

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 Nos. 1299/JP/2019  
निर्धारण वर्ष/Assessment Year :2013-14

Deputy Commissioner of Income Tax, Central Circle-01, Jaipur	बनाम Vs.	Late Smt. Pushpa Goyal, Through Legal Heir, Shri Munna Lal Goyal, B-40A- Ganesh Marg, Bapu Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG3686N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA Nos. 1300/JP/2019  
निर्धारण वर्ष/Assessment Year :2014-15

Deputy Commissioner of Income Tax, Central Circle-01, Jaipur	बनाम Vs.	Late Smt. Pushpa Goyal, Through Legal Heir, Shri Munna Lal Goyal, B-40A- Ganesh Marg, Bapu Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG3686N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA Nos. 1301/JP/2019  
निर्धारण वर्ष/Assessment Year :2015-16

Deputy Commissioner of Income Tax, Central Circle-01, Jaipur	बनाम Vs.	Late Smt. Pushpa Goyal, Through Legal Heir, Shri Munna Lal Goyal, B-40A- Ganesh Marg, Bapu Nagar, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG3686N		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by : Sh. B. K. Gupta (PCIT)  
निर्धारिती की ओर से/ Assessee by : Shri P. C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 22/10/2021  
उदघोषणा की तारीख / Date of Pronouncement: 03/01/2022

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are three appeals filed by the Revenue against the orders of Id. CIT(A)-04, Jaipur dated 13.09.2019 pertaining to AY 2013-14, 2014-15 & 2015-16. Since the common issues are involved, both these appeals were heard together and are being disposed off by this consolidated order.

2. With the consent of both the parties, the case of the assessee in ITA No. 1299/JP/2019 is taken as the lead case for the purposes of present discussion wherein the Revenue has taken the following grounds of appeal as under:-

*"1. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A)-4, Jaipur is justified in ignoring the evidence of "On-money" found of cloud data and deleting the addition of Rs.1,90,08,157/- made by the AO.*

*2. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A)-4, Jaipur is justified in ignoring the fact that the asset sold was stock in trade of the assessee and deleting the addition of Rs. 3,65,421/- made by the AO on account of disallowance of indexation cost.*

*3. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A)-4, Jaipur is justified in treating the shops sold as capital asset instead of stock in trade.*

*4. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A)-4, Jaipur is justified in ignoring the fact that entries pertaining to 'On-money' were found in N Trading cloud and thus addition of 'on money' was on the basis of incriminating seized data.*

*5. Whether on the facts and in the circumstances of the case and in law, Ld. CIT(A)-4, Jaipur is justified giving relief to the assessee on the*

*ground that the Manglam Group had owned up the entire entries in the N Trading on cloud data before the Hon'ble ITSC. The order of Hon'ble ITSC has already been challenged in writ before the Hon'ble High Court."*

3. Briefly stated, the facts of the case are that the assessee has filed her original return of income u/s 139 on 05.08.2013 at a total income of Rs. 42,89,950/- which was revised u/s 139(5) on 31.05.2015 at a total income of Rs. 1,54,33,880/-. Subsequently, a search and seizure operation u/s 132(1) was carried out on 04.11.2016 at the various premises of M/s Mangalam Group, Jaipur. The residential premises of the assessee were also covered in the said search operation. Thereafter, notice u/s 153A was issued and in respect of the said notice, the assessee furnished her return of income on 31.10.2018 declaring total income of Rs. 1,54,33,880/-. Thereafter, notice u/s 143(2) as well as 142(1) was issued and specific show cause notice was issued to the assessee on 20.12.2018 regarding on-money on sale of shops in the JEM complex. In response to the show cause notice, the assessee submitted her reply which was considered but not accepted by the Assessing Officer and addition of Rs. 1,90,08,157/- was made u/s 68 read with section 115 BBE of the Act on account of 'on money' on the JEM Project during the year under consideration.

4. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) who has since deleted the said addition. Against the said decision and findings of the Id. CIT(A), the Revenue is in appeal before us.

5. During the course of hearing, the Id. PCIT/DR took us through the findings of the Assessing Officer and it was submitted that during the course of search action, a development agreement dated 09.11.2009 was found and seized as per which various members of the Goyal family entered into an agreement with M/s Mangalam Housing and Developers and wherein the Goyal family was the owner of the land situated at B-1, Gopalpura Bypass which was

decided to be developed in a multi storied commercial complex. This commercial complex was named 'JEM Electronic Market'. It was submitted that as per the said agreement, the sale proceeds from the shops in the said commercial complex were to be divided in the ratio of 50:50 between the owner and developer. Thereafter, supplementary development agreement was signed dated 1<sup>st</sup> of April, 2012, as per this agreement the sale distribution ratio was changed to 40:60 i.e., the owner was to receive 40% of the sales and the developer was to receive 60%. The share of Goyal family was further divided whereby the assessee was to get 30.60% of the share of Goyal family.

6. It was further submitted by the Id PCIT/DR that during the course of search at the office premises of M/s MBDL Pvt. Ltd., a cloud tally data by the name of N. Trading Co. was seized. From this tally data, evidences were found that 'on money' had been received in the JEM project by the Goyal family and the Developer which was distributed by the owner of the said developer in the ratio of 40:60. It was submitted that basis the said documents and data found during the course of search that the assessee had received "on money" on sale of shops in the JEM Complex, a show cause was issued to the assessee on 20.12.2018. Further, our reference was drawn to the findings of the Assessing Officer, after considering the submissions so filed by the assessee, which are contained at para 7.1 to 7.6 of the assessment order which reads as under:-

*"7.1 Firstly, the assessee has simply denied having any knowledge of the N. Trading Co. Cloud entries found in his name. Now the moot question arises that can denial on the part of the assessee be treated as proof of the fact that the entries found in the cloud do not pertain to him. The answer is "No." In order to discharge the burden the assessee needs bring forth something more than simple denial. The denial by the assessee holds no substance when M/s MBDL has itself owned up the entire cloud entries while filing its petition before the Hon'ble ITSC. M/s MBDL has admitted that the contents of the unaccounted tally data found on cloud are correct and has offered it for taxation. When one party of the transactions under consideration has held the contents of the cloud data are correct, then the second party to the transaction (in*

*this case the assessee) needs to bring forth more evidence which could substantiate his stand that no such transaction had taken place.*

*7.2 The assessee has submitted that the data contained on the cloud has been corrupted during the search process, and thus the data is unreliable. This claim of the assessee is highly absurd. It is a fact that best of experts are called for during the search proceedings and the entire process of copying the data from the computers, laptops, mobile phones and other such devices is done in front of the assessee, had it been the case that the data in the hard disk was corrupt M/s MBDL from whom premises the said cloud was recovered would have raised the objection both during and after search. On the other hand M/s MBDL Pvt. Ltd. has owned up the entire data before the Hon'ble ITSC and has not raised any objection about the corruption of the said data.*

*7.3 The assessee has held that there is no evidence against him no paper or document was found in the handwriting of the assessee thus, provisions of section 292C of the I.T. Act, 1961 do not apply on him. At this point it is relevant to discuss section 132 (4A) of the I.T. Act, 1961 whereby the Act allows the creation of a legal fiction by making certain presumptions. As per section 292C(1) of the I.T. Act, 1961:*

*Presumption as to assets, books of account, etc.*

*292C. (1) Where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search under section 132 or survey under section 133A, it may, in any proceeding under this Act, be presumed-*

*(i) that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person;*

*(ii) that the contents of such books of account and other documents are true; and*

*(iii) that the signature and every other part of such books of account and other documents which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a document stamped, executed or attested, that it was duly stamped and*

*executed or attested by the person by whom it purports to have been so executed or attested.*

*In this case the assessee has simply tried to shift the onus on the department by resorting to denial. Denial does not have any evidentiary value, on the other hand the incriminating cloud data is a speaking document of evidentiary value, as the same has been owned up in totality by M/s MBDL Pvt. Ltd. before the Hon'ble ITSC. The admission in this case has been made by M/s MBDL Pvt. Ltd. and MBDL has continuously refused to disclose the details of the persons with whom this transaction was made. In such a scenario the N Trading entry under consideration pertain to the assessee.*

*7.4 The assessee has alleged that the evidence of 'on money' found against him is nothing but a presumption and assumption. However such a presumption is a rebuttable one and the assessee has tried to rebut the presumption by submitting that he has never engaged in any of the "on money" transactions which are being reflected on the N. Trading Cloud and he has no knowledge of any such transaction. A rebuttable presumption is clearly a rule of evidence which has the effect of shifting the burden of proof by leading the evidence. The word "rebuttable" here means that the person against whom it lies can rebut it when called upon to prove it, which means that the party who denies and doubts the document can claim that the content of the document is not true. However, for that he has to adduce evidence, in absence of any evidence presumption holds true and has not been rebutted successfully.*

*7.5 Further, the assessee has submitted that during the year under consideration many of the entries are repeating twice or thrice and some entries have been squared up in the subsequent years. In this regard it is submitted that the reply of the assessee on this issue is accepted and accordingly the total "on money" received on the JEM project for the current A.Y. comes at Rs.15,52,95,400/-. In this the share of the assessee comes at Rs.1,90,08,157/- (40% of Rs.15,52,95,400/- = which is 30.60% of Rs. 6,21,18,160/-) (40% Rs. 15,52,95,400/- .i.e. Total on money received by owner and developer = Rs. 6,21,18,160/-)*

*7.6 Thus, addition of Rs. 1,90,08,157/- is being made u/s 68 of the I.T. Act, 1961 r.w.s. 115 BBE of the Act to the income of the assessee on the ground that the assessee has received "on money" on the JEM project*

*during the year under consideration and has not disclosed this amount in his return of income. Penalty u/s 271 (1)(c) is being initiated for concealment of income."*

7. It was further submitted by the Id PCIT/DR that Id. CIT(A) has failed to consider the evidences found during the course of search and has deleted the addition on the ground that M/s MBDL Pvt. Ltd has owned up all the data found in cloud as belonging to them and has offered the same before the Settlement Commission and the same has been accepted by the Settlement Commission vide its order dated 16.05.2019. It was submitted that the order of the Settlement Commission has not been accepted by the Revenue and the same has been challenged in writ before the Hon'ble Rajasthan High Court which is currently pending adjudication.

8. Per contra, the Id. AR submitted that in search of the assessee, no document or material was found to indicate that the assessee has received any 'on money' on sale of the shops/office at JEM Project. The addition has been made on the basis of the alleged tally data found from the premises of MBDL. On the basis of these data, no addition can be made in the hands of the assessee for the following reasons:-

(i) The assessee is only a land owner. She is not participating in day to day activities relating to this project and all the development work as well as sale, booking, etc. All these work are carried out by MBDL. She neither has any knowledge of the alleged 'on money' collected by the builder nor received any 'on money' from the builder.

(ii) The documents and soft data referred by the AO were seized from the business premises of MBDL and not from the residence of the assessee. Hence these data can't be used against the assessee.

(iii) During the course of search of assessee, statement of Shri Munna Lal Goyal, family head of assessee was recorded wherein certain questions relating to Jaipur Electronics Market was put to him. In response to these questions, Sh. Munna Lal Goyal categorically stated that neither he nor any of his family members are involved in booking/ sale of offices/ shops in JEM. All these activities were looked after by MBDL. His family members have only received their respective share in the sale proceeds as specified in the sale deed as per the development agreement.

(iv) In search of the assessee, no document or data or any material or evidence was found to suggest that she or her family members have received any 'on money' on sale of offices/ shop situated in JEM. The cloud data or accounts of N. Trading Company found from MBDL premises do not indicate that any 'on money' has been paid to the assessee.

(v) The presumption of section 292C is that where any books of accounts or other documents etc. are found in the possession and control of any person in course of search u/s 132, it may be presumed that such books of accounts or other documents etc. belongs to such persons and the contents of the same are true. Therefore the data found from the premises of the MBDL can be considered as true only in case of MBDL, unless and until any material is brought on record that the same is also true in respect of the person in whose name such data is recorded. It is not the case of the AO that the director of MBDL has stated that the 'on money' recorded in the tally data has been shared with the assessee. It is for this reason that MBDL in the settlement petition filed before the Hon'ble Commission accepted that all these transactions pertains to them and on that basis they have filed the settlement petition and the Settlement Commission has settled the income of the MBDL vide its order dated 16.05.2019. This fact was also mentioned by the AO. Therefore, no adverse inference on the basis of such data found from third party can be drawn in the hands of assessee specifically when no evidence of

parting of 'on money' with the assessee was found in search. In this connection reliance is placed on the following cases:-

- Jai Kumar Jain Vs. ACIT (2006) 99 TTJ 0744 (Jaipur) (Trib.)

It was held that addition in the instant case was made on the basis of the papers found from 'A' (Third Party). In search these papers were not confronted to the assessee. From the assessment order it was not borne out whether 'A'(Third Party) had stated these papers as pertaining to the assessee. No presumption could be drawn against the assessee u/s 132(4A) in respect of paper not recovered from him. No addition can be made on the basis of documents found from third party in the absence of corroborative evidence. Therefore, the Assessing Officer as well as the Commissioner of Income Tax(A) erred in making the addition on the basis of said papers in the hands of assessee. Hence, the entire addition made on the basis of papers found from 'A' (Third party) was to be deleted.

- Prarthana Construction (P) Ltd. Vs. DCIT (2001) 118 Taxman (Magz.) 112 (Ahmedabad) (Trib.)

It has been held that loose papers and documents seized from premises of third parties and statement recorded at back of assessee without it being afforded opportunity to interrogate said documents and without bringing on record any supporting evidence, could not be made basis for adding undisclosed income in hands of assessee.

- ACIT Vs. Miss Lata Mangeshkar (1974) ITR 696 (Mumbai)

It has been held that on appreciation of evidence on record, that entries in the ledger of a firm (third party) did not represent assessee's income from undisclosed sources, was finding of the fact not giving rise to any referable question of law.

9. It was further submitted that MBDL has owned up all the data found in cloud as belonging to them. On the basis of the same, it filed settlement petition before Settlement Commission on 28.03.2018. As per the petition filed by MBDL before the Hon'ble Settlement Commission, the following 'on money' receipts were considered for computing the income:-

Particulars	Total Receipts of 'On money'	Amount of such 'On money' receipts related to JEM as declared by MBDL
Booking Receipts	6,90,12,13,000	14,09,03,400
Settled Booking Receipts	3,67,74,14,100	18,76,04,460
Total	10,57,86,27,100	32,85,07,860

From this on money, after considering the expenditure incurred, MBDL has offered additional income of Rs.80.07 cr. (Rs.72.33 cr. + Rs.7.75 cr.) before the Settlement Commission which was accepted at Pg 57 of the order u/s 245D(4) dated 16.05.2019. Thus, when the 'on money' relating to JEM project recorded in the cloud data has been accepted and considered by MBDL in working out the additional income admitted in the settlement petition filed before the Hon'ble Settlement Commission and the same is also accepted, the same on money can't be again taxed in the hands of assessee as it would amount to double addition. Merely because a writ has been filed before the Hon'ble High Court against the order of Hon'ble ITSC (it is not known as to on which issue the writ is filed) cannot be a ground to tax the alleged on money in the hands of assessee.

10. It was further submitted that similar issue has been decided by Hon'ble ITAT Jaipur Benches in case of Sh. Jugal Kishore Garg (Derawala) where also the AO on the basis of cloud data of N. Trading Co. seized during the course of search carried out in case of M/s Manglam Group, Jaipur made various additions. The Ld. CIT(A) deleted the addition made by AO. Against the order

of Ld. CIT(A), department filed an appeal before Hon'ble ITAT, Jaipur Bench. The Hon'ble ITAT vide order dt. 14.09.2020 in ITA No.34 to 37/JP/2020 after considering the submission of assessee observed that Sh. N.K. Gupta, main person of M/s Manglam Builder & Developer Ltd. (MBDL) had already owned up all the data found in cloud as belonging to them. On the basis of same, MBDL filed the settlement petition before Settlement Commission which was accepted. Accordingly, Hon'ble ITAT held that since the amount had already been subjected to tax in the hands of MBDL and related entities, therefore, Ld. CIT(A) has rightly deleted the addition.

11. In view of above, it was submitted that the Id CIT(A) has rightly appreciated the facts and circumstances of the case and has deleted the additions so made by the AO and our reference was drawn to his findings which read as under:

*"6. Careful perusal of the order passed by the AO indicates that the Ld. AO has based his decision to make the addition on the basis of the following:-*

*(i) Appellant has not given any proof that no such amount of 'on money' is received. Simply denying the receipt cannot be accepted.*

*(ii) MBDL has owned up the transaction while filing the petition before Settlement Commission. Thus, where one party has accepted the transaction, the same is correct for other also.*

*(iii) As per section 292C, the presumption provides that where any books of accounts, documents etc. are found in the possession or control of any person in course of search u/s 132 then it is presumed that the same belongs to such person.*

7. *I have perused the written submissions submitted by the Ld. AR and the order of the AO. I have also gone through the various case laws cited by the Ld. AR. I have also gone through the common paper book filed along with the order of the settlement commission in case of MBDL.*

8. *After careful perusal of the Ld.AO order and submission, I am not in agreement with the conclusion drawn by the AO for the following reasons:-*

(i) *In search of the assessee no document or material was found to indicate that the assessee has received any 'on money' on sale of the shops/office at JEM Project.*

(ii) *The assessee is only a land owner. He is not participating in day to day activities relating to this project and all the development work as well as sale, booking, etc. All these work are carried out by MBDL. He did not receive any 'on money' from the builder as evident from the seized documents also.*

(iii) *The documents and soft data referred by the AO were seized from the business premises of MBDL and not from the residence of the assessee. Hence these data can't be used against the assessee in the absence of any evidence contrary to that found in search of the assessee.*

(iv) *During the course of search of the appellant statement of Shri Munna Lal Goyal, family head of assessee, was recorded wherein certain questions relating to Jaipur Electronics Market was put to him. In response to these questions Sh. Munna Lal Goyal stated that neither he nor any of his family members are involved in booking/sale of offices/ shops in JEM. All these activities were looked after by MBDL. His family members have only received their respective share*

*in the sale proceeds as specified in the sale deed as per the development agreement. (Q. No. 27 to 29 of the statement)*

*(v) In search of the assessee no document or data or any material or evidence was found to suggest that assessee or his family members have received any 'on money' on sale of offices/ shop situated in JEM. The cloud data or accounts of N Trading Company found from MBDL premises do not indicate that any 'on money' has been paid to the assessee.*

*(vi) The presumption of section 292C is that where any books of accounts or other documents etc. is found in the possession and control of any person in course of search u/s 132, it may be presumed that such books of accounts or other documents etc belonging to such persons and the contents of the same are true. Therefore the data found from the premises of the MBDL can be considered as true only in case of MBDL, unless and until any material is brought on record that the same is also true in respect of the person in whose name such data is recorded. It is not the case of the AO that the director of MBDL has stated that the 'on money' recorded in the tally data has been shared with the assessee.*

*(vii) MBDL has owned up all the data found in cloud as belonging to them. On the basis of the same it filed settlement petition before Settlement Commission on 28.03.2018. As per the petition filed by MBDL before the Hon'ble Settlement Commission the following 'On money' receipts were considered for computing the income:-*

<i>Particulars</i>	<i>Total Receipts of 'On money'</i>	<i>Amount of such 'On money' receipts related to JEM as declared by MBDL</i>
<i>Booking Receipts</i>	<i>6,90,12,13,000</i>	<i>14,09,03,400</i>
<i>Settled Booking Receipts</i>	<i>3,67,74,14,100</i>	<i>18,76,04,460</i>
<i>Total</i>	<i>10,57,86,27,100</i>	<i>32,85,07,860</i>

*From this on money after considering the expenditure incurred, MBDL has offered additional income of Rs. 72.32 cr. before the settlement commission which was accepted by it at page 53 to 58 of the order u/s 245D(4) dated 16.05.2019.*

*8.2 Thus considering the factual and legal position especially the settlement petition filed by MBDL and order of the settlement commission, I am of the view that the 'on money' received in the JME project belongs to MBDL only. MBDL has offered the same before the settlement commission and the same has been accepted by the Hon'ble Settlement Commission vide order dated 16-05-2019. No evidence was found in search to indicate that appellant has received any share in 'on money'. Therefore the addition made for alleged share in on money received by MBDL in the JME project is directed to be deleted. The appellant gets relief in Ground No. 1 & 2 of AYrs. 2013-14 to 2016-17."*

12. In his rejoinder, the Id PCIT/DR submitted that the Revenue has not accepted the aforesaid decision of the Coordinate Jaipur Benches in case of Jugal Kishore Derawala and a writ petition has been filed before the Hon'ble Rajasthan High Court for A.Y 2014-15 and A.Y 2015-16 which is currently pending adjudication.

13. We have heard the rival contentions and perused the material available on record. In case of **DCIT Central Circle 1 vs Shri Jugal Kishore Garg** (supra), the Coordinate Jaipur Benches of the Tribunal has held as under:

*"3.8 We have heard the Id. counsel for both the parties, we have also perused the materials placed on record, deliberated upon the judgement cited by both the parties as well as the orders passed by the Revenue authorities. From the facts of the present case, we noticed that the*

*assessee is a partner in different firms and details of which have already been submitted in preceding paragraphs of this appeal. The assessee had declared the income from house property, capital gains and interest from the respective parties during the year under consideration and original return for the assessment year 2014-15 was filed u/s 139(1) of the Act on 31-01-2015 at Rs. 6,25,35,780/-. A search and seizure operation was carried out on 4-11-2016 at the various premises of M/s. Mangalam Group, Jaipur and pursuant to this the AO issued notice u/s 153C of the Act for the assessment years 2014-15 to 2016-17 to the assessee. In compliance of the notice, the assessee has filed his return of income which has been tabulated in preceding paragraph of this appeal. The assessee has also filed his return of income on 30-10-2017 for the assessment year 2017-18 declaring total income at Rs. 3,32,32,940/-. Thereafter, the AO completed the assessment u/s 143(3) read with Section 153C of the Act for the respective assessment years 2014-15 to 2017-18 as per the following total income tabulated as under:-*

<i>AY</i>	<i>Dated</i>	<i>Assessed income (Rs.)</i>	<i>Addition made by the AO</i>
2014-15	28.12.2018	20,21,48,150/-	(i) Addition of Rs. 10,34,68,000/- u/s 69 of the Act on account of alleged undisclosed capital employed by the appellant in various projects of Manglam Group on the basis of cloud data. (ii) Addition of Rs. 2,46,25,600/- on account of surplus share profit in projects of Manglam Group on the basis of cloud data. (iii) Addition of Rs. 85,00,000/- on account of interest earned on the basis of cloud data.
2015-16	28.12.2018	8,78,62,760/-	(i) Addition of Rs. 2,82,97,500/- on account of surplus share profit in projects of Manglam Group on the basis of cloud data. (ii) Addition of Rs. 1,00,00,000/- on account of surplus interest from Manglam Group on the basis of cloud data.

2016-17	28.12.2018	28,56,88,120/-	<p>(i) Addition of Rs. 1,50,00,000/- u/s 69 of the Act on account of alleged undisclosed capital in cash employed by the assessee in various projects of Manglam Group on the basis of cloud data.</p> <p>(ii) Addition of Rs. 25,89,900/- on account of surplus share profit in projects received in cash from Manglam Group on the basis of cloud data.</p> <p>(iii) Addition of Rs. 14,24,800/- on account of surplus interest from Manglam Group on the</p>
2017-18	28.12.2018	4,04,51,940/-	Addition of Rs. 70,94,000/- on account of on-money received against booking of flats on the basis of cloud data of the person who owned that these transactions are only his transactions and paid tax and offered the transactions in

*3.10 After meticulously going through the facts of the case and submissions of the parties at length, we found that the transaction recorded in the cloud data of N Trading was owned up by the main person of the company MBDL with regard to the transactions like transactions under the heading of unsecured loans (receipt and payment) and consequent interest payment thereof. We have also gone through the order of the Hon'ble Settlement Commission dated 16-05-2019 passed in the case of MBDL and have also gone through the statement of Shri N.K. Gupta, main person of MBDL group wherein we found that M/s. Mangalam Builder & Developer Ltd.(MBDL) had already owned up all the data found in cloud as belonging to them. On the basis of the same, it filed settlement petition before Settlement Commission on 28.03.2018. As per the petition filed by MBDL before the Hon'ble Settlement Commission the 'peak deposit' of unaccounted Capital introduced, loans and advances and interest paid and received was considered for computing the income. Accordingly income of Rs.15.10 cr. was offered on the basis of cloud data of N. Trading Company. The same is accepted by the Settlement Commission at page 151 of the order*

*dated 16.05.2019. The relevant extract of the final order wherein this issue is discussed is reproduced as under:-*

*Para I of Page. 137-138 of the Hon'ble Settlement Commission order*

*"UNACCOUNTED CASH LOANS - CHAPTER VII OF THE RULE 9 REPORT: (page no. 128-180 of the Report):-As offered by the Applicants: Cash Peak Of Cash Loans And Capital Transactions: Rs.15,10,77,500/- .As was the case with the capital introduction by the partners, in the Data found in tally P1 and P2 and also in the seized cash book, all seized pursuant to search, there were found recorded entries with regard to cash loans introduced in the business shown to have been received from various persons directly as well as through certain finance brokers. Repayment of the said loans along with interest on the same was also all found recorded in the Tally data. The line of business of the Applicant group, as has been discussed earlier, was such that required huge sums of cash. For purposes of the said, huge sums of unsecured loans in cash were thus taken from the market to meet the requirements and as cash was generated from booking of flats/units/plots, the said loans were periodically repaid. Interest on the loans all in cash, were also paid. In the search conducted, in the seized data, all such complete recordings of loan received, repaid and interest paid was all found. However, during the course of the search itself, since these entries could not be explained by filing confirmation of parties, these cash loans were accepted to be the undisclosed income of the Applicant group in order to buy peace. Thus based on the above, therefore, to determine the net funds generated in business, peak of the loan accounts (including the capital cash entries) was worked out. It was the contention of the Applicant that the loan introductions/repayment and the capital introduction/withdrawals all represented inflow/ outflow of funds in the business and thus in the spirit of settlement, the peak of the same was offered as the undisclosed income of the Applicant group. In the working of such peak, the following cash entries relating to loans were considered: (the peak working is enclosed at pages 422-439 of the P/B).*

- *Receipt of unsecured loans.*
- *Repayment of unsecured loans.*
- *Interest paid or received on cash loans. The same being settled in cash, the same is included in the peak calculations.*

*Thus based on the above, the peak of the cash transactions was arrived at Rs. 15,10,77,6001 and the same, being the business income of the Group was thus offered as the Additional income of the group."*

*Para 2.5 Page No. 141 of the Hon'ble Settlement Commission order*

*"Thus, based on the above, the Applicant, in the event of loan confirmations being not readily available, in the spirit of settlement, has considered all these loan transaction as his own transaction. In the tally data both receipt of loan as well as repayment of loan is recorded. The loans raised from one party is*

*utilised in the business activities of the group and out of such business receipts or further loan raised, repayment is made of the earlier loan."*

**Para 7.7 (Findings of the Commission) Page No. 151 of the Hon'ble Settlement**

**Commission order**

*"The Commission has considered the submissions made by both parties. After going through the facts of the case the commission finds merit in the contention of the applicants that in computation of Peak the debit entries must also be considered. The contention of the Pr. CIT that the applicants are not entitled for any benefit of debit entries in calculation of peak values does not hold ground. The position of the Applicants get further force from the fact that the entries based on which applicants have computed the Peak value, are recorded in the data found in search and seizure.*

*Based on the above the contention of the applicants on the quantum of the peak as offered as undisclosed income of Rs. 15,10,77,600/- is hereby accepted."*

*3.11 In respect of surplus, the Id. CIT(A) observed that it may point out that as per the petition filed by MBDL before the Hon'ble Settlement Commission the 'on money' of received by the Group on its various projects was considered for computing the income. In its admissions made before the Hon'ble Settlement Commission, MBDL has explained the nature of such 'surplus' which was credited to the partner's accounts. .In fact the same represent 'on money'. Accordingly income of Rs.80.07 cr. (Rs.72.33 cr. + Rs.7.75 cr.) was offered on the basis of cloud data of N. Trading Company. The same is accepted by the Hon'ble Settlement Commission at page 57 of the order dated 16.05.2019. The relevant extract of the final order wherein this issue is discussed is reproduced as under:-*

**Para 21.2 of Page. 11 of the Hon'ble Settlement Commission order**

**21.2 Amount of Settled Booking Advances in Tally Data**

*The Applicant Group received booking advances from its various customers in various projects in cash, which got "settled" when the entire 'on-money' due from the customer was received. In the tally data, such receipts have been distributed in capital account directly with account description 'surplus'. The nature of these booking advances was identical to unsettled booking advances as explained above,*

*however, in such cases, no money remained further due from customers as far as 'cash component' was concerned, though, projects remains yet to be delivered to the customer. In the Tally Data, the said information is available with account head 'Surplus' for various schemes like "Surplus Ananda", 'Surplus Ajmer Road, 'SurplusVaishali Estate'. All such bookings are termed as Settled bookings for ready reference since in such cases, cash component has already been received/settled with customers. These advance bookings are also not revenue of the year of receipt, however, to determine overall profitability/cash profit, the said amount has been considered as 'revenue' in computation of additional income. The total of such Settled Booking received in cash as available in Tally data comes at Rs.382.89 Crores. Thus in total there has been receipt of booking advances in cash ('on money') of Rs. 684 Crore (301.11 cr. + 382.89 cr.), which is treated as revenue for the purpose of offer of additional income though the same is amount representing liability of the Applicant(s) is given in Enclosure I.*

Para 6.4 of page. 33 of the Hon'ble Settlement commissioner order

- *In the Tally Data, on the date on which the on money was all settled, the earlier cash receipts against "booking advances" were all deleted and on the said date of final settlement, a fresh consolidated cash entry was passed wherein cash was debited and the "Surplus - Project Name" Account was credited.*
- *After transfer of the settled receipts to the Surplus A/c, the said on money was transferred to the partners/directors of the Group by debiting the said Surplus Account and crediting the Partners Accounts with the description "being surplus after deletion credited to partners". Thus the Partners were given control of the funds for its proper utilisation for purposes of the Projects. The Term "Surplus" was a nomenclature used to identify the Settled on money which was put under the control of the Partners/Directors.*
- *These entire receipts thus are booking receipts, which are revenue in nature and have already been considered and offered as revenue on-money income in our working.*
- *Further regarding the utilization of the funds as pointed out the Ld. PCIT, it is submitted that above-mentioned surplus, being revenue in nature (earned by way of on money), was utilized was meeting various expenditures like utilization of land, for other construction cost and all other expenses related to business.*

Para 6.8 of Page. 57 of the Hon'ble Settlement Co mmission order

*Based on the above the total undisclosed income of the applicants of the Group is settled at Rs.80,07,69,,990/- on the issue of cash profit. The amount of undisclosed income settled in respect of the applicants in the respective assessment years are given in the following table.''*

*In view of above, the Id. CIT(A) observed that it is evident that the surplus being referred to by the Ld. AO is not profit from the projects but*

*the receipts of 'on money' credited to the capital accounts of the partners which has been considered in the additional income offered by MBDL and accepted by the Hon'ble Settlement Commission.*

*3.12 Thus on merits also since the amounts had already been added by the AO and the same had already been subjected to tax in the hands of MBDL and related entities, therefore, the Id. CIT(A) after considering all those facts had correctly deleted the addition made in various assessment years. The Bench also noted that no new facts have been brought by the Revenue in controverting the order of the Id. CIT(A) to the issue in question. In this view, of the matter, we find no reason to interfere with the order of the Id. CIT(A). Thus the appeal of the Revenue for the assessment year 2014-15 is dismissed."*

14. In the aforesaid decision, it is noted that pursuant to search action in case of M/s Manglam Group, the action was taken in the hands of the assessee u/s 153C of the Act based on transactions in "N Trading Company" found on cloud data found and seized during the course of search and the assessment was completed u/s 143(3) r/w 153C for A.Y 2014-15, 2015-16, 2016-17 and 2017-18 wherein addition on account of unaccounted/undisclosed capital employed in various projects of the Manglam Group, addition on account of surplus share in profits in various projects and addition on account of interest earned on such capital employed were made by the Assessing officer. On appeal, the Id CIT(A) deleted the additions. While confirming the findings of the Id CIT(A), the Coordinate Jaipur Benches has recorded a categorical finding that M/s Manglam Builder & Developer Ltd had owned up all the "N Trading Company" data found in cloud as belonging to them. On the basis of the same, it filed settlement petition before Settlement Commission on 28.03.2018 and among other transactions, the nature of 'surplus' which was found credited in the partners's account represent "on money" in respect of various real estate projects being undertaken by M/s MBDL and basis the same, income of Rs 80.07 cr was offered on the basis of cloud data of N trading Company and

which was finally accepted by the Settlement Commission in its order dated 16.05.2019 and accordingly, where the amounts have been subjected to tax in the hands of MBDL and related entities, there is no infirmity in action of the Id CIT(A) in deleting the same in the hands of the assessee and appeals of the Revenue for all the three years were dismissed.

15. In the instant case as well, we find that pursuant to search action in case of M/s Manglam Group and where the assessee's premises were also searched, the action was taken in the hands of the assessee u/s 153A of the Act based on transactions in "N Trading Company" found on cloud data found and seized during the course of search at the office premises of M/s MBDL and the assessment was completed u/s 143(3) r/w 153A wherein addition on account of "on money" found in N Trading Company cloud data relating to JEM project amounting to Rs 1,90,08,157/- were made by the Assessing officer. On appeal by the assessee, the Id CIT(A), while adjudicating the merits of the case and which are under challenge before us, has again recorded a similar findings, as recorded by the Coordinate Benches in the aforesaid decision, that M/s Manglam Builder & Developer Ltd had owned up all the "N Trading Company" data found in cloud as belonging to them and basis the same, it filed settlement petition before Settlement Commission on 28.03.2018 and the "On money" receipts relating to various real estate projects totaling to Rs 1057.86 cr including 32.85 cr pertaining to JEM project has been declared by MBDL and after considering the expenditure incurred, MBDL has offered additional income of Rs 72.32 cr before the Settlement Commission and which has been accepted by the Settlement Commission in its order dated 16.05.2019 and accordingly, where "on-money" received in JEM project belong to MBDL and MBDL has offered the same which has been accepted and no evidence was found in search to indicate that the appellant has received any share in "on-money", the AO was directed to delete the additions in the hands of the assessee.

16. We therefore find that the facts of the aforesaid case are *pari-materia* arising out of same search action on M/s Manglam Group and same set of data

in form of "N trading Company" found in cloud data which has formed the basis of addition in the aforesaid case and the matter has already been examined by the Coordinate Jaipur Benches basis the filings and acceptance of MBDL's petition before the Settlement Commission and the addition has been deleted. The Revenue has not been able to highlight and demonstrate before us as to how the findings of the Coordinate Benches should not be followed in the instant case.

17. The fact that the order of the Settlement Commission has been challenged by the Revenue by way of writ before the Hon'ble Rajasthan High Court and similarly, the fact that another set of writ petitions have been filed before the Hon'ble Rajasthan High Court against the decision of the Coordinate Benches in case of Shri Jugal Kishore Garg for A.Y 2014-15 and A.Y 2015-16 cannot be the basis for not following the decision so passed by the Coordinate Benches in aforesaid case as nothing has been brought on record in terms of the specific grounds basis which the findings in aforesaid orders have been challenged by way of writ petition and secondly, whether the order of the Settlement Commission and that of the Coordinate Benches have been stayed by the Hon'ble Rajasthan High Court or not. Where the decision of the Coordinate Bench is not acceptable to the Revenue, the Revenue is well within its right to pursue the matter before the Hon'ble Rajasthan Court and however, till such time, the order of the Coordinate Bench is not stayed or overruled by the Hon'ble Rajasthan High Court, the assessee is well within his rights to draw support from the said decision. Where the matter is adjudicated by the Hon'ble Rajasthan High Court in favour of the Revenue, the Revenue is not without recourse and is free to take action as per law. Therefore, following the principle of consistency, where the Coordinate Jaipur Benches have already taken a view in the matter under identical set of facts and circumstances of the case and no restriction has been placed by the Hon'ble Rajasthan High Court in terms of effect and operation of the said order of the Coordinate Benches including following the same in other cases as facts and circumstances so

justify as in the instant case, we see no justifiable reason to deviate and take a different view in the matter and following the same, addition so made in the hands of the assessee is hereby held to be rightly deleted by the Id CIT(A) and we hereby affirm his findings in this regard and the grounds of appeal so taken by the Revenue are thus dismissed.

18. In respect of ITA Nos. 1300/JP/2019 pertaining to A.Y 2014-15 and ITA Nos. 1301/JP/2019 pertaining to A.Y 2015-16, both the parties fairly submitted that similar grounds of appeal have been taken by the Revenue and the facts and circumstances of the case are exactly identical to the facts and circumstances of the case in ITA No. 1299/JP/2019, therefore, our findings and directions contained therein shall apply *mutatis mutandis* to these appeals as well. The respective grounds of appeal so taken by the Revenue in these two appeals are also dismissed.

In the result, all the three appeals filed by the Revenue are dismissed.

Order pronounced on 03/01/2022.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 03/01/2022

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- DCIT, Central Circle-01, Jaipur
2. प्रत्यर्थी / The Respondent- Late Smt. Pushpa Goyal, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA Nos. 1299, 1300 & 1301/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar