

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'B' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 1333/JP/2018
निर्धारण वर्ष/Assessment Year :2012-13

Sh. Mahinder Yadav, S/o Late Sh. Jeet Singh Yadav, Vill. Sanoli, Tehsil – Mundawar, Distt.- Alwar (Raj.)	बनाम Vs.	ITO, Behror
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABPPY 6893 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No. 1339/JP/2018
निर्धारण वर्ष/Assessment Year :2012-13

ITO, Behror	बनाम Vs.	Sh. Mahinder Yadav, S/o Late Sh. Jeet Singh Yadav, Vill. Sanoli, Tehsil – Mundawar, Distt.- Alwar (Raj.)
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABPPY 6893 D		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Sh. Rajeev Sogani (CA)
राजस्व की ओर से/ Revenue by : Sh. Sanjay Dhariwal (CIT)

सुनवाई की तारीख/ Date of Hearing : 20/07/2022
उदघोषणा की तारीख/Date of Pronouncement: 31/08/2022

आदेश / ORDER

PER BENCH :

These two appeals are filed by the assessee and revenue aggrieved from the order of the Commissioner of Income Tax

(Appeal)-22, Alwar [Here in after referred as Ld. CIT(A)] for the assessment year 2012-13 dated 13.09.2018 which in turn arises from the order passed by the ITO, Ward- Behror passed under Section 147 r.w.s 143(3) of the Income Tax Act, 1961 (in short 'the Act') dated 23.03.2016.

2. In ITA No. 1333/JP/2018, the assessee has taken following grounds in this appeal;

- “1. That the order of the CIT Appeal, Alwar is not justified, The Hon'ble CIT ignored that facts of the case and finding given by the AO.
2. That the CIT Appeal, Alwar in his order dated 13.09.2018 enhanced the total amount of investment from 35653212.00 to 36245212.00 of the assessee by his own assumption. The total investment proved by the AO in his remand report is 35653212.00. Therefore the enhancement of Rs. 5.92 lakh is illegal and baseless. And based on his own assumption.
3. That the CIT Appeal erred in making addition of Rs. 18.92 lakh, where the Id. AO was satisfied with the submission of the assessee.
4. That the CIT Appeal has overruled the findings of the AO without giving any specific reasons.
The assessee craves to add/alter any ground of appeal at the hearing of the appeal.”

2.1 On 22.09.2021 assessee has filed a payer to revise ground no. 3 and a prayer to raise additional ground. The said additional ground and revised ground is extracted herein below as the same admitted in the interest of justice:

Modified ground no.3

3. That the CIT(A) erred in making addition of Rs. 19.92 laksh where the Id. AO was satisfied with the submission of the assessee.

Additional ground raised by the assessee

In the facts and circumstances of the case and in law, Id. CIT(A) has erred in confirming the addition to the tune of Rs. 34,73,212/-. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may be granted by deleting the said addition.

3. In ITA No. 1339/JP/2018, the revenue has taken following ground in this appeal;

“1. On the facts and circumstances of the case and in law Ld. CIT(A) erred in restricting the addition of Rs. 3,62,45,212/- to Rs. 53,65,212/- made by the AO on account of unexplained investment from undisclosed sources, without appreciating the material facts of the case.”

4. The fact as culled out from the records is that in this case notice dated 29.12.2014 u/s 148 of the I.T.Act, 1961 was issued and served upon the assessee on 03.01.2015 after recording reasons u/s 147 of the Act. The assessee has not filed return of income within stipulated time in compliance of notice u/s 148. Thereafter notice dated 20.02.2015 u/s 142(1) along with query letter was issue to the assessee fixing the date of hearing on 02.03.2015. It is observed from the records that the assessee remained non-compliant in the assessment proceedings. The Id. AO in his order at page 3 given a table mentioning the notices issued and / or opportunities provided and the compliance made by the assessee. The same is reproduced here in below:

Notice issued and date of issue of notice / Note Sheet entry	Due date of compliance	Details of compliance made by the assessee
u/s 148 dated 29-12-2014	02-02-2015	No compliance made
u/s 142(1) dated 20-02-2015	02-03-2015	No compliance was made
Order sheet entry dated 04-03-2015	11-03-2015	No compliance was made
u/s 142(1) dated 21-05-2015	29-05-2015	No compliance was made
Show cause u/s 144 dated 10-06-2015	22-06-2015	Request for adjournment was received
Notice u/s 142(1) dated 22-06-15	29-06-2015	AR of the assessee and brother of the assessee attended but no compliance was made
Order sheet entry dated 29-06-2015	08-07-2015	No compliance
Notice u/s 142(1) dated 13-07-2015	21-07-2015	Request for adjournment was received
Notice u/s 142(1) dated 04-08-2015	18-08-2015	Non compliance was made
Notice u/s 142(1) dated 19-11-2015	27-11-2015	Application for adjournment was received
Order sheet entry dated 27-11-2015	08-12-2015	Part reply furnished
Order sheet entry dated 08-12-2015	16-12-2015	No compliance was made
Summon u/s 131 dated 13-01-2016	21-01-2016	Non compliance
Order sheet entry dated 16-02-2016	03-03-2016	Non compliance
Order sheet entry dated 04-03-2016	14-03-2016	Non compliance
Notice u/s 142(1) dated 14-03-2016 along with last & final opportunity letter	18-03-2016	No compliance was made.

5. It has been thus observed by the Id. AO that the assessee was provided number of opportunities to file reply in relation of various queries raised but he has only furnished part details/documents. The Id. AO based on the information provided by the assessee and details obtained from the office of the sub-registrar observed that the assessee has purchased following immovable properties during the year under consideration:

Name of the purchaser	Name of sellers	Face value of transaction	Date of transaction	Mode of transaction	Address of immo. Property
Mahendra Singh Yadav	Kamla, Dharma, Urmila D/o Surajbhan	9687300	16.06.2011	Cash	Neemrana
Mahendra Singh Yadav	Mahipal S/o Sh. Chhitar	94,48,180	08.12.2011	Cash	Neemrana
Mahendra Singh Yadav	Ramkumar, Mahipal, Jitendra, Surendra, Chanderkalan, Sangeeta	99,30,340	08.07.2011	Cash	Neemrana
Mahendra Singh Yadav	Ramanand, Kanwar Singh, Jale Singh	6,66,000	12.01.2012	Cash	Batkhani

5.1 On perusal of the above table, it has been observed that assessee has paid a sum of Rs. 2,97,31,820/- for purchase of immovable property to the sellers in cash for purchase of immovable properties. The AO has further observed that the assessee has also incurred the other expenses in the form of registration expense, stamp duty, deed writing, commission/brokerage, photography expenses and other expenses which is tabulated in the assessment order and the same is extracted here in below:

