

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

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

आयकर अपील सं./ITA. No. 1361 to 1363/JP/2019
निर्धारण वर्ष / Assessment Years : 2014-15 to 2016-17

Deputy Commissioner of Income Tax, Central Circle-1, Jaipur.	बनाम Vs.	Shri Ram Gopal Sarraf Khanda Bai Ji Ka, Manak Chowk, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHNPS 6705 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri B.K. Gupta (Pr.CIT)
निर्धारिती की ओर से / Assessee by : Shri S. R. Sharma (C.A.) &
Shri R.K. Bhatra (C.A.)

सुनवाई की तारीख / Date of Hearing : 14/10/2021
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 consolidated order passed by the Id. CIT(A)-4, Jaipur dated 01.10.2019 pertaining to assessment years 2014-15 to 2016-17. Since common issues are involved, all 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. 1361/JP/2019 for assessment year 2014-15 was taken as the

lead case wherein the Revenue has taken the following grounds of appeal:-

"1. Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A)-4, Jaipur is justified in ignoring the transactions found on cloud data and deleting the addition of Rs. 8,83,39,100/- made by the AO on account of unaccounted capital deployed by the assessee.

2. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A)-4, Jaipur is justified in ignoring the transaction found on cloud data and deleting the addition of Rs. 1,06,35,650/- made by the AO on account of unaccounted interest earned on cash loan/capital.

3. Whether on the facts and in the circumstances of the case and in law, Id. CIT(A)-4, Jaipur is justified in ignoring the fact that entries pertaining to unaccounted capital and advances were found in the N Trading cloud data, and thus addition of unexplained unaccounted capital, advances and interest earned were on the basis of incriminating seized data.

4. Whether on the facts and in the circumstances of the case and in law Id. CIT(A)-4, Jaipur is justified in 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 the facts of the case are that the assessee filed his original return of income on 27-3-2015 declaring total income of Rs. 46,75,520/- which was selected for scrutiny assessment and thereafter, the assessment was completed U/s 143(3) of the Act vide order dated 04.11.2016 accepting the returned income filed by the assessee. Thereafter, a search operation U/s 132 of the Act was carried out on various business premises of Manglam Group, Jaipur on

04.11.2016. Consequent to the said search action, the notice U/s 153C of the Act was issued to the assessee on 26.10.2018. In response to the said notice, the assessee furnished his return of income on 26.11.2018 declaring total income of Rs. 46,75,520/- as originally declared and assessed. Thereafter, notice U/s 143(2) of the Act was issued on 28.11.2018 followed by notice U/s 142(1) on the same date alongwith details questionnaire to which the assessee responded and filed the requisite submissions.

4. A show cause dated 12.12.2018 was thereafter issued by the Assessing officer and in the said show cause, it was stated by the Assessing officer that during the course of search and seizure action in the Manglam Group, large number of incriminating documents and data in the form of hard disk and other electronic storage devices were found and seized. It was further stated by the Assessing Officer that on perusal of the seized material, it is noticed that the assessee along with his brother are partners in a firm with other members of the Manglam Group and have developed some of the projects like Manglam Residency, The Grand Geejgarh, Geejgarh Tower, Kanakpura Project and Apex Mall. It was further stated by the Assessing Officer that the ledger account of Shri Ram Gopal Sarraf in the books of N. Trading Company is in the name of "RGS" and from the ledger account found in both the tally books (P and P1), it can be seen that the accounts of RGS are maintained project-wise, such as RGS Alwar, RGS Bhankrota, RGS Bikaner Manglam Greens, RGS Gulmohar Garden, RGS Kherwadi, RGS Natata, RGS Shree Krishna Construction & RGS Sunland Project. The nomenclature of ledger accounts itself reflect that Shri Ram Gopal Sarraf is a business partner in these projects by making capital

investment in cash as found recorded in the books of N. Trading Company. Thereafter, the Assessing Officer referred and reproduced the respective ledger accounts pertaining to financial year 2013-14 for each of the projects and stated that unaccounted capital investment in cash was made on various dates and interest was also credited from time to time on the funds invested by Shri Ram Gopal Sarraf (RGS) in the projects where he is a business partner and deployed his unaccounted capital in cash and after decoding of the figures, the total cash funds deployed/credited were found as under:-

<i>S. No.</i>	<i>Particular/Narration</i>	<i>Amount (in Rs.)</i>
<i>1.</i>	<i>Cash capital addition</i>	<i>8,83,39,100/-</i>
<i>2.</i>	<i>Interest credited on various dates</i>	<i>1,06,35,650/-</i>
	<i>Total</i>	<i>9,89,74,750/-</i>

5. The assessee was accordingly asked by the Assessing officer to show-cause and explain as to why these credit entries should not be treated as his undisclosed income and added to his total income and brought to tax.

6. In response to the show-cause, the assessee submitted that these transactions/entries/document/papers of N Trading Co. are not related with him. It was submitted that Mr. Nand kishor Gupta S/o Shri Rood Mai Gupta of Manglam Build-Developers Ltd. has given an affidavit stating that they have already considered these papers/transactions related to N Trading Company in their application filed

before the Settlement Commission. The records were found with Shri Nand Kishor Gupta and they had included these papers in their Settlement Commission petition, there is thus no justification to add this amount again in the case of the assessee. It was submitted that the original affidavit of Shri Nand Kishor Gupta was enclosed with reply filed by the assessee for A.Y 2014-15. Further, an affidavit of Shri Ram Gopal Sarraf, assessee was also enclosed declaring that transactions were not related to him and original affidavit was enclosed with reply filed for A.Y 2014-15.

7. The reply/submission so filed by the assessee in response to the show-cause was considered but not found acceptable to the AO for the following reasons which read as under:

"8.1 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.

8.2 Secondly, the assessee has held that evidence against him is nothing but presumption and conjecture. At this point it is relevant to discuss section 132 (4A) of the I.T. Act, 1961 whereby the Act itself allows the creation of a legal fiction by making certain presumptions.

8.3 When a presumption is being made, it is being presumed that the name "RGS" denotes no one else but the assessee under consideration and that the entries of unaccounted capital, surplus, cash loans and interest pertain to the assessee. 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 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.

8.4. 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. To elucidate this point further the statement of Sh. N. K. Gupta, Managing Director of M/s MBDL which was recorded during the course of search needs to be considered. When Shri N.K. Gupta was specifically asked to explain the nature of such transactions, he refused to disclose the name and complete address of these persons from whom such huge cash transactions were made. In the statement given by Shri N.K. Gupta he has submitted it clearly that in order to avoid litigation he will not disclose the names of the parties with whom these unaccounted transactions, were made. Every transaction has to have two parties, one being the recipient and the other being the giver or vice-versa. Cross examination can be fruitful only in a situation where either of the two parties are ready to disclose true information pertaining to the transaction under consideration. In this case on one hand M/s MBDL Pvt. Ltd. has held a decided position throughout the search proceedings and even before the Hon'ble ITSC whereby, it has decided to conceal the name of the parties with whom transactions were carried out in order to avoid litigation, buy peace of mind, and protect the other parties from legal consequences. On the other hand the assessee has simply denied the transaction. In a situation affidavit of Shri N.K. Gupta cannot be treated as evidence which reflects the truth. Therefore,

considering the facts of the case, reply of the assessee and the material available on record in the form of ledger entries found on N Trading Company accounts maintained by the MBDL Group, the following additions deserve to be made to the income of the assessee.

9. Addition on account of unaccounted capital employed in projects of Manglam Group

In absence of proper explanation by the assessee, addition on account of undisclosed capital employed by the assessee in the various Projects of Manglam Group deserves to be made. Hence, the total out of books cash capital of Rs. 8,83,39,100/- provided by the assessee to the Manglam Group is being added as his undisclosed investment u/s 69 r.w.s. 115BBE of the Act.

10. Addition on account of interest earned on cash loans/capital:

On analysis of ledger accounts as discussed in the previous paras the total interest on out of books cash loans and capital which has been earned by the assessee in the assessment year under consideration, comes to Rs. 1,06,35,650/. In absence of proper explanation by the assessee, this undisclosed interest income needs to be added to the income of the assessee. Hence, the total interest of Rs. 1,06,35,650/- received by the assessee from cash loans and capital given to the Manglam Group is being added u/s 68 r.w.s. 115BBE of the Act in the nature of being income from other sources."

8. Being aggrieved, the assessee carried the matter in appeal before the Id. CIT(A) wherein the assessee challenged the action of the Assessing Officer in initiating the proceedings U/s 153C of the Act by way of additional grounds of appeal contending that the cloud data was seized from the business premises of Manglam Group and key person of the Manglam Group owned up all of them as pertaining to their own affairs and thus the same pertains to and information contained therein relates to them and not to the assessee and secondly, the said cloud data cannot be termed as incriminating material found as pertaining to the assessee and therefore, no action can be taken u/s 153C of the Act. Besides that, on merits of the case, the consequent order passed by the Assessing Officer U/s 143(3) r.w.s. 153C of the Act was also challenged.

9. The Id. CIT(A) admitted the additional grounds of appeal wherein the assessee has challenged the initiation of the proceedings U/s 153C holding that the same is purely legal in nature and involves question of law and does not require any investigation or examination of fresh facts and can be decided on facts and material available on record. The Id. CIT(A) however negated the plea of the assessee that no incriminating material were seized from the premises of Manglam Group and held that seized material is apparently incriminating material and only adequacy of such seized material whether it pertains to the assessee or not needs to be examined. Thereafter, referring to the transactions as stated in the ledger account maintained in the cloud data in the name of N. Trading Company, the Id. CIT(A) has noted certain noticeable features in the said ledger account and his findings read as under:-

"1. All the transactions are in cash.

2. The heading of the ledger reads RGS Sunland project, RGS Natata, RGS Krishan Constn etc. other than the name there is no other parameter like address of the person or PAN mentioned in these accounts nor found or corroborated by inquiry.

3. Transactions in the said ledger are not relatable or corroborative by any other evidence. Further there is no correlation of transactions of N. Trading Company with the transaction in the regular books of either Mangalam group or regular books of appellant.

4. It may be noticed that nowhere in the statement given by N.K. Gupta he has identified various entities accounts of which are found in cloud data in the name of N. Trading Company. These facts also have been elaborated in the N.K. Gupta is also discussed in the order by settlement commission (page 79, 80 & 81). The extract of those statements can be seen in next 3 pages of this order. In these statements no where the main person of MBDL, Shri N.K. Gupta has positively identified the appellant as the person appearing in the account of cloud data.”

10. Basis the aforesaid findings, the Id. CIT(A) recorded a categorical finding that the fundamental question that the name of RGS Sunland or RGS shree Krishan Constn in the accounts of N. Trading Company is the same Shri Ram Gopal Sarraf is not proved. In other words, mere mention of name in the ledger of N. Trading Company is not sufficient to prove that it is assessee's name and therefore, the Id. CIT(A) held that the assessee succeeds in his legal ground of appeal that initiation of proceedings U/s 153C are void ab-initio and the transaction in the cloud data in the name of RGS cannot be attributed to the assessee.

11. Thereafter, on merits of the case, the Id. CIT(A) has recorded his findings which read as under:-

"8. It may further point out that Mangalam Builder & Developer Ltd. (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 '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.

8.2 In respect of surplus 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 Settlement Commission at page 57 of the order dated 16.05.2019.

8.3 In view of above, 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.

8.4 Thus, on merits too, since the amounts which have been added by the Id. AO have already been subjected to tax in the hands of MBDL & related entities. The Id. AO is directed to delete the additions made in the various A.Yr. in short the relief is granted to the appellant on the following additions

<i>Ground of appeal</i>	<i>A.Y. 2014-15</i>	<i>A.Y. 2015-16</i>	<i>A.Y. 2016-17</i>
<i>Advances given in cash</i>	<i>8,83,39,100/-</i>	<i>-</i>	<i>17,29,000/-</i>
<i>Interest on unaccounted advances/loans</i>	<i>1,06,35,650/-</i>	<i>1,16,93,400/-</i>	<i>1,52,95,800/-</i>
<i>Share of profit</i>		<i>1,27,83,000/-</i>	<i>82,69,100/-</i>

12. Against the findings of the Id CIT(A), the Revenue is in appeal before us and has raised the aforesaid grounds of appeal.

13. The Id DR contested the findings of the Id CIT(A) and taken us through the order and the findings of the Assessing officer and it was submitted that the Id CIT(A) has failed to consider the data found in cloud data relating to transactions of unaccounted capital deployed by the assessee and interest earned on such capital. It was submitted that the Id CIT(A) has relied on the findings of the Settlement Commission in case of M/s MBDL where such findings have been challenged by the Revenue by way of writ before the Hon'ble Rajasthan High Court which is currently pending adjudication. It was also submitted 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 which are again pending adjudication. Further, the Id DR has relied upon the

Ahmedabad Benches decision in case of ACIT Central Circle vs M/s Amardeep Industries Ltd (*IT(SS) A No. 342/Ahd/2018 dated 13.10.2020*).

14. On the other hand, the Id. AR supported the order and findings of the Id. CIT(A). It was submitted that in course of search, statement of Shri N.K. Gupta, the Director and Key person of the Manglam Group was recorded u/s 132(4) wherein he owned up all the cash loan/transactions found in cloud data and stated that name of persons/entities mentioned in the said data are imaginary/false names. He has also stated that Manglam Group has not taken any loan in cash from any person or repaid it to any person as mentioned in cloud data and these relates to their own affairs and reference was drawn to the reply submitted by Shri N.K. Gupta in response to question No. 117 and 118. It was further submitted that during the course of assessment proceedings, the assessee also submitted an affidavit of Shri N.K. Gupta wherein he again affirmed on oath that no transactions of cash loan/transaction with assessee were taken by Mangalam Group or by himself. The Assessing Officer, however rejected the said affidavit without making any enquiry from him or examining him personally. Further, the Assessing Officer did not brought on record any corroborative material to controvert the affidavit of Shri N.K. Gupta and the fact that the assessee having denied the said transaction. It was submitted that the Id. CIT(A) has rightly appreciated the facts and submission so made by the assessee and held that mere mention of name in the ledger of N. Trading Company is not sufficient to prove that it is assessee's name and the transaction in the cloud data in the name of "RGS" cannot be attributed to the assessee. It was accordingly

submitted that the addition cannot be made without bringing on record any corroborative material found in the course of search from third party. In support, reliance was placed on the decision of Mumbai Benches of the Tribunal in case of ACIT vs. Katrina Rosemary Turcottee (*in ITA Nos. 3092/Mum/2015 to 3097/Mum.2015 dated 11.10.2017*) wherein it was held that the addition made on the basis of print out taken from the computer of a third party without there being no other corroborative evidence brought on record to prove the fact that the payment mentioned in the seized material was actually received by the assessee cannot be sustained. Further, reliance was placed on Hon'ble Delhi High Court decisions in case of CIT vs. Vatika Landbase (2016) 383 ITR 320 (Del), CIT vs. S.M. Aggarwal (2007) 293 ITR 43(Del) and the decision of Hon'ble M. P. High Court in case of PCIT vs. Pukhraj Soni (*in ITA No. 53 of 2017 dated 06.03.2019*).

15. It was further submitted that the Assessing Officer has not provided any opportunity of cross examination of the Director of Manglam Group Shri N.K. Gupta from whom the cloud data was seized and which is the basis of making addition in the hand of the assessee. In support, reliance was placed on decision in case of Andaman Timber Industries vs. CCE Kolkata 11 (2016) 55 taxworld (SC).

16. It was further submitted that Manglam group through its Director & key person has owned up these transactions found in cloud data as their own and also admitted that names etc. noted therein are imaginary and false. The assessee also categorically denied about those transactions in cloud data not pertained to him. However the Ld. A.O. in assessment order held that "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." In this connection, it was submitted that when Manglam group admitted the data in cloud as its own and names are imaginary and fictitious than the said data and accounts belongs exclusively to them only and transactions shown pertains only to Manglam group, and not that Manglam group is one party and therefore there has to be other party of the transaction. The Ld. A.O. is wrong in giving such finding contrary to facts. Further, now the Hon'ble Settlement Commission has decided the settlement petition filed by Manglam group by passing settlement order u/s 245D (4) and each and every transactions given in ledger accounts by Ld. A.O. on page 9 – 15 of assessment order has been considered as of Manglam group and covered in determining undisclosed income of Manglam group and therefore those ledger accounts cannot be held as pertaining to or related to assessee herein.

17. It was further submitted that the Coordinate Jaipur benches in case of DCIT vs. Jugal Kishore Garg (*in ITA No. 34,35,36, & 37/JP/2020 dated 14.09.2020*) having identical facts and issues under consideration has dismissed the appeal filed by the Revenue. It was submitted that the said decision squarely supports the case of the assessee. It was accordingly submitted that the addition made by the AO U/s 69 r.w.s.

115BBE as well as addition U/s 68 r.w.s. 115BBE has rightly been deleted by the Id. CIT(A). In his rejoinder, the Id DR submitted that the Revenue has not accepted the said decision of the Coordinate Benches 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.

18. It was submitted that all transaction mentioned in the account of N. Trading Company have been taken into account/considered in the Settlement application filed by the Manglam Group and which has also been confirmed by Shri N.K. Gupta in his affidavit filed before the Assessing Officer. It was submitted that the said facts were there before the Assessing Officer and she has not disputed the same and the same have been accepted by the Id CIT(A). It was accordingly submitted that there is no dispute that the transactions basis which the addition have been made by the Assessing Officer have been taken into consideration by Manglam Group in its application before the Settlement Commission and the same has been accepted by the Settlement Commission.

19. It was further submitted that in the Rule 9 report submitted by the Id. Pr. CIT, Central Rajasthan, Jaipur before the Hon'ble Settlement Commission, the Id Pr. CIT has stated as under:

"The extracted Tally data found in two sets contains the complete details of unaccounted transactions of applicant group. The additional income of the applicant group has been determined and quantified in subsequent portion of this report in Chapter V to VIII. The applicant has

furnished its analysis of extracted Tally Data and other seized records in the Enclosure I to statement III of Form 34B. On the basis of analysis of tally data, the actual 'on-money receipts' has been determined at Rs. 1908 crore and on account of undisclosed booking advances the income is determined at Rs. 85.80 crore for the entire applicant group. The analysis of extracted Tally Data and of the seized records has been verified with the records available with the department".

20. It was submitted that as per above contents of the Pr. CIT, Central, Jaipur's Rule 9 report, it is evident that all the transactions in Tally data maintained in cloud have been considered and taken into account in determination of the undisclosed income of M/s. Manglam Builders and Developers. It was accordingly submitted that there is no basis in the present appeal filed by the Revenue and the same deserve to be dismissed and the order of the Id CIT(A) be confirmed.

21. 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/-	<p><i>(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.</i></p> <p><i>(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.</i></p> <p><i>(iii) Addition of Rs. 85,00,000/- on account of interest earned on the basis of cloud data.</i></p>

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/-	(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. (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. (iii) Addition of Rs. 14,24,800/- on account of surplus interest from Manglam Group on the
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 Enclosure1.

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.”

22. 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 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 the `peak deposit' of unaccounted Capital introduced, loans and advances and interest paid and received was considered for computing its income and income of Rs.15.10 cr. was offered on the basis of cloud data of N. Trading Company 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.

23. In the instant case as well, we find 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 wherein addition on account of unaccounted capital employed in various projects of the Manglam Group amounting to Rs 8,83,39,100/- and addition on account of interest earned on such capital employed amounting to Rs 1,06,35,650/- 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 `peak deposit' of unaccounted

Capital introduced, loans and advances and interest paid and received was considered for computing its income and income of Rs.15.10 cr. was offered on the basis of cloud data of N. Trading Company 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, the AO was directed to delete the additions in the hands of the assessee. 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 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.

24. 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 Courts and however, till such time, the order of the Coordinate Bench is not stayed or overruled by the Courts, 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 taken a view in the matter under identical set of facts and circumstances of the case and no restriction has been placed by the Courts 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 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. The grounds of appeal so taken by the Revenue are thus dismissed.

25. In respect of ITA Nos. 1362 & 1363/JP/2019 pertaining to A.Ys. 2015-16 & 2016-17, both the parties fairly submitted that the facts and circumstances of the case are exactly identical to the facts and circumstances of the case in ITA No. 1361/JP/2019, therefore, our findings and directions contained therein shall apply *mutatis mutandis* to these appeals as well.

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.

***Santosh**

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

1. अपीलार्थी / The Appellant- DCIT, Central Circle-1, Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Ram Gopal Sarraf, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1361 to 1363/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar