunal in the respective cases holding that without finding any incriminating material, no additions can be made merely on the declaration u/s 132(4). We find that on the basis of the same

statement and with the same reasoning, the additions have been made by the Ld. A.O. in the present case and the same have been deleted by the ld. CIT(A) following the judgment of the Tribunal (supra). In view of above discussion, we hold that the ld. CIT(A) rightly deleted the addition of Rs.2,75,00,000/- made by the Assessing Officer on account of additional income surrendered by the assessee u/s 132(4) of the I.T. Act. Thus, ground no.1 raised by the Revenue for the assessment year 2014-15 is dismissed.

7. So far as the issue with regard to alleged unexplained unsecured loans is concerned, we find that for confirmation of addition of Rs. 3,50,000/- on account of unexplained unsecured loan received from Paresh O. Kalla for the assessment year 2012-13, the assessee is in appeal whereas for the assessment years 2013-14 & 2014-15, the Revenue is in appeals challenging the additions of Rs.2,85,50,000/- and Rs.55,00,000/-, respectively. Facts, in brief, are that it was submitted before the ld. A.O. that the above loans are duly recorded in the regular books of accounts and have been received through the banking channel. The assessee submitted the confirmation and the assessee's bank account establishing the fact that all the transactions were

routed through banking channel. The assessee could not submit the other required evidences such as the bank statements of the respective parties and the IT Returns of the creditors as they were not available at the time of the assessment. The Ld. A.O. made the additions on the ground that in absence of the bank statement and the income tax returns, the genuineness and the credit worthiness of the parties are not established.

8. Being aggrieved, the assessee approached the ld. CIT(A) and before the ld. CIT(A), the assessee filed all details like the bank statements, income tax returns etc. with an application under rule 46A. The Ld. CIT(A) sent all the papers to the Ld. A.O. for his comment and the remand report. The ld. A.O. submitted the remand report (pg.41-43 of the PB) challenging the admittance of the additional evidence stating that adequate opportunities were given to the assessee. However, on merits, the ld. A.O. stated as under:

“In some cases the amount is still outstanding and interest has not been paid no agreement is entered by the assessee for unsecured loans.

*The facts and circumstances of the case indicate that the transaction **with some lenders** whose repayment details are not submitted is not a genuine transaction. The amounts have been advanced to the assessee without any expectation of return on the loan, the transaction is devoid of rationality.”*

The ld. CIT(A) after considering the submissions and facts of the case deleted the additions in question narrating the fact of payment of interest and return of money for the assessment years 2013-14 & 2014-15. The ld. CITA(A) in para 4.4.3 at pg.90 observed that the assessee furnished all details such as the documents relating to the identity, credit worthiness of the lender and genuineness of the transaction. Thus, prima facie, the liability of the assessee to prove the genuineness, identity and credit worthiness stands discharged. The ld. CIT(A) further observed as under:

“In the remand report A.O. has raised doubt about the genuineness of the transaction which is mainly based on the non availability of any written agreement and non repayment of the loan. The appellant in reply has submitted that the contract can be either verbal or written and simply non availability of the written contract will not make the loan non genuine. Further, in private arrangement of loan between known persons, no practice of entering into a loan agreement is followed. Thus,

considering the fact that the lenders are regular tax assesseees and have given the loan through account payee cheque and have confirmed the transaction the liability of the assessee of explaining the genuineness of the transaction stands discharged and the addition cannot be made on mere suspicion how so strong the reasons of suspicion may be. Also, the appellant has paid interest on unsecured loans and has repaid the loan. Hon'ble Gujrat High Court in the case of Ayachi Chandrashekhari Narsangji (2014) 42 Taxmann.com 251 (Guj HC) has held that "it has also come on record that the said loan amount has been repaid by the assessee to Shri Ishwar Advani in the immediate next FY and the Dept has accepted the repayment of loan without probing into it. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible we see no reason to interfere with the impugned order passed by ITAT"

From the record available, the ld. CIT(A) noted that the loan party furnished the loan confirmation, copy of bank account and proof of filing of the return and by filing the above documents, the assessee was able to establish the identity of the creditors as the creditors are income tax payer and filed the loan confirmations, to establish the genuineness of the transaction as the assessee took the loans through banking channel and to establish the creditworthiness of the creditors as the creditors are income tax payer and filing the income tax return. These persons not only gave loan to the assessee but also to other parties.

9. Considering the above, the ld. CIT(A) was of the view that it is clear that the assessee has satisfied all the three conditions required for the genuineness of the transaction and accordingly, deleted the additions for assessment years 2013-14 & 2014-15. However, the ld. CIT(A) confirmed the addition of Rs.3,50,000/- on account of unexplained unsecured loan received by the assessee from Mr. Paresh O. Kalla on the ground that the assessee merely filed a copy of confirmation received from the lender but no details regarding creditworthiness of lender and genuineness of the transaction were filed.

10. We have considered the rival submissions of both the parties and gone through the material available on the file. We find that the ld. CIT-DR defended the assessment orders merely relying upon the orders of the Assessing Officer but could not bring any contrary material on record to controvert the finding of the ld. CIT(A) who having gone through the material available on record in the light of the relevant judicial pronouncements reached to the conclusion that the assessee discharged its onus by furnishing all the requisite details in order to prove genuineness of the transaction and creditworthiness & identity of

the loan creditors for the assessment years 2013-14 & 2014-15 in question. The requisite details in order to prove genuineness of the transaction and creditworthiness & identity of the loan creditors for the assessment years 2013-14 & 2014-15 is summarised as under:

“Unsecured loans for AY 2012-13:-

Paresh O. Kalla (Rs. 3,50,000/-):-

The appellant has filed only a copy of confirmation received from the lender, however, no details regarding creditworthiness of lender and genuineness of the transaction were filed.

Unsecured loans for AY 2013-14:-

i, Deepak Shadija (Rs.5,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 15.07.2017. Appellant has also paid interest of Rs. 95,342/- upto 31.03.2014.

ii. Envee Developers Private Limited (Rs. 50,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

iii. Heena Shadija (Rs.3,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 13.06.2014. Appellant has also paid interest of Rs. 66,740/- upto 31.03.2014.

iv. Maa Vaishno Devi Constructions (Rs. 47,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of copy of balance sheet under the head 'Sundry Debtors and Loans and Advances', outstanding balance of Om Construction shows a balance of Rs. 1,33,00,000/-. However, the appellant has explained that loan amount only to the tune of Rs. 86,00,000 pertains to Om Constructions and balance pertains to Om Builders (Rs. 47,00,000/-) which has wrongly been reported by the party in the name of Om Construction. Therefore, it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

v. Madhu Agrawal (Rs. 5,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

vi. Naresh Mulchandani (Rs. 6,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under

consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

vii. Pooja Shadija (Rs. 3,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and

creditworthiness of the investor is duly established. The loan was repaid on 13.06.2014. Appellant has also paid interest of Rs. 66,625/upto 31.03.2014.

viii. Rajat Consumer Services Private Limited (Rs. 1,48,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

ix. Rajesh Agrawal (Rs. 5,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

x. Ratna Shadija (Rs. 6,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear

that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 20.12.2014. Appellant has also paid interest of Rs. 1,14,214/- upto 31.03.2014.

xi. Vijay Mulchandani (Rs. 6,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

Unsecured loans for AY 2014-15:-

i. Chitra Hariramani (Rs. 1,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. Appellant has also paid interest of Rs. 690/- upto 31.03.2014.

ii. Deepak Shadija HUF (Rs. 5,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 18.07.2017. Appellant has also paid interest of Rs. 33,205/- upto 10"2014 .

iii. Geeta Dharrnani (Rs. 4,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. Appellant has also paid interest of Rs. 26,3011- upto 31.03.2014.

iv. Harsha Harirarnani (Rs.1,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. Appellant has also paid interest of Rs. 822/- upto 31.03.2014.

v. Hemlal ji Funka HUF (Rs. 4,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

VI. Indra Devi (Rs. 4,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established.

vii. Rahul Johri (Rs. 20,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 04.07.2017. Appellant has also paid interest of Rs. 1,15,068/- upto 31.03.2014.

viii. Rajesh Kumar Shadija (Rs. 3,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. The loan was repaid on 21.08.2017. Appellant has also paid interest of Rs. 19,923/- upto 31.03.2014.

ix. S. K. Lahori HUF (Rs. 2,50,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and creditworthiness of the investor is duly established. Appellant has also paid interest of Rs. 6,493/- upto 31.03.2014.

x. Sur Sangam Mobiles (Rs. 10,00,000/-):-

The appellant has furnished copy of confirmation obtained from the lender along with his PAN card, copy of relevant entry in his bank statement of the year under consideration. On perusal of the same it is evidently clear that the genuineness of the transaction and identity and

creditworthiness of the investor is duly established. The loan was repaid on 06.08.14.”

11. From above, it is clear that the assessee has furnished all details such as documents relating to identity, and creditworthiness of the lenders and genuineness of the transactions except in AY 2012-13. Thus, prima facie liability of the assessee to prove the genuineness of the transaction and to establish the identity and credit worthiness of the lender stands discharged. We also note that the Assessing Officer in the remand report has raised a doubt about the genuineness of the transaction which is mainly based on non availability of any written agreement and non repayment of the loan. However, we find that the assessee in reply had submitted that the contract can be either verbal or written and simply non availability of a written contract would not make the loan non-genuine and in private arrangement of loan between known persons, no practice of entering into a loan agreement is followed. We find that that the lenders are regular tax assesseees and have given the loan through account payee cheques and have confirmed the transaction then the liability of the assessee of explaining the genuineness of the transaction stands discharged and the addition cannot be made on mere suspicion. Further, the Assessing Officer also failed to appreciate the fact that the assessee had paid interest on unsecured loans and had repaid the loan which is unjustified in view of the decision of Hon'ble Gujarat High Court in

the case of *Ayachi Chandrashekhar Narsangji (2014) 42 Taxmann.com 251 (Guj HC)* wherein it was held as under:

*“It has also come on record that the said loan amount **has been repaid** by the assessee to Shri Ishwar Adwani **in the immediate next FY** and the **Deptt has accepted the repayment of loan without probing into it**. In the aforesaid facts and circumstances of the case, when the Tribunal has held that the matter is not required to be remanded as no other view would be possible we see no reason to interfere with the impugned order passed by ITAT”.*

12. Thus, we find that loan party furnished the loan confirmation, copy of bank account and proof of filing of the return. By filing the above documents the assessee established the Identity of the creditor, genuineness of the transaction and creditworthiness of the creditor. Thus, the assessee had satisfied all the three conditions required for genuineness of the transaction. Our view is supported by the ratio laid down in the following judicial pronouncements:

a. Umesh Electricals vis Asst. CIT(2011) 18 IT] 635 (Trib.Agra): (2011) 131 ITD 127: (2011) 141 TTJ

Establishment of identity and credit-worthiness proved- Assessee produced the bank account of creditor in his bank account on the same day on which loan was given- Assessee furnished the cash flow statement of creditor- Based on inquiry, AO noted that creditor was engaged in providing accommodation entries-HELD- In group cases, it has been held that there was no evidence against the creditor to prove that he was providing accommodation entries-Further, mere deposit of money by the creditor on the same day, does not establish that the loan is not genuine-Assessee has proved the source of credit and also the source of Source -Addition cannot be made.

b. Aseem Singh v/s Asst. CIT (2012) 19 ITJ 52 (Trib.-Indore) Identity and credit-worthiness proved-Assessee took loan of Rs.1, 00, 000/- confirmation of creditor was filed-Lower authorities made addition u/s 68 holding that amount was deposited in cash in the bank account of lender immediately prior to date of loan _ HELD- Assessee has established the identity- The party has confirmed the transaction-If AO doubted the transaction, AO should have called creditor u/s 131 -Addition cannot be made.

13. On consideration of above in the light of the judicial pronouncements (supra), it is clear that the assessee had proved beyond doubt the identity of the lender, credit worthiness and the genuineness. Further, we find that in the remand report, the ld. A.O. accepted the factual position and only in 2 cases had raised doubts about the genuineness of the transaction because of non-repayment. Since the assessee had established the genuineness of the transaction from all the sides, we are of the view that the ld. CIT(A) was right in deleting the additions. Therefore, we do not find any infirmity in the order of the ld. CIT(A) for the assessment years 2013-14 & 2014-15 in respect of the present issue. Thus, ground no.1 of the appeal of the Revenue for the assessment year 2013-14 and ground no.2 of appeal of the Revenue for the assessment year 2014-15 are dismissed. However, for the assessment year 2012-13, we find that the ld. CIT(A) confirmed the addition of Rs.3,50,000/- on account of unexplained

unsecured loan received by the assessee from Mr. Paresh O. Kalla on the ground that the assessee merely filed a copy of confirmation received from the lender but no details regarding creditworthiness of lender and genuineness of the transaction were filed. Even before us, the assessee could not controvert the finding of the ld. CIT(A) by bringing any positive material on record. Therefore, we confirm the finding of the ld. CIT(A) in this regard. Thus, ground no.1 & 2 raised in the appeal of the assessee are dismissed on the present issue. Accordingly, assessee's appeal for the assessment year 2012-13 and departmental appeals for the assessment years 2013-14 & 2014-15 are dismissed.

M/s. Om Construction, Bhopal

In IT(SS)A No.64/Ind/2020 for the assessment year 2013-14, the Revenue has raised the following grounds of appeal:

- “1. On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.50,00,000/- made by the Assessing Officer on account of admission of additional income u/s 132(4) of the I.T. Act.
2. On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.1,55,50,000/- made by the Assessing Officer on account of unexplained unsecured loan.”

In IT(SS)A No.65/Ind/2020 for the assessment year 2014-15, the

Revenue has raised the following grounds of appeal:

- “1. *On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.7,50,00,000/- made by the Assessing Officer on account of admission of additional income u/s 132(4) of the I.T. Act.*
2. *On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.1,83,50,000/- made by the Assessing Officer on account of unexplained unsecured loan.”*

11. From perusal of the abovementioned grounds, only two issues with regard to surrender of additional income u/s 132(4) and unexplained unsecured loan are involved in both the departmental appeals. Both the parties submitted that the facts and issues are identical to the case of Om Builders (above), therefore, the arguments advanced in the case of Om Builders may be considered in the case of Om Construction too. We find that the facts and issues are identical to the case of Om Builders, therefore, our order passed in the case of Om Builders shall prevail in the case of Om Construction too. Thus, by following the same discussion and reasoning thereof recorded in the case of Om Builder in the foregoing paragraphs, we do not find any infirmity in the order of the ld. CIT(A) on both the issues under appeals of the Revenue. Accordingly, both these departmental

appeals are dismissed for the assessment years 2013-14 & 2014-15.

M/s. Sainath Builders and Colonisers, Bhopal

In ITA No.268/Ind/2020 for the assessment year 2014-15, the Revenue has raised the following grounds of appeal:

- “1. *On the facts and in circumstances of the case, ld. CIT(A) has erred in deleting the addition of Rs.1,98,43,500/- made by the Assessing Officer on account of unexplained unsecured loan.*”

12. Both the parties submitted that the facts and the above issue are identical to the case of Om Builders (above), therefore, the arguments advanced in the case of Om Builders may be considered in the case of M/s. Sainath Builders and Colonisers, Bhopal too. We find that the facts and the above issue are identical to the case of Om Builders, therefore, our order passed in the case of Om Builders shall prevail in the case of M/s. Sainath Builders and Colonisers, Bhopal too. Thus, by following the same discussion and reasoning thereof recorded in the case of Om Builder in the foregoing paragraphs, we do not find any infirmity in the order of the ld. CIT(A) on the present issue under appeal of the Revenue. Accordingly, the present departmental appeal is dismissed for the assessment year 2014-15.

13. Finally, the assessee's appeal i.e. IT(SS)A No.18/Ind/2020 is dismissed whereas the departmental appeals i.e. IT(SS)A Nos.62 & 63/Ind/2020 in case of Om Builders, Bhopal, departmental appeals i.e. IT(SS)A Nos.64 7 65/Ind/2020 in case of Om Construction, Bhopal and departmental appeal i.e. ITA No.268/Ind/2020 in case of M/s. Sainath Builders & Colonisers, Bhopal are also dismissed.

Order was pronounced as per Rule 34 of I.T.A.T., Rules 1963 on 26.11.2021.

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 26.11.2021

!vyas!

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

By order

Assistant Registrar, Indore