S.No.	Face value	Registration/stamp duty expenses	Other expenses i.e. deed writing, photography, commission/brokerage and other expenses	Total
1	96,87,300	488590	Approximately Rs. 175000/-	10350890/-
2	94,48,180	472800	Approximately Rs. 175000/-	10095980/-
3	99,30,340	458720	Approximately Rs. 175000/-	10564060/-
4	6,66,000	39150	Approximately Rs. 10000/-	715150/-

5.2 Based on the above information before the AO observed that the assessee has invested a sum of Rs. 2,97,31,820/- in purchase of immovable properties during the year under consideration and also incurred expenses to the tune of Rs. 19,94,260/- in registration and other expenses. Thus, he has stated that the assessee has invested a sum of Rs. 3,17,26,080/- in purchase of immovable properties. The Id. AO further observed that in spite of various opportunity granted to the assessee. Therefore, based on the above facts the Id. AO given a final show cause notice to the assessee asking him to show cause as to why a sum of Rs. 3,17,26,080/- should not be treated as undisclosed sources income and added to the income of the assessee. The assessee has not filed any reply to the said show cause notice.

5.3 Meanwhile SR Bansur has also furnished copy of sale deed executed by the assessee for the year under consideration. Therefore, on 22.06.2015 again a show cause notice was issued to the assessee. The relevant extract is as under:

"...In compliance of enquiry letter issued u/s 133(6) of the I.T. Act, 1961, Sub-Registrar Bansur has furnished copy of sale deeds executed by you during the year under consideration. On perusal of the sale deed, it is noticed that you have paid a sum of Rs. 10,00,000/- for purchase of immovable property situated at Vill. Hamirpur, Bansur and also paid registration charges/stamp duty of Rs. 65660/-. You are hereby required to show cause by this amount

should not be treated as your undisclosed income and added to your income..."

No details/documents have been furnished by the assessee in compliance of above cause notice. Copy of two sale deeds registered by the assessee before the SR Fundawar has also been furnished by the SR-Mundawar vide his office letter no. 186 dated 12-06-2015 received in this office on 23-06-2015.

However, AR of the assessee vide his written submission dated 08-12-2015 has stated that:-

".....with due respect it is submitted that the assessee has purchased agriculture land as follows

Date	place	cost	registration charges	total	total
16-06-2011	Neemrana	9687300	188590		101175890
08-12-2011	Neemrana	9448180	472800		9920980
08.07.2011	Neemrana	9930340	458720		10389060
26.07.2011	Neemrana	1078000	65000		1143000
24.07.2011	Partapur chak no. 1	1250080	83510		<u>699150</u>
					<u>33661670</u>

The assessee has purchased this land from the proceeds received on agreement of his ancestral land situated at Village Sanoli Tehsil Mundawar, Dist-Alwar, Rajasthan. The assessee has sold total of 4.48 hact, ie, about 22 bigha land @ 15.00 lakh/- bigha to Sh. T. Lachunagapa R/o Yamuna House, Gangtok, Sikkim. Sir, the assessee has received all the payment in cash from the party and handed over the possession and promised him that the documents can be register whenever he want. The invested all the proceed/amount in the purchase of agriculture land stated above...."

5.4 In the light of the peculiar facts of the case and continuation non compliance on the part of the assessee the Id. AO sought direction u/s 144A of the Income Tax Act from the office of the Addl. CIT, Range -2, Alwar vide AO letter dated 08.01.2016. The relevant direction is extracted here in below ;

"..... I have perused the assessment records of the above assessee and find that there is no complication regarding the issue involved in this case. Neither any nor direction has been sought. Therefore, you are directed to complete the assessment as per rules. If the assessee does not co-operate the assessment proceedings, you can complete the assessment on merits experts u/s 144 of the I.T. Act"

5.5 Thereafter the Id. AO passed the order in this case and the relevant observation of the AO is reiterated here in below for the sake of brevity of the facts:

“Summon u/s 131 of the IT Act, 1961 was issued on 13-01-2016 and assessee was required to attend this office personally on 21-01-2016. The summon remained uncomplished with. The assessee has furnished a copy of so called sale agreement executed between him and Sh. T. Lachunagapa R/o Gangtok (Sikkim) for sale of his agricultural land situated at Vill. Sanoli, Tehsil Mundawar, Distt. Alwar (Rajasthan) An enquiry letter dated 13.01.2016 u/s 133(6) of the IT Act, 1961 was issued to Sh. T. Lachunagapa R/o Gangtok (Sikkim) calling for certain details/documents in support of land purchased by him from the assessee on agreement basis. No reply was received from Sh. T. Lachunagapa R/o Gangtok (Sikkim) till 14-03-2016 hence another enquiry letter dated 14-03-2016 was issued to him through registered post to furnish certain details/documents within three days but till date no reply has been received from him.

On 04-03-2016, the AR of the assessee has furnished copy of affidavit of Sh. Thukchuk Lachungpa S/o Lt. Sh. Tencho Lachungpa R/o Gangtok Sikkim in which he has stated that he has purchased the land from the assessee situated at Vill. Sanoli admeasuring 4.48 hectares but have not registered the sale deeds. He has further stated that he has visited the place once in Feb 2011 and again in April 2011 and in May 2011 during my visit to New Delhi by his personal vehicle.

He further stated that I have given some amount at the time of my first visit and balance he has collected by visiting delhi from me and balance in may 2011 at Gangtok along with his brother Virender Yadav. He has further stated that all the payments have been made in cash by him to the selling party. He further stated that papers relating to agreement to sales are purchased by the seller himself and got notarized by them and after completion of payment I received the original and copy of that give to them.

Contents of the affidavit have been examined carefully and it is observed that the purchaser has only stated that he has made some payments in his first visit during Feb. 2011, April 2011 and some in May 2011 is completely contradictory to the contents of the sale agreement. Exact amount paid on each time has been not stated by the purchaser. No or non registration of sale deed has been given by the so called purchaser. "When being facility is available all over the country then why payments were made in cash has been justified by him.

Vide this office letter dated 14-03-2016 the assessee was asked as under:

In order to finalize the pending assessment proceedings for the A.Y. 2012-13, in addition to earlier details/documents/clarification, you are hereby required to furnish the following details/documents/clarifications:

1. Furnish all pending details/documents along with supporting evidences.

2. Produce original copy of sale agreement entered into by you for sale of your agricultural land situated at Vill. Sanoli (Mundawar) during the year under consideration.
3. Produce the person to whom you have sold your agricultural on agreement basis alongwith his source of investment. You are hereby required to explain the genuineness of transaction entered for sale of your agricultural land.
4. Whether the sale deed for the land under consideration has been registered with the registration authority, if not, furnish the justification for non registration.
5. Produce the notary public who has notarized the sale agreement along with copy of his register.
6. On 13-01-2016 summon u/s 131 of the IT Act, 1961 was issued to you for personal appearance but you have failed to comply the same. You are hereby given last & final opportunity to appear before me on 18.03.2016 personally.

Statutory notice 142(1) is enclosed herewith. It may please be noted that neither any incomplete reply will be appreciated nor any requested for adjournment will be entertained. In the event of failure of your part to furnish the above details matter will be decided on merits without giving any further opportunity. It may please be treated as LAST & FINAL OPPORTUNITY.

The assessee has not made compliance of this letter however on 23-03-2016, AR of the assessee has furnished written submission in which he has stated that:

".....the assessee has parental land at village Sanoli n various Khasar out of which he has sold 4.48 Hect Land to Sh. T. Lachungpa during the year under consideration, the written an agreement with the party and handed over the possession to him and se to register the document whenever he want. The copy of agreement is already submitted with you

The assessee has received total amount of Rs. 2.68.80.000/- from the buyer. He has first visit in month of Feb. 2011 and given Rs. 10 Lakh as token and promise to purchase. Thereafter in come in first week of April 2011 and agreement was executed on his date. I have received Rs. 40 lakh from him at Delhi and balance amount has been received by visiting Sikkim along with his brother. That balance payment has been received in .cash.in month May 2011.

That the assessee has purchased following agriculture land during the year under consideration:-

16/06/2011	9687300.00+488590.00	10175890.00
08/12/2011	9448180.00 + 472800.00	9920980.00
12/05/2011	9930340 + 458720	10389060.00
27/06/2011	1078000 + 65660	1143660.00
12/01/2012	666000 + 39150	<u>705150.00</u>
	Total	32334740/-

That the assessee paid all the payment to the seller s in cash. The payment was made Rs. 2,68.80.000/- from the cash received from T. Lachungpa Rs. 4,00,000/- from my brother K.D. Yadav HUF, who also sold the land along with us to Sh. T. Lanchangpa and balance amount from my savings. I have sold my other agriculture land and all the sales of proceed was with me and balance from agriculture goods sold.

Total payment made as under	
Total purchases	32334740
Less:: Received from T. Lachungpa	26888000
Received from brother	4000000
Self amount	= 1446740

Reply of the assessee has been considered but the same is not found tenable documentary evidences in support of his contention have been furnished by him copy of alleged sale agreement. As stated above, the assessee was provided ample opportunities during the assessment proceedings to explain the source of investment made in purchase of immovable properties but the assessee has failed to prove source of investment made in purchase of immovable properties. However, the assessee has furnished a copy of alleged sale agreement executed by him with Sh. T. Lachunagapa R/o Gangtok (Sikkim) for sale of his agricultural land situated at Vill." as no except Sanoli. The contention of the assessee regarding sale of his agricultural land through a sale agreement is being hereby rejected on the following grounds:

1. The assessee has failed to prove the genuineness of sale agreement as he has neither produced the person with whom he has executed a sale agreement for sale of his agriculture land nor has produced the notary public who has notarized the sale agreement.

2. There is a clear contradiction in sale agreement and in affidavit of Sh. Lachungpa R/o Gangtok (Sikkim). As per affidavit of Sh. Lachungpa he has stated that he has made some payments in his first visit during Feb. 2011, April 2011 and some in May 2011 is completely contradictory to the contents of the sale agreement. Exact amount paid on each time has been not stated by the purchaser. As per sale agreement dated 10-04-2011 it is stated that entire sale consideration has been received in cash from the purchaser as earnest money (sai). Relevant extract of sale agreement is being reproduced hereunder:

“...मैने उपरोक्त आराजीयात को मुबलिक- 15,00,000/- रूपये शब्देन पन्द्रह लाख रूपये प्रति पक्की बीघा के हिसाब से सौदा तय किया गया है। बहक क्रेता को विक्रय करके क्रेता से इस सौदे के मध्य बतौर साई के मु0 2,68,80,000/- रूपये शब्देन दो करोड़ अडसठ लाख अस्सी हजार रूपये प्राप्त कर लिये है। उपरोक्त आराजीयात का बयनामा मै विक्रेता जिस दिनांक को क्रेता चाहेगा उस दिन क्रेता के ह कमे या क्रेता द्वारा बनाये किसी दिगर व्यक्ति के हक में करवा दूंगा तथा क्रेता से बयनामों की कोई रकम प्राप्त नहीं करूंगा”

3. No sale deed has been registered with the registration authorities till date as stated by the purchaser without specifying any reasons for non registration of sale deed when entire payments was made at the time of executing sale agreement which shows that the transaction is not genuine and is a sham transaction.

4. As stated in the sale agreement, the assessee has sold 4.48 hectares Le Bigha land to Sh. T. Lachunagapa 15.00 lacs per bigha i.e. for a consideration of Rs. 2,68,29,560 4.48 hectares means 17.89 Bigha and 17.89 1500000 2,68,29,560/-) and received a sum of Rs. 2,68,80,000/- as earnest money. It is ridiculous that a persons who buy a land for a sale consideration of Rs. 2,68,29,560/- and paid a sum of Rs. 2,68,80,000/- as carnest money and even after paying more than sale consideration did not get registered the sale deed in his name or in the name of other person.
5. How a person paid the entire sale consideration in cash to the seller at the time of executing sale agreement and did not get registered the sale deed with the registration authorities even after 05 years and 10 months from date of sale agreement is also not believable.
6. No original sale agreement has been produced by the assessee.
7. The assessee has also not proved the ownership over the land as mentioned in the sale agreement.
8. It is also not a believable fact that a person brings a sum of Rs. 2,68,80,000/- in cash from Gangtok to Neemrana which is about 1630 KM away in the present time when banking facilities are available even in the small villages.
9. Neither the assessee not the purchaser has proved the source of extending such a huge amount in cash to the assessee for purchase of his agricultural land situated at village- Sanoli, Mundawar.
10. It is also pertinent to mention here that the assessee has purchased two immovable property situated at Vill. Sanoli for a consideration of Rs. 1,92,822)- & 5,58,900/- respectively on 07-10-2011 & 01-07-2011 @ 2,79,450/- per bigha whereas he has sold his agricultural land in the month of April 2011 through a sale agreement at the rate of 15,00,000/- per bigha. There is huge difference in rate of land as per sale agreement executed by the assessee for sale of his land and as per purchase deed registered with the SR Mundawar for purchase of immovable properties by the assessee in the same locality i.e. village Sanoli. These facts made it clear the contention of the assessee regarding sale of his land on agreement basis is nothing but a device adopted to prove the source of investment made by the assessee in purchase of immovable properties as discussed in foregoing paragraphs of this assessment order.

Based on the above discussed facts, it is crystal clear that the contention of the assessee regarding sale of immovable property through a sale agreement dated 10-04 2011 is nothing but a device adopted to explain the source of investment made in purchase of immovable property. The story of sale agreement is only a sham transaction which cannot be relied upon as discussed above. Hence I hereby treated the sale agreement as a sham transaction.

Further, on perusal of AR of assessee's written submission dated 23-03-2016 received in this office 23-03-2016 AR of the assessee has stated in one para that he has received a sum of Rs. 4,00,000)- from his brother K.D. Yadav HUF and in another para he has stated that he has received Rs. 40,00,000/- from his brother but neither the name of his brother nor mode of receipt has been explained by him. It is not clear whether the assessee has

received a sum of Rs. 40,00,000/- from his brother or Rs. 4,00,000/- from K.D. Yadav HUF. No confirmation and source of extending the sum has been proved by the assessee. The assessee has also stated that out of total investment in purchase of immovable property, Rs. 14,46,740/- has been invested from his past savings. He has stated that he has sold his agricultural land in 2006 and all the sale consideration was with him and remaining was from sale of agricultural goods.

The contention of assessee cannot be accepted because a person of ordinary prudence cannot keep such a huge amount in cash when he maintains a bank account in his own name and there is gap of almost 05 years when the land was sold by the assessee and purchased by him. Hence this contention of the assessee is being hereby rejected.

Further the assessee has failed to furnish details of immovable properties purchased by him and registered with the SR- Bansur and Mundawar during the year under consideration. Even the assessee has not furnished any details of these properties in his any written submission furnished in this office. The source of investment in these properties remained explained.

Details of properties by the assessee and other expenses incurred are being as per below mentioned table:-

S. No.	Address of property	Date of transaction	Face value	Registrati on/stamp duty expenses	Other expenses i.e. deed writing, photography, commission/brokerage and other expenses (on estimation basis)	Total
1	Neemrana	16.06.2011	96,87,300	488590	Approximately Rs. 175000/-	10350890
2	Neemrana	08.12.2011	94,48,180	472800	Approximately Rs. 175000/	10095980
3	Neemrana	08.07.2011	99,30,340	581040	Approximately Rs. 175000/	10686380
4	Batkhani	12.01.2012	6,66,000	39150	Approximately Rs. 10000/	715150
5	Hamirpur	05.10.2011	10,00,000	65660/-	Approximately Rs. 15000/	1080660
6	Sanoli	07.10.2011	192822/-	10200/-	Approximately Rs. 3000/	206022
7	Sanoli	01.07.2011	558900	35640	Approximately Rs. 9000/	603540
8	Neemrana	26.07.2011	1078000	65000	Approximately Rs. 15000/	1158000
9	Partpur Chak No. 2	24.07.2011	1250080	83510	Approximately Rs. 15000/	1348590
Total Investment						36245212

The above chart shows that the assessee has made investment in immovable properties to the tune of Rs. 3,62,45,212/- but source of the same

has been remained unexplained as discussed in forgoing paragraphs of this assessment order. The assessee has failed to prove the source of investment in purchase of immovable property to the tune of Rs. 3,62,45,212/- hence the sum of Rs. 3,62,45,212/- is being hereby treated as income from undisclosed sources invested in purchase of immovable property and added to the total income of the assessee and taxed in his hands accordingly.

6. Aggrieved from the said order of the assessing officer, assessee has preferred an appeal before the Commissioner of Income Tax, Appeals-22, Alwar.

6.1 In the appellate proceeding the assessee has taken 7 grounds of appeal related to the addition of Rs, 3,62,45,212/- made by the AO on account of investment in purchase of immovable property from undisclosed sources.

6.2 Before the Id. CIT(A) assessee filed a detailed submissions along with the additional evidence under rule 46A of the Income Tax Rules, 1962. The Id. CIT(A) stated that after going through the reasons for not filling the details before the AO it has been considered necessary to take it on record to adjudicate on the issues raised in the appeal. The additional evidences were thus, forwarded to the AO for examination and his comments.

6.3 The Id. AO has filed his comments vide letter dated 09.04.2018 in the remand proceedings, the relevant part is reproduced here in below :

“Verification of the funds received by the assessee of Rs. 26880000/- from shri T. Lachunagapa:- the assessee in his submission during the course of proceedings stated that he has received all the amount in cash from T.Lachungapa. The was asked to produce Sh.T. Lachungapa on dated 24.02.2016 , statement of the buyer is recorded, the buyer stated that he has purchases the land from the assessee and paid all the money in cash on different dates and executed the agreement with him. He further stated that he has taken over the possession of the land and sale deed is yet not executed. He produce his balance sheet for verification in which he has shown this land. He further stated that he is native of Sikkim for which no tax liability on him and given his PAN. He submitted all about his income in the state which place on record and copy of the statement is attached with this. The statement of brother of the assessee Sh. KD yadav was also recorded and placed on file copy of that is also enclosed. The statements of the assessee was also recorded and matched with the statement of the buyer Sh T. Lachunagapa. After recorded the statement the following amount has been verified :-

Total investment by the Assessee including

Registration charges in property	Rs	35653212.00
Amount received from T. Lachunagapa	Rs	26880000.00
Amount received from KD yadav	<u>Rs.</u>	<u>4000000.00</u>
Balance	Rs.	4773212.00
Amount invested by assessee from sale of his other		
Land and savings	=	1400000.00
Unvarifeed amount	=	3473212.00

The Jt. CIT while endorsing the remand report has written as under;

Kindly refer to the subject cited as above

2. Kindly find enclosed herewith letter No 04.04.2018 received from the ITO, Ward Behror, Alwar on the subject cited above

3.The AO, vide this letter has submitted that the assessee was given ample opportunities to prove the source of investment made by him in purchase of

Immovable property at Neemrana and others. Despite this, the assessee did not respond and was not able to prove the transactions. The AO has also submitted that amount which remains unverified during the proceedings in respect of the purchase of immovable property to Rs. 34,73,212/-.

4. In view of the above facts and as submitted by the AO, the above amount as derived by the AO deserves to be confirmed as mentioned in AO's letter.

This is submitted herewith for your kind perusal and consideration.

Therefore after due verification the A.O has concluded that the source of investment made by the appellant in purchase of property to the extent of Rs.3,22,80,000/- has been verified that includes Rs. 2,68,80,000/- receipt as sale consideration from Sh. T Lachungpa and Rs. 40,00,000/- receipt from Sh. K. D. Yadav and Rs. 14,00,000/- out of past savings.

In this regard, I have taken into consideration the remand report stating that Sh. K. D. Yadav was summoned during remand proceedings and his statement was recorded where he has admitted to have advanced Rs. 40,00,000/- to the appellant. Furthermore the A.O. has accepted the claim of the assessee with regard to investment of Rs. 14,00,000/- out of his past savings/crop sales etc. However, I am not convinced about the source of investment of Rs. 14 Lakhs as no concrete evidence has been filed to substantiate this claim of the appellant. Therefore in my considered view, on the basis of enquiries made by the A.O during remand proceedings and evidences on record following amount of investment stand verified;

1. Rs. 2,68,80,000/- received from Sh. T Lachungpa on account of sale consideration of land as verified by the A.O in remand report.

2. Rs. 40 lakhs received from Sh. K. D. Yadav as verified by the A.O in remand report.

However another question arises about the sale of the land vide agreement to sell. Since the possession of the land was transferred to Sh. T. Lachungpa after getting the sale consideration therefore as per the transfer of property Act, the transfer has already taken place. Therefore, has any capital gain arisen out of this transfer? In this regard, the appellant has filed the proof of the said land being agricultural as per the letter from Patwari vide his letter dated 31/08/2018 mentioning that the land is situated 25 km from the municipal limit. As such the land is not capital asset as per the provisions of section 2(14)(iii) of the Act."

6.4 The Id. CIT(A) based on the evidences and facts along with the remand report submitted by the AO the investment to the extent of Rs. 3,08,80,000/- considered as explained and deleted the

addition for that amount and balance amount of Rs. 53,65,212/- sustained and thus the appeal of the assessee was partly allowed.

7. As the assessee did not get the relief completely the assessee has carried the appeal before us and even the revenue also aggrieved from the order of the CIT(A) carried the the appeal before us on the only one ground granting the relief by CIT(A) based on the report of the AO.

8. First of all we take up the appeal of the revenue in ITA No. 1339/JPR/2018 where in the revenue has taken only one ground which is related to the deletion of the addition by the Id. CIT(A) based on the basis of the remand report for an amount of Rs. 3,08,80,000/-.

8.1 The Id. DR has filed a detail submission and in respect of the appeal filed by the Revenue and the appeal of the assessee to the relevant submission of the Id. DR is extracted herein below.

“2. The brief facts of the case are that the assessee had purchased some lands in Neemrana and surrounding area and the AO required the assessee to explain the source of purchase of such lands. The total cost of 9 pieces of land was Rs. 3,62,45,212 which included estimated expenses of Rs. 5,92,000 on account of misc. expenses discussed by the AO in the assessment order u/s

143(3)/147 dated 26.03.2016. The explanation of the assessee regarding source during the course of the assessing proceedings was:

Total Purchases: Rs. 3,23,34,740

Sources: (i) Sale receipts from Sh Lachungpa on account of sale of land: 2,68,88,000

(ii) Loan from brother : 40,00,000

(iii) Savings : 14,46,740

Thus, the major source of purchase was purported sale of agricultural land to a resident of Sikkim, Sh Lachungpa.

The AO required to produce Sh Lachungpa, so that his statement could be recorded, but the assessee failed to do so. The assessee was also not able to satisfy the AO that why a person of Sikkim will purchase the land in a village in Rajasthan and why the agreement has not been registered by him even after so many years of so-called purchase of land. The entire payment was made in cash and the AO wondered how a person will come far away from Sikkim to purchase the land with huge amount of cash. The AO was also not satisfied with the explanation of the assessee regarding other sources and added Rs 3,62,45,212 to his total income

2. Aggrieved with the order of the AO, the assessee filed appeal before the CIT(A). The CIT(A) during the course of the appellate proceedings, forwarded the submission of the assessee to the AO for remand report. The AO submitted in his remand report that amount of RS 2,68,000 received from Lachungpa, loan of Rs 40,00,000 for hither K.D Yadav is verified and savings of Rs. 14,00,000 is also verified. The AO took total con at Rs 3,56,53,212 in the remand proceedings and did not offer any comment on cost of misc expenses amounting to Rs. 5,92,000 taken in the assessment order. Thus, as per AO in the remand proceedings, total verified amount was Rs. 3,22,80,000 and balance amount of Rs. 34,73,212 was unverifiable and was required to be confirmed.

3. The Id. CIT(A) in his order dated 13.09.2018 accepted the verification of Rs. 3,08,80,000 on account of sale of land to Lachungpa and loan from brother, but he did not accept the verification of Rs. 14,00,000 out of savings of the assessee, as he failed to furnish any evidence during the course of the remand proceedings to substantiate his claim.

4. The Id. AR during the course of the proceedings has submitted that when the AO in the remand proceedings had accepted the past savings of Rs. 14,00,000 then the Id. CIT(A) could not disregard such admission and ought to have accepted the remand report on this issue also.

The argument is legally untenable because of the following reasons-

(1) As per the provisions of section 251(1a) of the Act, in case of an order of assessment, the CIT(A) may confirm, reduce, enhance or annul the assessment. Thus, the CIT(A) is required to confirm or reduce the additions disallowances made in the assessment order, he is not required to confirm or reduce the finding of the AO in remand report pursuant to his directions u/s 250(4) of the Act

(ii) The remand report is furnished in pursuance of the directions of the CIT(A) s 250(4) of the Act to enable him to dispose of an appeal in a satisfactory manner. By no stretch of imagination, this report can be binding on CIT(A) and divest him from the powers vested in him by the Act by virtue of section 251(1) of the Act. It is inconceivable to think that a report of lower authority, to whom the higher authority directed to furnish such report, will be binding on such higher authority when judicial conscience of such higher authority prevents him to accept such report

(iii) Remand report, which is sort of an administrative report, cannot substitute the order of assessment. What is appealable as per the provisions of the Act, is order of assessment and not remand report

(iv) The CIT(A) has co-terminus power with that of the AO. So, he can make any inquiry to dispose of the appeal himself, or he can direct the AD to do such inquiry. Section 250(4) only talks about directions by the CIT(A) to make inquiry and report the result of the same to the CIT(A). The work of the AO stops here. Section 250(4) does not lay down that the CIT(A) shall pass the order on the basis of the findings of the AO. The reason is not far away to seek. The Act cannot bound a judicial authority to accept the finding of some other authority, otherwise it will severely undermine the independence and judicial conscience of such authority. Even a higher authority cannot direct the lower authority to decide a particular case in a particular manner. If the view that every finding of the AO in remand proceedings should be accepted by the CIT(A) is accepted, then it will be akin to delegating the function of the higher judicial forum to a lower judicial forum.

(v) The objective of the remand report is to get the inquiry conducted. What should be the conclusion of such inquiry, is to be decided by the CIT(A) and not the Assessing Officer.

(vi) When the view of the AO in the remand proceedings is not in conformity with the view of the AO, who passed the assessment order and the CFTCA finds that view of the latter is acceptable, then argument that the Department was also of the view that the addition is not sustainable, will no longer hold true. In this scenario, there are two views of the Department and the CIT(A) has preferred the finding of the AO in the assessment order rather than the finding of the AO in the remand report for the simple reason that the AO has not given any reason for such finding.

5. On merits also, the assessee had shown its past savings at Rs. 14,00,000 without any evidence. The AO has accepted the submission without even an iota of evidence during the remand proceedings. Hence, the Id. CIT(A) has not accepted the so-called verification by the AO. It is to be noted that during the course of the appellate proceedings, the savings of the self was shown by the assessee at Rs. 14,00,000 while during the course of the appellate proceedings he increased this figure to around Rs. 48,00,000. The assessee is taking the figures as per his whims and fancies just to balance out the total cost which shows that figures are not actual. The saving of the assessee is a certain fact which is within his knowledge, how this figure can change during different proceedings.

6. In view of the above facts, the additions of Rs. 53,65,21 confirmed by the Id.CIT(A) may kindly be sustained.

Departmental Appeal

The Id. CIT(A) has allowed the relief of Rs. 3,08,80,000 on the basis of the remand report of the AO. It is seen that the said remand report is perverse, as it did not take into account the crucial facts in case of source of fund received from Sh Lachungpa. The AO in the remand proceedings had only recorded the statement of Sh Lachungpa and relied upon his balance sheet. However, the following crucial facts were missed by the AO-

1. Why the sale-purchase transaction of such a hefty amount was not registered till the date of recording of statement.
2. When the similar properties were sold in the same village at much lower price at same time, what was specific and extra-ordinary to the property purchased by Sh Lachungpa.
3. Sh. Lachungpa is not an agriculturist. Otherwise also, what was the rationale of purchase of property by a Sikkimese in Rajasthan, particularly when neither he nor his any family member is residing in Rajasthan.
4. The entire sale transaction has been shown to have been done in cash. What was the rationale of doing such a huge transaction in cash, particularly when the impugned land is agricultural land and transaction per se is outside the scope of income-tax.
5. What was the need of carrying such a huge amount of cash from Sikkim to Rajasthan.
6. What is the sanctity of the Balance-sheet of Sh. Lachungpa, when as a resident of Sikkim, his income is exempt u/s 10(26AAA), and therefore, tinkering in Balance-sheet is not noticed anywhere.
7. The AO in the remand proceedings did not carry out any physical inquiry to see that impugned land is in whose possession.

As the Id. CIT(A) has relied upon a remand report which was not prepared with due diligence, therefore, the Hon'ble Tribunal is requested to

exercise its wide powers u/s 254 of the Act and restore back this matter to the file of the AO to pass an order after conducting the proper inquiries.”

8.2 As regards the appeal filed by the revenue the Id. AR of the assessee submitted his written submission where in he has contended as under :

“GROUND 1 OF DEPARTMENT’S APPEAL: RESTRICTING OF ADDITION OF RS. 3,62,45,212 TO RS. 53,65,212

1. Ld. CIT(A) on the basis of Remand Report of the Id. AO considered the following sources of investment to be explained:
 - a. Proceeds from sale of agriculture land of Rs. 2,68,80,000 from Mr. T. Lachungpa
 - b. Gift of Rs. 40,00,000 received from brother Mr. KD Yadav.
2. Revenue cannot be said to be aggrieved from the order of Id. CIT(A) wherein the relief provided by Id. CIT(A) was based on the Remand Report of Id. AO
3. Reliance is placed on the following decisions:
 - a. SRMB Dairy Farming (P) Ltd -Civil Appeal No. 19651 of 2017 (SC) [CLC 35-45]

“...The National Litigation Policy is as follows:

The Vision/Mission

1. The National Litigation Policy is based on the recognition that the Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country. Its aim is to transform the Government into an efficient and responsible litigant. This policy is also based on the recognition that it is the responsibility of the Government to protect the rights of citizens, to respect fundamental rights and those in charge of the conduct of the Government litigation should never forget this basic principle.

“Efficient litigant” means

- Focusing on the core issues involved in the litigation and addressing them squarely.
- Managing and conducting litigation in a cohesive, co-ordinated and time-bound manner.
- Ensuring that good cases are won and bad cases are not needlessly persevered with.

- A litigant who is represented by competent and sensitive legal persons: competent in their skills and sensitive to the facts that the Government is not, an ordinary litigant and that a litigation does not have to be won at any cost.

....

“(G) Appeals in revenue matters will not be filed:

(a) if the stakes are not high and are less than that amount to be fixed by the Revenue authorities:

(b) if the matter is covered by a series of judgments of the Tribunal or of the High Court which have held the field and which have not been challenged in the Supreme Court:

(c) where the assessee has acted in accordance with long standing industry practice:

(d) merely because of change of opinion on the part of the jurisdictional officers...” [CLC 37-38]

- b. *Jivatlal Purtapshi vs CIT* [1967] 65 ITR 261 (Bom) [CLC 1-2]
It has been held that what is voluntarily accepted cannot give rise to a grievance which can be taken in further appeal. Because of settlement between assessee and department, addition was deleted, however, the department filed appeal before ITAT complaining about deletion of said additions. Department’s appeal was dismissed as it was not treated to be aggrieved.
- c. *Banta Singh Kartar Singh vs CIT* [1980] 125 IT 238 (P&H) [CLC 3-5]
Decision of *Jivatlal Purtapshi* (supra) was followed.
- d. *CIT vs Cochin Malabar Estates & Industries Ltd* [1989] 180 ITR 152 (Kerala) [CLC 6-7]
&
- e. *Ramanlal Lamdar vs CIT* [1977] 108 ITR 73 (Madras) [CLC 8-9]

In both the above cases (d and e) the assessee’s appeal was dismissed on account of being incompetent as the assessee was not considered to be “person aggrieved”. The appeal was filed on the same issue for which the assessee agreed before AO and filed no objection. Therefore, the assessee was not said to be aggrieved by the order of AO.

- f. *B. Jayalakshmi vs ACIT* [2018] 407 ITR 212 (Madras) [CLC 10-19]
Headnote: Where Commissioner (Appeals) on basis of remand report of Assessing Officer, allowed claim of assessee, revenue was not entitled to maintain an appeal before Tribunal against said order of Commissioner (Appeals).

With the above mentioned observations of the Hon'ble Madras High Court set aside the matter to Hon'ble ITAT. In the set aside case ACIT vs B Jayalakshmi – ITA No. 1512 to 1514/CHNY/2003 [CLC 20-34], Hon'ble ITAT after taking note of the observations of Hon'ble Madras High Court held that where a remand report in favour of the assessee is there, revenue could not be considered as an aggrieved party. Hon'ble ITAT also placed reliance on the decision of Hon'ble Supreme Court in the case of SRMB Dairy Farming (P) Ltd (supra).

4. Without prejudice to above it is submitted that the assessee along with his brothers sold the ancestral agriculture land. The assessee's brother Virendra Yadav's case for the same assessment year and for the same issue was also taken up for reassessment. Hon'ble ITAT in its order for department's appeal set aside the matter to the file of AO with specific directions to verify the source of proceeds [PB2 – 1-6]. After due verification remaining proceeds (appox 50%) from sale of agriculture land from Mr. T. Lachungpa were found to be justified in case of assessee's brother Virendra Yadav [PB2 – 7-8].

In view of above department's appeal deserves to be dismissed as the same is not maintainable. On merits also the same issue, in the case of brother of the appellant, has been assessed in favour of the assessee by the Department itself at assessment stage on case being set aside by Hon'ble ITAT. Thus, on merit also the appeal of department deserves to be dismissed.

8.3 The Id. AR of the assessee in addition to the written submitted that in respect of the source of the investment made by the assessee the Id. AO examined all the aspect of the source of the investment and after verifying the records produced and the statement recorded of the person involved in the proceeding it has been submitted by the AO that the investment source duly explained by the assessee in the remand proceddings. The AO himself accepted the contention of the assessee in the remand proceeding and no that situation revenue may not have any

grievance and therefore, based on the various decisions relied upon by the Id. AR of the assessee the department appeal is not maintainable. The Id. AR of the assessee further submitted the copy of the order of the ITAT in the case of Shri Virendra Yadav brother of the assessee where in the amount involved was the same and the coordinate bench of the ITAT has set aside the issue for verification before the AO for source from where even the assessee has received the source for the investment which were considered as unexplained sources. The relevant portion of the ITAT's decision is as under :

The AO issued notice under section 133(6) to the Sub Registrar, Neemrana and on receiving the details of the documents from concerned Sub Registrar, the AO found that the assessee had made investment of Rs. 2,69,82,340/-. All these enquiries were conducted by the AO due to the reason that the assessee did not cooperate and file the details regarding the investment made in the immovable properties. Only when the AO issued the show cause notice to frame the assessment under section 144 of the IT Act and also issued summon under section 131, the assessee furnished a copy of the alleged agreement dated 07.05.2011 and claimed that the sources of investment is sale proceeds of land for a consideration of Rs. 2,88,60,000/- to one Shri T. Lachunagapa resident of Gangtok (Sikkim). It is pertinent to note that it is beyond preponderance of human probability that a person from Gangtok (Sikkim) would purchase a land in Rajasthan against a consideration of Rs. 2,88,60,000/- without having a proper title deed in his favour. The alleged agreement to sell is not a document which can be verified independently and can be considered as a conclusive evidence for transaction of purchase and sale of the immovable properties. Even otherwise, the immovable properties cannot be transferred under such an unregistered document being agreement to sell. The details of assessee's share in the alleged ancestral land are also not available on record. It is also not clear from the record whether the assessee was having the share in the ancestral property to the extent of 19.20 bigha. Further, not executing the sale

deed and registration with the authorities even after the expiry of such a long time creates a genuine doubt about the transaction. Therefore, the genuineness of the claim has not been established with verifiable documentary evidence. It is also a relevant fact that the alleged purchaser of the land being a Sikkimese, is exempt from Income tax as per section 10(26AAA) of the IT Act. Therefore, the possibility of using the name of such a person as a device to evade the tax cannot be ruled out. Accordingly, in the facts and circumstances of the case, we set aside this matter to the record of the AO for conducting a proper enquiry particularly on the point of the assessee's share in the alleged ancestral property and whether the said property is available in the exclusive right of the assessee for transfer. The status of the land regarding the possession and the real ownership is also required to be verified. Needless to say that the assessee be given a proper opportunity of hearing before passing the fresh assessment order.

5. In the result, appeal of the revenue is allowed for statistical purposes.”

8.4 Consequent to the said order of the ITAT the assessing officer has accepted the contentions of the assessee and the relevant observation of the assessing officer in the case of his brother is as under:

Therefore, notice u/s 142(1) of the I.T. Act, 1961 was issued and served upon legal heir Smt. Kamla Devi W/o Late Sh. Virender Yadav on 16.02.2021 to provide details/information in respect of alleged agricultural land Simultaneously, information were also called for from the Tehsildar, Mundawar vide this office letter dated 19.02.2021 in respect of the alleged land and from the alleged purchaser Sh. T. Lachungapa R/o Gangtok (Sikkim) vide letter dated 08.07.2021 in respect of sale deed executed in respect of alleged property and possession & real ownership of the said land khasra as on today

In response, the assessee, the Tehsildar and Sh. T. Lachungapa furnished reply alongwith requisite details and documents which were examined and placed on records. After examination of details and documents furnished during the course of assessment proceedings, no adverse inference has been drawn.

Considering the above facts, the total income of the assessee is assessed at Rs 4,09,560/- as determined vide order u/s 250 passed on 17.10.2018 giving effect to the appellate order of Id. CIT(A), Alwar in appeal no. 84/2016-17 dated 13.09.2018.

8.5 Based on the above facts placed on record the Id. AR vehemently argued that the appeal of the revenue is not maintainable.

8.6 Per contra, the Id. DR in addition to the submission made submitted that the assessee has not cooperated to the department in the proceedings in spite the various opportunities were granted. He has purchased all the properties in cash. The source of the property is agreement to sale of the property in cash and that too it from the proceeds of sale of land of ancestral property to a person having residence at Sikkim and out of saving which is disputed based on the set of facts. The Id. AR further submitted that the assessee has received substantial amount in cash from Shri T. Lachungapa and that too without any registered document in his favour and a sum of Rs. 40 lac from his brother without any support. All these transaction cannot be considered as genuine and therefore, the relief granted by the Id. CIT(A) is required to be reversed and the addition made by the AO is required to be confirmed.

8.7 We have heard the rival contentions and also persuaded the written and oral arguments placed on record along with the decision cited by both the parties. It is not disputed by the revenue that the remand report given by the Id. AO is erroneous and without carrying out any independent inquiry. Thus, the revenue has accepted that the fact about the source of the investment made by the assessee is genuine and explained and based on that report the Id. CIT(A) has allowed the appeal partly then on that deleted addition revenue should not have any grievance. The Reliance for this purpose is placed on record on the detailed findings given by the decision of the coordinate A Bench of Chennai ITAT wherein the bench has held as under:-

“In our opinion, it is clear from the remand report and the underlying enquiry report that the claim of the assessee with regard to agricultural income was accepted by the Learned Assessing Officer and therefore the claim rightly allowed by the Commissioner of Income Tax(Appeals). Apart from this, in our opinion, there is much strength in the argument of the learned AR that on issues where a remand report is in favour of the assessee, Revenue could not be considered as an aggrieved party. Hon'ble Apex Court in its judgement in the case of SRMB Dairy Farming (P) Ltd.(supra) has highlighted the need to scrupulously follow the National Litigation Policy. It would be appropriate to reproduce a part of such policy here:

“3. The purpose underlying this policy is also to reduce the Government litigation in courts so that the valuable court time would be spent in resolving other pending cases so as to achieve the goal in the principles incorporated in the National mission for judicial reforms which includes identifying bottlenecks which the Government and its agencies may be concerned with and also removing unnecessary Government cases. Prioritization in litigation has to be achieved with particular emphasis on welfare legislation, social reform, weaker

sections and senior citizens and other categories requiring assistance must be given utmost priority.

In respect of filing of appeals in revenue matters it is stated as under:

(G) Appeals in revenue matters will not be filed:

(a) if the stakes are not high and are less than that amount to be fixed by the Revenue authorities:

(b) if the matter is covered by a series of judgements of the Tribunal or of the High Court which have held the field and which have not been challenged in the Supreme Court:

(c) where the assessee has acted in accordance with long standing industry practice:

(d) merely because of change of opinion on the part of the jurisdictional officers.”

In these circumstances, we do not find any merit in these appeals filed by the Revenue, insofar as it relates to the issue relating to agricultural income claimed by the assessee for the impugned assessment years.”

8.8 Being consistent with the said findings of the decision of the coordinate bench A of Chennai ITAT and the Bombay high court in the case of Jivatlal Purtapshi Vs. CIT 65 ITR 261 we hold that when the addition were deleted by the Id. CIT(A) based on remand report which is based on agreement on facts cannot give rise to any grievances on the same very facts and the revenue cannot agitate the same very issue in appeal. Thus, **the appeal of the revenue in ITA NO. 1339/1/JPR/2018 thus dismissed.**

9. Now we take up the appeal of the assessee where in the assessee has raised 4 grounds and ground no. 1 & 4 being general in nature does not require any adjudication and thus,

effective two ground remain. The Id. AR of the assessee has also taken an additional ground which is incorporated here in above while the grounds of the both the parties are extracted and thus not repeated.

ADDITIONAL GROUND OF ASSESSEE'S APPEAL- ADDITION OF RS. 34,73,212

9.1 In respect of this additional ground the Id. AR of the assessee has submitted following submission:

The investment of Rs. 34,73,212 is fully explained. The assessee is an agriculturist and has sold a number of lands and, therefore, had accumulated such amount for making investment.
In view of above addition of Rs. 34,73,212 deserves to be deleted.”

9.2 We found that while taking this ground the approach of the Id. AR of the assessee is causal and has submitted only three line reply and has knowing or unknowing remained silent as to why and how the said claim is required to be deleted considering the same as past savings. For this contention he has not given any justification of this contention and merely on a statement that the same was past saving. At the same time, he has also not submitted that there is an error in the findings of the lower authorities in holding that the amount invested by the assessee remain unverified to the extent of Rs. 34,73,212/- and thus, this general submission will not help the assessee to get relief and the

addition were confirmed by the AO after taking so much of the pain in the assessment proceedings and the assessee remain totally non cooperative in the proceeding before the lower authorities. In terms of these observations, we do not find any merits and thus **the additional ground raised by the assessee is dismissed.**

10. The ground number two and three (revised) raised by the assessee is that enhancement done by the CIT(A) ignoring the remand report of the AO where in the AO has not repeated the estimated addition at Rs. 5,92,000/- and Rs. 14,00,000/- sustained by the CIT(A) is illegal and baseless deserves to be deleted. The Id. AR of the assessee submitted that the Id. AO has not commented upon the estimate of income and issue related 14,00,000/- as past savings and thus it is the valid reason for the assessee to believe that the Id. AO choose to remain silent on the issue and has not controverted the submission of the assessee and therefore, the Id. CIT(A) confirming these two additions is bad in law as well as on facts and thus the said additions are required to be deleted. Against these grounds the Id. AR of the assessee submitted their written submission and filed a paper book. The relevant written submission is reiterated here in below:

GROUND 1 to 4 OF ASSESSEE'S APPEAL: FINDINGS OF AO NOT CONSIDERED AND ADDITION OF RS. 19,92,000 (MODIFIED) SUSTAINED

1. Remand Proceedings are not just mere proceedings for collection of data but are the proceedings wherein data is collected, analyzed and then conclusions are drawn by Id. AO.
2. Therefore, when in remand proceedings past saving of Rs. 14,00,000 were found to be justified, Id. CIT(A) should have assigned a proper reason for not considering the same to be justified. Ld. CIT(A) in a very summary manner rejected the claim of the assessee.
3. Further, addition of Rs. 5,92,000 made by Id. AO in assessment proceedings was an estimated ad-hoc addition without any basis as evident from AO page 14. During remand proceedings, Id. AO, after proper verification, found that such expenses were not incurred and, therefore, the said amount was not included in the amount of investment made during the year. Ld. CIT(A) without assigning proper reason confirmed the addition.

In view of above addition of Rs. 19,92,000 deserves to be deleted.

11. Per contra, the Id. DR argued that the Id. AO has merely given the facts and not dealt with the findings which were early given by the AO. The Id. DR also submitted that the remand report is for specific purpose and remand report cannot replace the reasoned order passed by the assessing officer. Even the Id. AR fail to demonstrate that the CIT(A) has asked for the comments of these additions. He has simply sought the report on the additional evidence for AO's examination and comments on it in order to

adjudicate on the issue raised by the assessee. Thus, these additions should be confirmed.

12. We have heard the rival contentions and perused the material available. It is true that the remand report cannot substitute the findings of the Id. AO and if in the remand report the same is not dealt will not change the nature of the additions made by the AO when the Id. AR failed demonstrate that in the remand proceedings that have taken the issue again and even there is not specific finding given by the Id. CIT(A) in his order. Merely the Id. AO did not make any comments the same cannot be considered as amount not disputed by the AO in the remand proceedings. In the remand report the Id. AO has reported the unverified amount of investment wherein he has remained silent on the estimation of the other expenses i.e. deed writing, photography, commission/brokerage and other expenses on estimate basis as reported in the order of the AO at page 14 column no. 6 in the table given by him and similarly on the issue of considering the source of property at Rs. 14,00,000/- as past savings. Considering the status of the assessee, holding agricultural land by the assessee it cannot be considered the savings at all is not available with the assessee.

At the same time estimation of the other expenses at Rs. 5,92,000/- has not scientific basis of estimation. Considering the overall facts and circumstances we deem it fit to reduce the 50 % as other expenses estimated at higher side incurred by the assessee not recorded or explained properly and at the same time 50 % of the amount at Rs. 7 lakh can be considered as past savings. Thus, out of the total addition of Rs. 19,92,000/- the assessee get relief for Rs. 9,96,000/- and thus ground no. 2 and 3 are partly allowed.

In the result, appeal of the assessee is partly allowed and appeal of the revenue is dismissed.

Order pronounced in the open Court on 31/08/2022.

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

Sd/-
(राठौड कमलेश जयंतभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2022

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Mahinder Yadav, Alwar
2. प्रत्यर्थी / The Respondent- Income Tax Officer, Behror
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

6. गार्ड फाईल / Guard File {ITA Nos. 1333 & 1339/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar