

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) AND  
SHRI AMARJIT SINGH (JUDICIAL MEMBER)**

**ITA No. 7159/MUM/2019  
Assessment Year: 2011-12  
&  
ITA No. 7160/MUM/2019  
Assessment Year: 2014-15**

ACIT 13(3)(2),  
Room No. 229/219, 2<sup>nd</sup> floor,  
Aayakar Bhavan, M.K. Road,  
Mumbai-400020.

**Appellant**

**Vs.** M/s Vyapar Industries Ltd.,  
145, Abbas Manzil, S.V. Road, Khar  
(West),  
Mumbai-400052.  
**PAN No. AAACB 8643 H**  
**Respondent**

Revenue by : Mr. Achal Sharma, CIT-DR  
Assessee by : Mr. Satyapraksh Singh, AR

Date of Hearing : 23/02/2022  
Date of pronouncement : 31/03/2022

**ORDER**

**PER OM PRAKASH KANT, AM**

These appeals by the Revenue are directed against two separate orders, each dated 30/08/2019, passed by the Ld. Commissioner of Income-Tax(Appeals)-21, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2011-12 and 2014-15 respectively. As common issue in dispute is involved in both

these appeals, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First, we are taking up the appeal for assessment year 2011-12. The grounds raised by the assessee are reproduced as under:

1. *On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of ₹6,29,24,400/- without appreciating the fact that the documentary evidence found during the search are sufficient evidence to draw a presumption regarding a transaction found entered in the seized document in terms of section 106 of the Evidence Act.*
2. *On the facts and circumstances of the case and in law the Ld. CIT(A) while holding that the Assessing Officer has not brought any corroborative evidence or records, has failed to appreciate that the seized documents has to be accepted as true or otherwise in it's entirety.*
3. *On the facts and circumstances of the case and in law the Ld. CIT(A) has failed to appreciate the settled position of law that where direct evidences not available or possible one has to fall back on the circumstantial evidence and apply the test human probabilities.*
4. *On the facts and circumstances of the case and in law the Ld. CIT(A) has failed to consider the provisions of the IT. Act, 1961 that even under the Act, there is a presumption u/s 292C of the IT. Act. 1961 that the contents of the books of account and other documents are true and such books of account/ documents belongs to such person who is searched u/s 132 of the IT. Act, 1961.*

3. Briefly stated facts of the case are that the assessee company filed its return of income for the year under consideration on 14/09/2011 declaring nil

income. The assessee revised its total income to ₹3,75,781/- on 27/04/2012.

In the scrutiny assessment completed on 31.01.2014 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act'), the Assessing Officer made this disallowance, however said disallowance was deleted by the Tribunal vide order dated 03/12/2015.

3.1 Subsequently, the Assessing Officer received information from the DCIT, central circle, Ahmedabad, that certain material/information belonging to the assessee was found during the course of the search carried out under section 132 of the Act on 04/12/2014 at the premises of Shri Atul Shah, Sh Anil Shah and their family members (Barter Group) and the entities controlled and managed by them. After due compliance of recording satisfaction, the Assessing Officer issued notice under section 153C of the Act on 21/03/2018, asking the assessee to file the return of income under the provisions of section 153C read with section 153A of the Act. During assessment proceedings under section 153A read with section 150 3C, the Assessing Officer asked the assessee to explain transactions recorded in "Excel file" named as "NGL" maintained on hard disk found from the residence of Shri Sanket Shah, Ahmedabad related to Global Depository Receipt (GDRs) of "Vyapar" and "Aqua" carried between January 2011 to March 2011 and interest computation thereof. During

assessment proceeding, statement of director of the company Shri Akil A Rassai, was recorded on 24/12/2018, however he expressed his ignorance about the transactions in the Excel File. The Assessing Officer, in absence of any explanation from the assessee and also considering the evidence gathered in relation to manipulation of GDRs and Initial Public Offer (IPOs) by the “Barter Group”, treated the transactions recorded in Excel file as “interest” received by the assessee in US dollars amounting to 13,86,000/- (converted into Indian rupees of 6,29,24,400/-), which the assessee did not shown in its books of accounts. Therefore, in assessment order dated 28/12/2018, the Assessing Officer added the said interest income to the income declared in the return of income for regular provisions as well as for computation of the book profit under MAT provisions. On further appeal by the assessee, the Ld. CIT(A) in his detailed finding in impugned order deleted the addition of interest. Aggrieved, the Revenue is in appeal before the Tribunal, raising the grounds as reproduced above.

4. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record.

4.1 All the grounds raised by the Revenue are in respect of deletion of addition of the ₹6,29,24,400/-. The relevant finding of Ld. CIT(A) on the issue in dispute is reproduced as under:

**"6. Decision on ground No. 5 to 10, 16 to 20, 23 & 24**

*I have considered the facts of the case and submissions made by the appellant. The second basic issue in the matter is that whether in facts of the case is whether "the so called transactions in Vyapaar referred to in the documents" are referable to the transactions made by the assessee or transactions made in the shares/DRs of the assessee company Vyapaar Industries Limited by someone else based on the entries appearing in the seized documents referred to in the assessment order and what is the meaning of the entries mentioned on these documents in facts and circumstances of the case?*

*First of all the analysis of the single page seized document shows the following:*

- a) Entries pertain to the period 1/1/2011 to 31 /3/2011,*
- b) First entry dated 1/1/2011 appears to start with a purchase or debit of Rs.9,22,50,000/- showing a balance of ₹(9,22,50,000/-) and interest column shows "o' interest, and subsequently there are credit entries from 17/1/2011 and interest figures for the number of days the debit balance was due for in the last column of the chart 'annexure NGL". The credit entry on 17/1/2011 is for Rs.62,62,000/- leaving a net balance as on 17/1/2011 at Rs.8,59,88,000/- and interest entry for 16 days is shown at Rs.9,70,521/- which appears to have been charged at 24% on debit balance of Rs.9,22,50,000/- for 16 days as follows-Rs.9,70,521/- divided by Rs.9,22,50,000/- multiplied by 365 divided by 16 which equals 24%. Interest rate of 24% is uniform and has been charged on debit balances for the outstanding*

number of days as is confirmed by the calculations till 1/4/2011 and the figure of total interest charged till 31/3/2011 (that is 1/4/2011 works out to Rs.21,18,776/-. However, there are five credit entries after 14/3/2011 which show realization from the sale of shares of Aquagold in varying quantities at rates varying from Rs. 22.95 per share to ₹18.00 per share and after the last entry dated 1/4/2011 of credit of ₹18,65,000/-, the balance in the account had worked out to Rs.24,50,000/-(1608500 minus 2193500 minus 1865000 ) but the credit balance of ₹24,50,000/- has not been shown and interest is also not charged After this there is a debit entry marked 'exchange difference of Rs.28,00,000/- thus leaving a balance ₹3,49,750/- which is shown after the debit balance in interest amount of ₹21,18,776/-. The debit balance in interest amount of Rs.21,18,776/- appears to have been reduced by three entries marked Jan Vyapaar Feb Vyapaar and March Vyapaar of Rs. 4,62,000/- each to arrive at a net balance of Rs.7,32,776/- as follows:

Interest	(-) 21,18,776/-
Jan Vyapaar	4,62,000/-
Feb Vyapaar	4,62,000/-
Marchvyapaar	4,62,000/-
Net Balance	(-)7,32,776/-

Reduction of the figure of interest of (-)21,18,776 by credits of 4,62,000/- each during January, February And March (during 2011) is indicative of the fact that the person concerned earned 4,62,000/- per month and hence the net outstanding balance in the interest account was reduced from 21,18,776 to 7,32,776 at the end of March (2011). Thus the person earned during January February and March 2011 credits of Vyapaar. Now the basic question is whether the word Vyapaar indicates 'Trade' as is generally understood in Gujarati language or 'in shares/GDRs of Vyapaar Industries Limited' or 'by Vyapaar Industries Limited'.

*The foregoing three entries of 462000 each marked Jan Vyapaar, Feb Vyapaar and March Vyapaar form the basis of additions made by the AO in the assessment order and are dealt with and discussed in following paragraphs.*

*In this connection it is observed from the records that the AO had drawn following conclusions from these entries:*

*"7.2 In connection with the open offer of the assessee company for the year under consideration, it is worth mentioning here that in course of search action at the residence of Shri Kush B. Shah (Shailesh Gandhi), a Sahjanand Bunglow, ramdevnagar, Ahmedabad an hard disk was found and seized by the search team on 04.12.2014. On analysis of the hard dish there is a word document named "MOU2" found at the path 'G:/DATA/DATA OF250GB HDD/DELETED FILES', contains records of IPO of Vyapar Industries Ltd. The soft copy of the same is reproduced as under."*

*Thus the AO appears to have concluded that" the three transactions totaling 13,86,000 (4,62,000 multiplied by 3 ) were made in US Dollars since there was an entry marked 'exchange rate difference-28,00,000 earlier on the sheet and in absence of any other explanation, and also considering the evidence gathered in relation to manipulation of GDRs/POs by the Barter Group (BG), the assessee had earned interest in foreign currency, that is, in USD in the months of January, February and March 2011 totaling USD 13,86,000 (converted into INR of Rs.6,29,24,400) by applying the dollar rupee conversion rate on the past day of the month and was added back to the total income. Assessee is in appeal.*

*First issue mentioned by the AO relates to the conclusion drawn by the AO that the transactions were made in USD since the words 'exchange rate difference 28,00,000 were mentioned earlier in the statement- annexure NGL and hence the three transactions of 4,62,000 each were also carried out in USD and relate to the assessee Vyapaar Industries Limited. First of all, the transactions entries were*

*made and the documents seized by/ from Ahmadabad Party Khush Shah who is said to be a benami as well as hawala entry giver and it is he only who can explain the exact nature of entries. However, the details mentioned on this single page marked annexure NGL is clearly indicative that by and large transactions appear to have been made in Indian Rupees and the words 'exchange rate difference' may indicate the payment of exchange rate difference in respect of 'GDRs which were freely traded on BSE, Mumbai 'either of the assessee company or some other company like Aquagold or some other company in which transactions were made and for which entries starting with a balance of (-)9,22,50,000 begin on the page marked annexure NGL. However, it is definitely illogical and unreasonable to conclude that "because the words exchange rate difference appear prior to the three entries at the bottom of the page marked annexure NGL, the transactions marked Jan Vyapaar, Feb Vyapaar and March Vyapaar for 4,62,000 each were also made in USD and hence its value should be converted into Indian rupees at the prevailing dollar rupee conversion rate. Second part of the issue is the main issue whether the words joes sir Jan Vyapaar, FebVyapaar and MarchVyapaar - 4,62,000 refer and mean Trade as it commonly understood in Gujarati Language or the reference is to trades in vyapaar Industries Limited by someone else or the reference is to trading by Vyapaar Industries Limited which earned 4,62,000 per month during January February and March 2011.*

*It also appears from the details and documents that assessee had floated a GDR issue in 2007-2008 and it was subscribed to by various parties and the same was listed on Singapore Stock Exchange and GDRs totalling USD were issued which were to be exchanged for two equity shares of Vyapaar Industries Limited in FY 2010-11 relevant to AY 2011-12. The DRs were redeemed by the GDR holders during FY 2010-11 relevant to AY 2011-12 and became entitled to two equity shares per GDR. Assessee had also come up with a buy back offer for its equity shares at a price of Rs. 27.37 per shares aggregating to Rs. 7,75,66,580/- which were purchased by the two promoters of the company, Mr. H A RASSAI and MR. A*

*A Rasaai as per SAST Regulations of SEBI, Mumbai and each promoter/purchaser acquirer paid Rs. 3,88,23,290/- of his own funds to acquire shares for consideration of Rs.7,75,66,580/-. This position in changes in the shareholding of GDRs and shares of the company are listed and described category wise in the yearly details filed by the assessee with ROC and SEBI. Thus it becomes quite apparent from the foregoing details that there were substantial changes in the share holding structure of the company during FY 2007-08, 2010-11 and FY 2013-14 relevant to AY 2008-09, AY 2011-12 and AY 2014-15 and hence there would have been substantial activity in buying and selling of DRs and shares of the assessee company, Vyapaar Industries Limited during these financial years in addition to normal buying and selling in the shares of the assessee company which may have been witnessed on the BSE. And such activities were noticed in the transactions on documents seized from Barter Group (G ) entities at Ahmadabad and which are a bone of contention in the case of the assessee.*

*One thing that becomes crystal clear from the details mentioned on the seized documents and the excel sheets that \* there were trading transactions in shares and GDRs of Vyapaar Industries Limited and scores of other companies made by entities X, Y and Z either on BSE and/or in a clandestine manner and profits were earned, losses incurred, interest ranging from 24% to 36% earned and/or paid, margin money paid and retained, charges paid and received and accounts settled at the end (at of month, quarter, half year and/or year to arrive at profits and losses incurred in these sale and purchase transactions undertaken by several entities during the specific periods , namely AY 2009-10 to AY 2012-13 and AY 2014-15 in shares GDRs of 89 companies mentioned in the list bearing names beginning with A and ending with Z and this includes dealing in shares/DRs of the assessee company, Vyapaar Industries Limited also and these deals may have been made either in Indian Rupees and/or US Dollars depending upon the facts of each case as mentioned in various lists. Seized documents indicate that ' some of these deals were made and executed in the names of persons named as keel, Atul, Tushar,*

*AS, TS, R, JIB, Jindal, Kalani etc and some unknown and unidentified entities whose names are not mentioned in the list who either earned profits and interest and/or incurred losses and paid interest and also ended up depositing margin moneys running into lakhs of rupees. Even though the name of Vyapaar Industries Limited in the list of 89 companies in which trading was done and the word Vyapaar occurs along with that of Aquagold on the page cited by the AO, it means one thing that trading, that is, selling and purchasing of GDRs and shares of Vyapaar Industries Limited and Aquagold Company were made during these periods along with other companies like Gravita Rushil, ABL BIO, Ankit Metal, Aqua Logistics, Aqua Gdr, Aqua Shares Of Gdr, Coral Hub, Donear Industries, Farmax India, Gdr Abl Bio, Vyapaar, Gravita India, Jindal Cotex, Kiri Industries, Midvalley Entertainment, Northgate Com, Punjab Communication, Rushil Décor, Veer Energy And Wellpack Papers as well. This clearly means that there were transactions of sale and purchase in shares and GDRs of these 19 companies and may be in shares of balance 70 ( 89 minus 19 ) as well by some one X, Y and/or Z and/or someone else whose identity is not revealed in these seized documents and prima facie these transactions of sale and purchase were undertaken by someone else other than the companies themselves because the companies were prohibited under the Companies Act 2013 and SEBI Rules were prohibited from trading in their own shares and GDRs except its purchase by promoters and directors with certain prohibitions under the Companies Act 2013 and SEBI Rules. It is definite and certain that 'shares and GDRs of Vyapaar Industries Limited changed ownership during FY 2010-11 and FY 2013-14 relevant to AY 2014-15 on account of conversion of GDRs into shares during FY 2010-11 relevant to AY 2011-12 and purchase of shares under • the buy back of shares by promoters scheme" approved by the SEBI during FY 2013-14 relevant to AY 2014-15 , however that does not mean, that 'these transactions were undertaken by the assessee company for the simple reason that assessee company and any other company registered under Companies Act 2013/1956 was prohibited from trading in its own shares and GDRs except the buy back of shares permitted as per Companies Act 2013/1956*

*and SEBI Rules. It is also a fact that the promoters of the company Harassai and Aarassai have purchased shares of the company from the open market as per the buy back of shares by promoters approved by SEBI, during FY 2013-14 relevant to AY 2014-15 and if any transactions were made and action taken, it was by the two promoters of the company and not by the assessee company since ownership over these 28,34,000 shares of value aggregating R\$. 7,75,66,580/- changed hands from 14 entities starting with highest number tendered of 10,66,650 shares tendered by Clareville Capital to lowest number of 1994 shares tendered by Binal Parekh. Thus it is quite clear from the foregoing details documents and analysis that 'the transactions in sale and purchase of shares and GDRs of the assessee company Vyapaar Industries Limited were undertaken by X, Y and/or Z and/or by someone else either in Indian Rupees and/or US Dollars and not by the assessee company and the word Vyapaar occurring in the page cited by the AO refers to the transactions undertaken in shares/DRs of Vyapaar Industries Limited and not to transactions undertaken by the assessee company, Vyapaar Industries Limited. It also appears from the records that the AO has erred in making two erroneous presumptions that the words foreign exchange difference of 28,00,000 are mentioned prior to 2118776, the figures are mentioned in US Dollars and since figures of 4,62,000 each for Jan Vyapaar, Feb Vyapaar and March Vyapaar are mentioned below 21,18,776 to arrive at a net balance figure of 7,32,776, the amount represents interest earned in US Dollars by the assessee company. The reason for this is very simple in as much as 'exchange difference in Indian context will be in Indian rupees and not in US Dollars and just because the words Jan vyapaar, Feb vyapaar and March vyappaar occur together, it will not mean that these transactions were undertaken by the assessee company. Reduction of three figures of 4,62,000 each from 21,18,776 is itself indicative of the fact that these were the profits and/or interest earned by X, Y or Z in trading in Vyapaar Industries Limited for another reason also. If the figures of 4,62,000 for January, February and March represent profits/interest earned by Vyapaar Industries Limited, then who paid the interest of 21,18,776 from which the total figure of*

*13,86,000 (462000 multiplied by 3 ) has been reduced and then what do the transactions totaling 9,22,50,000 which became nil at the end of 31/3/2011 represent? Are these interlinked or these were all the transactions undertaken by someone trading in shares of Aqua and Vyapaar with an opening balarice of 9,22,50,000 as on 1/1/2011. If the AO is assuming the figures of 4,62,000 totalling 13,86,000 in US Dollars, then all other transactions should also have been presumed to be in US Dollars giving figures in Indian Rupees of 4,61,25,00,000 (92250000 multiplied by 50) which is 461.25 cores of Indian Rupees. Further it is also to be mentioned here that there is no corroborative evidence or any information with regard to amount invested by the assessee company, how the amount invested? Where the amount invested? How the assessee got interest? And who paid the interest ? For all the above questions absolutely there is no information. In the light of above discussion and analysis the seized material which was relied on by the assessing officer based on assumptions and surmises cannot lead to addition in the hands of the assessee company During the appellate proceedings it has been mentioned by the assessee and ascertained by the undersigned that the assessments in the cases of the main persons in the Barter Group viz. (Mr. Anilbhai Hiralal Shah & Mr. Atulbhai Hiralal Shah) have also been completed by the concerned Assessing Officer at Ahmadabad. Therefore, in order to know the details of additions made in the assessment u/s 143(3) r.w.s. 153A of the IT Act, 1961 (consequent of search and seizure action u/s 132 of the IT Act. 1961 on 04.12.2014) in the cases of main persons of Barter Group (Mr. Anilbhai Hiralal Shah & Mr. Atulbhai Hiralal Shah), copies of the assessment orders passed by DCIT Central Circle 1(2), Ahmadabad have been obtained. (Ref. Page No. 249 to 255 of assessment order dated 09.03.2018 in tha case of Anilbhai Hiralal Shah for the AY. 2011-12 & page No. 262 to 268 in the case of Atulbhai Hiralal Shah for the AY. 2011-12). The relevant portion with regard to the seized material annexed to the assessment order as annexed ""NGL" in the assessment order is as under.*

*"Excel file named 'NGL'-This file contains transactions in GDRs of Vyapar & Aqua between January 2011 to March 2011 & interest computations therein. The sheet is reproduced below;-"*

*The Excel sheet is available as enclosure to the assessment order of Vyapar Industries Ltd. for A. Y. 2011-12 as annexure "NGL".*

*Though the Assessing Officer in the aforesaid assessment order reproduced the seized material wherein the interest amounts are mentioned against the name Vyapar, the assessing officer has not made any discussion or has drawn any conclusion nor made any addition in the hands of the main persons, but he has only commented as under:-*

*Even though the seized MOU does not contain amount payable to assessee and his brother, the same has been discussed here to prove that assessee has been indulging in transactions of such nature on continuous basis.*

*The above comment, in fact is related to the alleged difference between the share price quoted and offer made as per the MOU. This issue has been dealt in the appellate order for the assessment year 2014-15.*

*Thus, from the above it goes to prove that the interest amount alleged to have been received by the assessee company does not have any basis in view of the facts available on record. In short, the unsigned and unauthenticated seized material which does not have any basis nor any corroborative evidence brought on record by the AO therefore based on this seized material it cannot be presumed that assessee had received interest and the same was not admitted. Thus, it is clear from the discussion made above the addition was made based on presumption and surmises therefore the addition made by the AO is not justified. The assessee has relied on the following cases that they are applicable to the facts of the assessee's case, they are as under:-*

1. *Bhajan Das & Bros v. ACIT (2009) 119 ITD 76 ITAT (THIRD MEMBER) (Agra)*
2. *M.M. FINANCIERS (P.) LTD. V. DCIT (2007) 17 SOT 5 ITAT (CHENNAI/URO)*
3. *Assistant Commissioner of Income-tax, Yamuna Nagar Kishore Lal Balwant Rai (2007) 17 SOT 380 (Chandigarh)*
4. *PCIT v. Krutika Land (P.) Ltd (2019) 103 taxmann.com 9 (SC)*
5. *Bansal Strips (P) Ltd 99 ITD 177 Delhi*
6. *Harish Daulatram Innani v. Deputy Commissioner of Income-tax(Inv), Cir. 11(1), Mumbai (2008) 24 SOT 541 (Mumbai)*
7. *K P Verghese v ITO 24 CTR 358 (SC)*
8. *P. R. Metrani vs. CIT (2006) 287 ITR 209 SC*
9. *CIT vs. Smt. P. K. Nooriahan 1999 237 ITR 570 (SC)*
10. *CBI Vs. V. C. Shukla & Ors. (1998) 3SCE 410*

*The gist submitted by the assessee of some of the cases is an under:-*

**1. *Bhajan Das & Bros v. ACIT (2009) 119 ITD 76 ITAT (THIRD MEMBER) (Agra)***

*In a search conducted under section 132 at residences of partners of assessee-firm on 22-2-2003, certain papers were seized from residence of 'N' - Assessing Officer was of view that in those papers position of stock and capital, etc., had been written for purpose of distribution of assets amongst partners - Assessing Officer made an addition in assessee's hands on basis of those documents - It was found that there was change in partnership on 1-4-2000 and 'N' was not a partner of assessee-firm from 1-4-2000 - It was also found that such documents had been written by 'B' who had committed suicide - Further, seized material contained some scribbles of figures which did not in any way lead to transactions of firm - Whether addition made to income of assessee under section 158BC in respect of papers seized from residence of 'N' could be supported in eyes of law - Held, no*

**2 M.M. FINANCIERS (P.) LTD. V. DCIT (2007] 17 SOT 5 ITAT  
(CHENNAI)(URO)**

*Assessee-company was engaged in real estate business 'KM' was its business associate - In search conducted at premises of 'KM', an unsigned MoU, reflecting transaction for purchase of 95 acres of land between assessee and 5 others as purchasers, on one hand, and 'KM' and 'KMR' firm, on other, for a consideration of Rs. 2,40,40,000 was found - At assessee's premises, 5 registered sale deeds were also found, as per which 'KMR had transferred 22 acres of land to nominees of assessee which in turn was reconveyed by assessee to nominees of 'KMR' vide agreement dated 1-1-1997 for a consideration of Rs. 1,15,52,148 - On verification, Assessing Officer found that assessee in its books of account had entered payment of Rs. 91 lakhs as against Rs. 2,40,40,000 admitted by 'KM' vide unsigned MoU and, therefore, he treated difference between these two amounts, i.e., Rs.1,49,40,000 as undisclosed income of assessee - Assessing Officer also found that for transfer of 22 acres of land, by another agreement dated 25-3-1997 assessee had received payment of ₹3,62,18,000 as against disclosed income of ₹1,15,52,148 and accordingly, he computed difference between these amounts and treated same as undisclosed short-term capital gain However, it was found that 'KM' in his sworn statement had recorded that agreement under which assessee had agreed to purchase land was not acted upon and transaction did not materialize; that later 'KM' had retracted his own statement during cross-examination; that Assessing Officer was not firm about consideration for sale of 22 acres of land that passed on to assessee - It was also found that Assessing Officer had not examined all parties to unsigned MoU and there was no evidence for payment of money to assessee by any party other than amount entered in books of account - Whether, on facts, it could be said that there was no valid seized material representing addition of Rs. 1,49,40,000 towards undisclosed purchase consideration and it was only on surmise basis and statement recorded from third party, which could not be acted upon - Held, yes - Whether since assessee was a party to agreement dated 1-1-1997*

*and not to agreement dated 25-3-1997 and payment in agreement dated 1-1-1997 properly tallied with books of account maintained by assessee, sale consideration for 22 acres of land of ₹1,15,52,148 was properly disclosed by assessee and, thus, it was justified in offering difference between Rs. 1,15,52,148 and Rs. 91 lakhs as undisclosed income and, therefore, there was no question of computing short-term capital gain on difference of sale consideration of Rs. 3,62, 18,000 - Held, yes*

**3. ACIT v. Kishore Lal Balwant Rai (2007] 17 SOT 380 ITAT (CHD.)**

*Pursuant to a search conducted at premises of a dalal (finance broker), a red bound bahi was seized - Statement of dalal was recorded to ascertain nature of entries contained in bahi - Dalal explained that bahi contained a recording of monies lent and borrowed by various people undertaken through him, and that he was earning dalali income/commission income from business of broking - On basis of said statement, Assessing Officer deduced that assessee had borrowed money from said broker and had lent monies to various borrowers and earned interest thereon - Further, Assessing Officer held that entries recorded in bahi were not found recorded in regular books of account of assessee and, therefore, amount of loan along with interest earned thereon represented undisclosed income of assessee chargeable to tax in terms of section 158BD, read with section 158BC, and, accordingly, made certain addition - Whether since sole basis for making addition to income of assessee was statement of daal which was not supported by any independent and corroborative evidence and, moreover, there was no such evidence available with revenue which could establish that entries in bahi represented honest and real transaction so as to inform that assessee actually transacted in money lending as per entries recorded in bahi, impugned addition made to income of assessee was not justified and liable to be deleted - Held, yes*

**4. PCIT v. Krutika Land (P.) Ltd [2019] 103 taxmann.com 9 (SC)**

*During search certain incriminating documents were found in possession of one DD, managing and handling land acquisition on behalf of assessee- company and his statement was recorded - He stated that there were amounts disbursed for purchase of lands and a certain amount of cash had also been received by him to purchase lands - However, later he had retracted said statement - Assessing Officer issued notice under section 153C and initiated proceedings against assessee and made additions under section 69C - High Court by impugned order held that since seized documents did not belong to assessee but were seized from residential premises of one DD who had later retracted his statement, no action under section 153C could be undertaken in case of assessee - It further held that since entire decision was based on seized documents and there was no material to conclusively show that huge amounts revealed from seized documents were actually transferred from one side to another, additions under section 69C were not sustainable - Whether Special leave petition filed against impugned order was to be dismissed - Held, yes*

**5. *Bansal Strips P. Ltd. v. Asst. CIT [2006] 99 ITD 177 (Delhi)***

*The Assessing Officer has found certain loose papers during the course of search which indicated that certain figures against certain names were written. They were decoded to make the total to Rs. 53,69,260. The assessee submitted before the Tribunal that (i) the impugned seized papers are dumb documents and no addition can be made on their basis in the absence of corroborative materials. No circumstantial evidence in the form of unaccounted cash, jewellery or investment outside the books was found in the search, (ii) the assessee from the very inception denied having any nexus with the seized papers, (iii) the impugned papers did not constitute books of account, (iv) the said papers are unsigned and therefore, not sufficient to fasten the liability on the assessee, (v) the Assessing Officer did not carry out any enquiry by summoning the persons named in the seized papers although the assessee has furnished their addresses, (vi) some of the documents did not specify the year. The Revenue did not discharge the onus lying on them to*

*prove that the documents pertained to the block period. On this basis, the Tribunal held that no addition could be made on the basis of the seized papers as material available with the Assessing Officer is grossly inadequate.*

**6. Harish Daulatram Innani v. DCIT (2008) 24 SOT 541 ITAT (Mumbai)**

*Authorized Officer conducted a search under section 132 upon assessee and seized from his possession certain papers - During block assessment proceedings, Assessing Officer noticed that assessee had purchased a flat It was further noted that another flat was purchased by father of assessee under separate purchase agreement - During course of search, a slip of paper had been found attached along with aforesaid purchase agreements showing payment of on-money for flats - Assessing Officer, therefore, made addition of said amount to income of assessee as undisclosed investment under section 69 - Commissioner (Appeals) upheld said addition - On instant appeal, it was seen that assessee had been confronted in respect of loose paper found at time of search by taking statement under section 132(4), wherein he had categorically denied paying any on-money for purchase of flats - Further, Assessing Officer examined selling party by issuing summons under section 131 and it had also categorically denied receiving any on-money in transaction - Revenue authorities, however, ignored said explanations and relying upon paper found at time of search, made impugned addition - Whether revenue authorities could not convert a good proof or evidence in form of statements of assessee recorded at time of search under section 132(4) and statement of seller under section 131 recorded at time of assessment proceedings into no proof or evidence - Held, yes - Whether, therefore, impugned addition made under section 69 was not justified - Held, yes*

**7. P. R. Metrani v. CIT (2006) 287 ITR.209 (SC)**

*The Apex Court in the case of P.R. Metrani (supra) held that the presumption under sub-section (4A) is a rebuttable presumption. The relevant finding is reproduced as under (head note):-*

*"The words in sub-section (4A) of section 132 are 'may be presumed'. The presumption under sub-section (4A) therefore, is a rebuttable presumption. The presumption under sub-section (4A) would not be available for the purpose of framing a regular assessment. There is nothing either in section 132 or any other provision of the Act to indicate that the presumption provided under section 132 which is a self-contained code for search and seizure and retention of books etc. can be raised for the purposes of framing of the regular assessment as well. Wherever the Legislature intended the presumption to continue, it has provided so. It has not been provided that the presumption available under section 132(4A) would be available for framing the regular assessment under section 143 as well, whereas the Legislature under section 132(4) has provided that the books of account, money, bullion, jewellery and other valuable articles or things and any statement made by such person during examination may thereafter be used as evidence in any other proceedings under the Act, it has not provided so under sub-section (4A) of section 132, it does not provide that the presumption under section 132(4A) would be available while framing the regular assessment or for that matter under any other proceeding under the Act except under section 278D. Being a complete code in itself section 132 cannot intrude into any other provision of the Act. Similarly, other provisions of the Act cannot interfere with the scheme or the working of section 132 or its provisions."*

**8. CIT v. P.K. Noorjahan (1999) 237 IT 570**

*The Apex Court in the case Smt. P.K. Noorjahan (supra) examined the section 69 of IT Act and held as under (head note):-*

*"In the corresponding clause in the bill which was introduced in Parliament, while inserting section 69 in the Income-tax Act, 1961, the word "shall" had been used but during the course of consideration of the bill and on the recommendation of the Select Committee, the said word was substituted by the word 'may'. This clearly indicates that the intention of Parliament in enacting section 69 was to confer a discretion on the Income-tax Officer in the matter of treating the source of investment which has not been satisfactorily explained by the assessee as the income of the assessee and the Income-tax Officer is not obliged to treat such source of investment as income in every case where the explanation offered by the assessee is found to be not satisfactory. The question whether the source of the investment should be treated as income or not under section 69 has to be considered in the light of the facts of each case. In other words, a discretion has been conferred on the ITO under section 69 to treat the source of investment as the income of the assessee if the explanation offered by the assessee is not found satisfactory and the said discretion has to be exercised keeping in view the facts and circumstances of the particular case.*

*Held, dismissing the appeal, that in the instant case, the Tribunal has held that the discretion had not been properly exercised by the Income-tax Officer and the Appellate Assistant Commissioner taking into account the circumstances in which the assessee was placed and the Tribunal has found that the sources of investments could not be treated as income of the assessee. The High Court has agreed with the said view of the Tribunal. There is no error in the said finding recorded by the Tribunal. Section 69 could not be invoked in respect of the investments of the assessee"*

**9. CBI vs V.C.Shukla (1998) 3SCE 410**

*In this case the Hon'ble Supreme Court held that entries made in the diaries can be used only by way of corroboration to other pieces of evidence. In the assessee's case the facts of also similar to that of the above case.*

*I have considered the facts mentioned in the above cases and also the facts of the appellant's case. The facts in the appellant's case have already been discussed in the previous paragraphs and in nutshell they are as under:-*

*In the assessee's case there is no confirmation from the person / premises from where the documents seized.*

*There is no conformation / admission by the assessee*

*There is no corroborative evidence what so ever to prove the transaction.*

*There is no proof for any money received from anyone by the assessee as per the impugned seized documents.*

*In view of the facts of the case and in the light of the decisions cited above as they are applicable to the facts of the assessee's case, respectfully following the decisions of ITAT in the case of Harish Daulatram Inani and Bansal Strips and also the decisions of Hon'ble Supreme Court' mentioned above the addition of Rs.6,29,24,400/- made by the AO is hereby deleted in facts of the case and in law. Thus, these grounds of appeal are allowed.*

4.2 The Assessing Officer has reproduced the printout of the Excel sheet maintained in the hard disk on page 3 of the assessment order. At the bottom of the sheet, entries recorded have been alleged by the Assessing Officer as related to the assessee. In this bottom part of the sheet, there are two columns. In one column narration of item is mentioned and in the second column amount is mentioned. The first row of the narration contain interest and amount mentioned is (-) 21, 18, 776/-. In second row narration mentioned is "Jan

Vyapar” and amount mentioned is 4, 62,000/-. In third row, narration mentioned is “Feb Vyapar” and amount mentioned is 4, 62,000/-. In fourth row, the narration mentioned is “March Vyapar” and amount mentioned is 4, 62,000/-. In last row narration is “net balance” and amount is (-) 7, 32, 776/-. Just above these details in the bottom part of the Excel Sheet heading in the narration column is “Exchange Rate Difference”. Against this narration amount of (-) 28, 00, 000 is mentioned. In view of the heading, the Assessing Officer has considered that amount of US dollar 4, 62,000/- has been received by the assessee i.e. Vyapar industries Ltd for the period from January 2011 to March 2011. The contention of the assessee before the Ld. CIT(A) on the finding of the of the Assessing Officer are summarized as under:

- (i) the details mentioned on single page marked as Annexure NGL is clearly indicative that by and large transactions appear to have been made in Indian rupees and the word “exchange rate difference” may indicate the payment of exchange difference in respect of “GDR” which were freely traded on BSE , Mumbai either of the assessee company or some other company like “Aqua Gold or some other company in which transactions were made and for

which entries starting with a balance of (-) 9,22,50,000/- begin on page marked as annexure “NGL”.

- (ii) The word ‘Jan Vyapar’, ‘Feb Vyapar’, ‘March Vyapar’ and amount of 4,62,000, against each word, refer and mean ‘trade’, as it is commonly understood in Gujarati language or references to trade in Vyapar industries Ltd by someone else or the references to trading by ‘Vyapar industries Ltd’, which earned 4,62,000 per month during January, February and March 2011
- (iii) In financial year 2007-08, the assessee had floated a ‘GDR’ issue, which was subscribed by various parties and same was listed on Singpur Stock exchange. The GDRs issued were to be exchanged for two equity shares of Vyapar industries Ltd in financial year 2010-11 to assessment year 2011-12. The GDRs were redeemed by the GDR holders during financial year 2010-11. The assessee had also come up with a buyback offer of its equity shares, which were purchased by the two promoters of the assessee company and paid ₹7,75,66,580/-. According to the assessee, during the period from financial year 2007-08 to 2014-15 there would have been substantial buying and selling of ‘GDRs’ and shares of the assessee

company, which might have been witnessed on the BSE. These activities might have been resulted in recording in the documents seized from 'Barter group'. These entries are therefore not connected with the assessee.

- (iv) The shares and GDR of the assessee company changed ownership during financial year 2010-11 and financial year 2013-14, on account of conversion of GDRs into shares during financial year 2010-11 and purchase of shares under " buyback of shares by promoters scheme " approved by the SEBI during financial year 2013-14, however that does not mean that these transactions were undertaken by the assessee company for the simple reason that the assessee company company was prohibited from trading in its shares under the Companies Act, 2013 and SEBI rules, except the buyback of the shares permitted as per Companies Act, 2013.
- (v) Entries in the Excel sheet might be related to transactions in the 'GDRs' and shares of 'Vyapar industries Ltd' i.e. the assessee by different persons and not the transactions undertaken by the assessee company

(vi) There is no corroborative evidence as to receipt of the interest by the assessee.

4.3 In view of the above, the assessee contested that the addition made by the Assessing Officer was based on assumptions and surmises.

4.4 The Ld. CIT(A) has further mentioned that during appellate proceedings, it was mentioned by the assessee and ascertained by him that the assessments in the case of main persons in the Barter Group ( Mr Anil Bhai Hiralal Shah and Mr Atul Bhai Hiraral Shah ) had been completed. The Ld. CIT(A) obtained copies of assessment order in their cases and he observed that there was no discussion or any conclusion in respect of the relevant seized material.

4.5 The Ld. CIT(A), accordingly concluded that addition of the interest on the basis of unsigned and unauthenticated seized material, without any corroborative evidence brought on record by the Assessing Officer, cannot be sustained merely on the basis of presumptions. In support of his finding, he relied on No. of decisions cited in the impugned order.

5. We have heard rival submission of the Ld. Counsel of the assessee as well as Ld. Departmental Representative and perused the relevant material on record. In the instant case issue in dispute is whether the documents seized

expressly reflect interest income in the hands of the assessee. The document in dispute has been seized from the residence of the persons of the “Barter Group”, and therefore in terms of section 132(4A), it is presumed that the documents belonged to the person from whom possession said document has been found and seized. Further, it is presumed that contents of the document are true. The relevant provision of section 132(4A) is reproduced as under:

*“132 (4A) Where any books of account, other documents, money, bullion, jewellery brother valuable article or thing are or is found in the possession or control of any person in the course of a search, it may 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.”*

5.1 However, these presumptions are rebuttable by the searched person with evidences that said documents belongs or relates to any third person. We find that in normal course during search proceedings, statements of the

searched persons are recorded and they are questioned about the seized documents. In the instant case there is nothing on record which could show, what the searched person stated about this document and how they rebutted the presumption of the document belonging to them. In the case the Assessing Officer only summoned the directors of the assessee company and recorded his statement and the concerned director simply expressed ignorance about the document. But before the Ld. CIT(A), the assessee on the basis of his own assumptions and presumption submitted that amount of addition in dispute might be related to transactions of purchase and sale of GDR and shares of the assessee company by other persons. No such explanation was submitted by the Director of the assessee company before the Assessing Officer for leading to carry out further enquiry on the issue in dispute by the Assessing Officer. The Ld. CIT(A) has also adjudicated the issue in dispute on the basis of explanation of the assessee only of possibility of transactions related to dealing by other persons in GDR and shares of the assessee company during relevant period. The Ld. CIT(A) also gathered information in the form of assessment orders in the case of persons of "Barter Group" and concluded that nothing was mentioned in those assessment order on the issue in dispute. From the impugned order, we find that Ld. CIT(A) did not forward those evidences to the Assessing Officer

for his comment. The Ld. CIT(A) also did not enquire into the statement of the searched person made during the course of the search proceedings on the seized document under reference. If no such statement of the searched person were recorded u/s 132(4) of the Act during search proceedings, then for ascertaining the true nature and character of income reflected in seized document under reference, the Ld CIT(A) should have ensured recording of statement of searched person during appellate proceedings. He is not justified in relying merely on the statement of director of the assessee company before the Assessing Officer that he was not aware of the content of the document or submission of the assessee in appellate proceeding that transaction in documents must be transactions carried in GDRs and shares of assessee company by some other persons.

5.2 In the case of **Jansampark Advertising and Marketing Private Limited**, the Hon'ble Delhi High Court has held that obligation to make proper enquiry and reach finding on facts does not end with the Assessing Officer and this obligation moves upward to the Ld. CIT (Appeals) and also ITAT should if it come to their notice that there has been the default in such respect on the part of the Assessing Officer. The Hon'ble High Court held that in such event, they are duty bound to either themselves properly enquire or cause such

enquiry to be completed. The relevant finding of the Hon'ble High Court is reproduced as under:

*"38. The provision of appeal, before the CIT (Appeals) and then before the ITAT, is made more as a check on the abuse of power and authority by the AO. Whilst it is true that it is the obligation of the AO to conduct proper scrutiny of the material, given the fact that the two appellate authorities above are also forums for fact-finding, in the event of AO failing to discharge his functions properly, the obligation to conduct proper inquiry on facts would naturally shift to the door of the said appellate authority. For such purposes, we only need to point out one step in the procedure in appeal as prescribed in [Section 250](#) of the Income Tax Act wherein, besides it being obligatory for the right of hearing to be afforded not only to the assessee but also the AO, the first appellate authority is given the liberty to make, or cause to be made, "further inquiry", in terms of sub-section (4) which reads as under:-*

*—The Commissioner (Appeals) may, before disposing of any appeal, make such further inquiry as he thinks fit, or may direct the Assessing Officer to make further inquiry and report the result of the same to the Commissioner (Appeals).*

*39. The further inquiry envisaged under [Section 250\(4\)](#) quoted above is generally by calling what is known as "remand report". The purpose of this enabling clause is essentially to ensure that the matter of assessment reaches finality with all the requisite facts found. The assessment proceedings re-opened on the basis of preliminary satisfaction that some part of the income has escaped assessment, particularly when some unexplained credit entries have come to the notice (as in [Section 68](#)), cannot conclude, save and except by reaching satisfaction on the touchstone of the three tests mentioned earlier; viz. the identity of the third party making the payment, its creditworthiness and genuineness of the transaction. Whilst it is true that the assessee cannot be called upon to adduce conclusive proof on all*

*these three questions, it is nonetheless legitimate expectation of the process that he would bring in some proof so as to discharge the initial burden placed on him. Since [Section 68](#) itself declares that the credited sum would have to be included in the income of the assessee in the absence of explanation, or in the event of explanation being not satisfactory, it naturally follows that the material submitted by the assessee with his explanation must itself be wholesome or not untrue. It is only when the explanation and the material offered by the assessee at this stage passes this muster that the initial onus placed on him would shift leaving it to the AO to start inquiring into the affairs of the third party.*

*40. The CIT (Appeals), as also the ITAT, in the case at hand, in our view, unjustifiably criticized the AO for not having confronted the assessee with the facts regarding return of some of the summons under [Section 131](#) or not having given opportunity for the identity of all the share applicants to be properly established. The order sheet entries taken note of in the order of CIT (Appeals) seem to indicate otherwise. The order of CIT (Appeals), which was confirmed by ITAT in the second appeal, does not demonstrate as to on the basis of which material it had been concluded that the genuineness of the transactions had been duly established. There is virtually no discussion in the said orders on such score, except for vague description of the material submitted by the assessee at the appellate stage. Whilst it does appear that the time given to the assessee for proving the identity of the third party was too short, and further that it is probably not always possible for the assessee placed in such situation to be able to enforce the physical attendance of such third party (who, in the case of share applicants vis-à-vis a company, would be individuals at large and may not be even in direct or personal contact), the curtains on such exercise at verification may not be drawn and adverse inferences reached only on the basis of returning undelivered of the summonses under [Section 131](#). Conversely, with doubts as to the genuineness of some of the parties persisting on account of non-delivery of the processes, the initial burden on the assessee to adduce proof of identity cannot be treated as discharged.*

*41. We are inclined to agree with the CIT (Appeals), and consequently with ITAT, to the extent of their conclusion that the assessee herein had come up with some proof of identity of some of the entries in question. But, from this inference, or from the fact that the transactions were through banking channels, it does not necessarily follow that satisfaction as to the creditworthiness of the parties or the genuineness of the transactions in question would also have been established.*

*42. The AO here may have failed to discharge his obligation to conduct a proper inquiry to take the matter to logical conclusion. But CIT (Appeals), having noticed want of proper inquiry, could not have closed the chapter simply by allowing the appeal and deleting the additions made. It was also the obligation of the first appellate authority, as indeed of ITAT, to have ensured that effective inquiry was carried out, particularly in the face of the allegations of the Revenue that the account statements reveal a uniform pattern of cash deposits of equal amounts in the respective accounts preceding the transactions in question. This necessitated a detailed scrutiny of the material submitted by the assessee in response to the notice under [Section 148](#) issued by the AO, as also the material submitted at the stage of appeals, if deemed proper by way of making or causing to be made a "further inquiry" in exercise of the power under [Section 250\(4\)](#). This approach not having been adopted, the impugned order of ITAT, and consequently that of CIT (Appeals), cannot be approved or upheld."*

5.3 It is evident that in the case no information is available as what the searched person (from whose possession said document has been found) has stated about the entries recorded in the relevant seized document, which is important for arriving at conclusion as what information is contained in the said documents. The primary onus is on searched person to explain the nature

and character of the entries recorded in the documents seized from his residence. In absence of any such information on record, arriving a decision by the Ld. CIT(A) that document is unsigned and unauthentic, is unjustified. In the facts and circumstances, respectfully following the finding of the Hon'ble Delhi High Court (supra), we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Ld. Assessing Officer for deciding afresh following our directions in above paras for considering the statement of searched person from whose possession the seized document under reference has been found, for ascertaining true nature and character of the entries recorded in said seized document. It is needless to mention that the assessee shall be afforded adequate opportunity of being heard. Accordingly, the grounds raised by the revenue in its appeal are allowed for statistical purposes.

6. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

7. The grounds raised by the Revenue in appeal for assessment year 2014-15 are reproduced as under:

1. *On the facts and circumstances of the case and in law the Ld. CIT(A) has erred in deleting the addition of ₹7,08,48,993/- (₹6,41,33,420/- on account of cash expenses, ₹31,83,750/- on account of sale of shares and payment of Vyapar & ₹35,31,823/- on account of sale GDR) without appreciating the fact that the documentary evidence found during the search are sufficient evidence to draw a presumption regarding transaction found entered in the seized document in terms of section 106 of the Evidence Act.*
  2. *On the facts and circumstances of the case and in law the Ld. CIT(A) while holding that the assessing officer has not brought any corroborative evidence on records, has failed to appreciate that the seized documents has to be accepted as true or otherwise in it's entirety.*
  3. *On the facts and circumstances of the case and in law the Ld. CIT(A) has failed to appreciate the settled position of law that where direct evidences is not available or possible one has to fall back on the circumstantial evidence and apply the test of human probabilities.*
  4. *On the facts and circumstances of the case and in law the Ld. CIT(A) has failed to consider the provisions of the IT. Act, 1961 that even under the Act, there is a presumption u/s 292C of the I.T. Act, 1961 that the contents of the books of account and other documents are true and such books of account/ documents belongs to such person who is searched u/s 132 of the IT. Act, 1961.*
8. The grounds raised in the assessment year 2014-15 are identical to grounds raised by the revenue in assessment year 2011-12. Both the parties

agreed that additions made in assessment year 2014-15 are in same set of facts and circumstances as the addition made in assessment year 2011-12, therefore following our finding in assessment year 2011-12, we feel it appropriate to set aside the finding of the Ld. CIT(A) on the issue in dispute and restore the matter back to the file of the Ld. Assessing Officer for deciding afresh, following our directions in assessment year 2011-12. The grounds of the Revenue are accordingly allowed for statistical purposes.

9. In the result, both the appeals of the Revenue are allowed for statistical purposes.

**Order pronounced in the open Court on 31/03/2022.**

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER

Mumbai;

Dated: **31/03/2022**

Dragon Legal/Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**