

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"B" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 335/JP/2022  
निर्धारण वर्ष/Assessment Years : 2020-21

Deputy Commissioner of Income-tax, Central Circle, Ajmer	बनाम Vs.	Sh. Alok Malpani 8, Panchwati Rajhans Colony, Madanganj, Kishangarh, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGZPM 0083 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 24/JP/2022  
(Arising out of ITA No. 335/JP/2022)  
निर्धारण वर्ष/Assessment Years : 2020-21

Sh. Alok Malpani 8, Panchwati Rajhans Colony, Madanganj, Kishangarh, Ajmer	बनाम Vs.	Deputy Commissioner of Income-tax, Central Circle, Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AGZPM 0083 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 352/JP/2022  
निर्धारण वर्ष/Assessment Years : 2020-21

Deputy Commissioner of Income-tax, Central Circle, Ajmer	बनाम Vs.	Sh. Mukesh Kumar Somani Sarveshwar Sadan, Jain Colony, Madanganj, Kishangarh, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACGPS 1831 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

CO No. 29/JP/2022  
(Arising out of ITA No. 352/JP/2022)  
निर्धारण वर्ष/Assessment Years : 2020-21

Sh. Mukesh Kumar Somani Sarveshwar Sadan, Jain Colony, Madanganj, Kishangarh, Ajmer	बनाम Vs.	Deputy Commissioner of Income-tax, Central Circle, Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACGPS 1831 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri C. M Agarwal (C.A.)  
राजस्व की ओरसे / Revenue by: Shri Shailendra Sharma (CIT)

सुनवाई की तारीख / Date of Hearing : 15/11/2022  
उदघोषणा की तारीख / Date of Pronouncement : 08/12/2022

आदेश / ORDER

PER BENCH:

The two appeals have been filed by the revenue and two cross objections filed by the respective assessee which is against the two respective orders of the learned Commissioner of Income Tax-2, Udaipur [hereinafter referred to as Id.CIT(A)] passed on 07.06.2022 & 06.07.2022 for the assessment year 2020-21 which in turn arises from the order passed by the ACIT, Central Circle, Ajmer passed under Section 143(3) r.w.s. 153A of the Income tax Act, 1961 (in short 'the Act') dated 30.09.2021. Since the issues involved are common in both the appeals of the revenue and cross objections of the assessee are also on similar

issues, we have heard together both the parties in the matter and are being disposed off by this consolidated order.

2. At the outset, the Id. AR has submitted that the matter pertaining to Shri Alok Malpani in ITA no. 335/JP/2022 & Co. No. 24/JP/2022 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are exactly identical. The Id. DR did not raise any specific objection against taking the case of Shri Alok Malpani as a lead case. Therefore, for the purpose of the present discussions, the case of Shri Alok Malpani is taken as a lead case.

3. In ITA No. 335/JP/2022 for A.Y 2020-21, the revenue has taken following grounds of appeal, which are reproduced here in below:

“1. Ground 1. "The Ld. CIT(A) has erred in law and on facts in granting relief to the assessee".

2. Ground (i) "Whether on the facts, and in circumstances of the case and in law, the Id. CIT(A) is justified in deleting the addition of Rs.1,99.06,000/- (Rs. 2,2,74,000/- Rs. 5,92,000/-) in hand of the assessee, ignoring the fact that there is significant difference in the cost of extra items as well as cost of movable items as per valuation report of the DVO in comparison to valuation report of registered valuer (submitted by appellant) (ii) "Whether on the facts, and in circumstances of the case and law, the Id. CIT(A) is justified in considering Rs.5,92,000/- (1/4th of the Rs. 23,68,000/-) only in the hand of the assessee and remaining 3/4<sup>th</sup> in the hands of other three family members without giving a satisfactory reasoning.

3. Ground 3. "The Ld. CIT(A) erred in law and on facts in granting relief by holding that peak credit theory was applicable even through the assessee failed to explain the source & destination of the amounts, and identities and creditworthiness of persons involved."

4. Ground (i) Whether on the facts, in the circumstances of the case and law, the Id. CIT(A) is justified in deleting the addition of Rs.2,54,54,793/- made u/s 69 r.w.s.115BBE of the I.T. Act, 1961 by relying the contention of assessee that the unexplained investment was opening capital of assessee and by ignoring the finding of AO that it was the fresh capital (found first time in tally data) introduced during the year". (ii) "In granting relief, the Ld. CIT(A) has accepted the opening balance which has been conveniently specified by the taxpayer at a convenient figure, without any satisfactory or judicial basis."

5. Ground "The Appellant craves leave or reserves right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."

4. In CO No. 24/JP/2022 for A.Y 2020-21, the assessee has taken following grounds, which are reproduced here in below:

"1. On the facts and in the circumstances of the case the CIT(A) has erred on facts and in law in sustaining addition of Rs.5,92,000/- u/s 69 r.w.s. 115BBE of I.T. Act on account of alleged unexplained investment in furnishing of four flats.

2. That the net difference in the cost of construction/furnishing of the four flats after considering the declared cost and allowing 10% self supervision chares is 23,68,000/- Moreover, the Id. CIT(A) has allowed Self supervision charges @10% which should be more and balance should be ignored without considering the submissions of the assessee in this regard.

Therefore, the addition sustained by the Id. CIT(A) may kindly be deleted.

Further Reference to private valuer by LD DDIT is bad in law

3. On the facts and in the circumstances of the case the approval given by the Addl. CIT u/s 153D of the Act is in at routine and mechanical manner, without any application of mind, without appreciating the facts and without following the mandate of the section 153D, which makes the order passed u/s 143(3)/153Aonest, void ab initio, bad in law. Therefore, the assessment order

passed by the Id. AO on the basis of such approval deserves to be quashed. LD CIT(A) has erred in not accepting this issue.

On the facts and in the circumstances of the case the Id. AO has grossly erred in charging interest of u/s 234B. LD CIT(A) has erred in not giving finding on this issue.

On the facts and in the circumstances of the case the Id. AO has erred in initiating penalty proceedings u/s 271AAB of the Act. LD CIT(A) has erred in not giving finding on this issue.

The appellant craves leave to add, amend or withdraw any of the grounds of the appeal during the course of appellate proceedings.

All the grounds of appeal are independent and without prejudice to each other.”

5. The brief facts of the case as culled out from the records is that the search and seizure action u/s 132 of I.T. Act, 1961, carried out on 13.02.2020 at the residential and business premises of the assessee group and his family members i.e. Saini Gupta Jain Malpani Somani Group of Ajmer. Various assets had been found at the time of search and some of them were also seized at various places of the group at the time of action u/s 132 of I.T. Act. Certain incriminating documents / Loose papers / Books of accounts etc. were also found, inventorized and some of them also seized or impounded at the time of search / survey u/s 132/133A of the I.T. Act. On account of search action, the case of the assessee was centralized vide order under section 127 of the Act dated 12.05.2021 and thus the jurisdiction was assigned to DCIT, Central Circle, Ajmer. The assessee has

filed his original return of income for the year under consideration on 18.09.2021 declaring income of Rs. 3,68,04,230/-. During the year the assessee having income from Business or Profession and Income from other sources. Notices were issued from time and time and in responses to these notices the assessee filed the details. The seized books of account and other books of account have been examined and desired details were filed by the assessee and was discussed by the assessing officer.

6. The fact related to the amount added pursuant of the search and the contention of the AO and submission of the assessee in the assessment proceeding is required to be briefly extracted so as to understand the nature of addition disputed. During the course of assessment proceeding pursuant to the search the assessee was asked that the Malpani Family has purchased 04 residential properties in the 'Kishangarh Pride'. During the search valuation of these properties were made as per which the Fair Market Value was determined on 14.02.2020. As per which the cost determined as under:-

1	Cost of Land & Building	Rs. 2,02,69,200
2	Cost of extra items (based on market rates)	Rs. 1,28,76,225
	Total	Rs. 3,31,45,425/-

The assessee was asked to explain the source of the cost of extra items of Rs. 1,28,76,225/-. In response, assessee submitted that the valuation made by registered valuer during the course of search proceedings seems to be incorrect as various variance were not considered during the course of valuation by Er. Nagendra Choudhary as per valuation report NC/19-20/243. Hence, an independent valuation was also carried on by registered valuer on request of assessee and as per his report dated 15.07.2021 the value of constructed residential property is Rs. 2,40,80,000/-, a copy of valuation report was submitted. Moreover, details of 04 residential properties of Malpani Family tabulated here in below :

Name of owner	Flat No.	SBU Area (Sq. ft.)	Cost of Semi-furnished Flats
Smt. Kiran Malpani	T3- Pent House-2, 9 <sup>th</sup> Floor, Kishangarh Pride	2671	53,42,000
Smt. Rinku Malpani	T3 R-802, 8 <sup>th</sup> Floor, Kishangarh Pride	1518	30,36,000
Shri Akhilesh Malpani	T3 Premium-2, 8 <sup>th</sup> Floor, Kishangarh Pride	2803	56,06,000
Shri Alok Malpani	T3- DX-2, 8 <sup>th</sup> & 9 <sup>th</sup> Floor, Kishangarh Pride	2660	53,20,000
Accumulated Cost of Sem-furnished flats:			1,93,04,000
Cost of Building as per Valuer Report dated 15.07.2021			2,40,80,000
Difference amount should be treated as Cost of Extra Items:			47,76,000

From above table it can be clearly discern that the total cost of 04 residential property as per valuation report to the tune of Rs. 2,40,80,000 and out of this cost of semi furnished flats is 1,93,04,000 and same has been duly recorded/reflected in the books of account of Malpani Family and

for remaining balance cost of extra items of Rs. 47,76,000 assessee submit that Search and seizure operation was conducted on the premises of the assessee as on 12.02.2020 and matter was referred for valuation for the purpose of income tax to ascertain the fair market value as on 14.02.2020. The Id. AR of the assessee submitted that section 142A of the Income Tax Act authorizes the assessing officer for the reference to valuation. From perusal it is clear that Id. AO can refer the matter for valuation but the Investigation wing cannot refer the matter for valuation. Secondly the matter was referred for valuation to ascertain the fair market value as on 14.02.2020. He has also submitted that no incriminating document was found during the course of search which justify the reference to the valuation or ascertain undisclosed investments. Based on various juridical pronouncements that no reference can be made on the basis of statement recorded during the course of search by the Investigation wing and is not in accordance with the law. Thus, no addition can be made under section 153A of the IT Act unless or until incriminating document/evidences are found during the course of search related to this asset. The Id. AR of the assessee also submitted that during the course of search proceedings tally data was found and seized in 8 pen Drives inventorized as Exhibit-1-8 of Annexure-PD found from the residential premises of Sh. Alok Malpani

situated at Kishangarh Pride as per which the P&L account, capital a/c and Balance Sheet of various concerns related to the assessee were found. These P&L accounts, depicting opening stock, Gross Profit and Net profit of these concerns. The Balance Sheet depicts opening asset of these concerns the details of are tabulated below:

S.No.	Name of the concerns	FY	Opening stock	Gross Profit	Net Profit	Capital A/c
1	SMP	2019-20	65803200	7276818	7276818	70408000
2	SG	2019-20	0	8969924	10807271	111351741
3	Shakti Eng	2019-20	0	-4108952	3974945	4164600
4	Shakti Rewari	2019-20	12155000	-10676440	-10676440	12273776
5	SM	2019-20	13475490	46172456	44326005	320585703
6	SGM	2019-20	0	4410179	4937828	<b>50909586</b>
				52043985	<b>60646427</b>	

6.1 The assessee was asked to explain the transaction mentioned in the tally data of these concern and to verify the same from the regular books of accounts of the concern. In response to that the assessee submitted that it was in fact a manipulated figure and not a capital. It includes many figures like creditors and other liabilities. No cash was found during the search which may establish that we are not having so much capital. This figure was put into tally for the purpose to arrive at the profit and it was an imaginary figure. We have prepared a consolidated sheet of all the divisions from which it appears that there is a negative cash balance on

dated 07-06-2018 of Rs. 167,70,585/- and which has been divided equally between Alok Malpani & Mukesh Kumar Somani. We have prepared a sheet showing Profit earned in all the divisions Rs. 6,87,24,410 which has been divided equally between Alok Malpani & Mukesh Kumar Somani. Thus, the total income of each partner of these businesses tune to Rs. 3,43,62,205 and we already have declared that business income in our return.

6.2 The Id. AO noted that the reply of the assessee was considered but he found not satisfactory. He noted that out of the capital mentioned in the above table only the capital of Rs. 5,09,09,586/- was introduced first time in the year under consideration. The others were introduced in the F.Y. 2018-19 which are discussed in the order of A.Y. 2019-20. Since, the assessee has owned up the Net Profit figure shown in the above table and declared the same in the income tax return and paid due taxes thereon, then the onus is upon the assessee to explain the source of capital introduction of Rs. 5,09,09,586/-. The Id. AO further noted the assessee failed to give any satisfactory explanation with regard to the source of this capital introduction. He also noted the assessee simultaneously failed to provide the details of the said creditors on a/c of which the said entries were said to be mentioned in the Balance Sheet. Therefore, the amount of Rs.

5,09,09,586/ is held as the unexplained investment u/s 69 r.w.s. 115BBE of the 1.T. Act. 1961. Since, all the transactions mentioned in the said divisions mentioned in the table are admitted to be the joint venture of the assessee and Sh. Mukesh Somani and the Net Profit reflecting from these concerns were jointly own by these two, therefore, the half amount of Rs. 5,09,09,586/- i.e. Rs. 2,54,54,793/- was added in the total income of the assessee.

7. Aggrieved from the additions made by the Id. AO, assessee has carried the matter in appeal before the Id CIT(A). The Id. CIT(A) has given the relief to the assessee in part considering the factual aspects placed before him by the assessee. Both the party aggrieved from the order of the Id. CIT(A), revenue has filed this appeal and the assessee has also filed cross objections.

8. We have taken the appeal of the revenue first in ITA NO. 335/JPR/2022. We note that the ground no. 1, 3 & 5 being general in nature and there is no specific submission and/or arguments advanced we considered it as general in nature and it does not require any adjudication and thus same are treated as dismissed.

9. Apropos ground no. 2 raised by the revenue the Id. CIT(A) has recorded his detailed and reasoned finding vide para 4.2 (i) to (iii) and the same is reiterated here in below for the sake of brevity;

“(i) The fact remains that the Malpani family has purchased 4 residential properties in the property name as Kishangarh Pride. During the course of search proceedings, valuation of these properties was made by the DVO who determined the fair market value of the aforesaid properties at Rs. 3,31,45,425/- on 14.02.2020 out of which the cost of land & building was determined at Rs. 2,02,69,200/- and the cost of extra items based on market rates was determined at Rs. 1,28,76,225/-. It is observed that the appellant also got carried out an independent valuation by a registered valuer and as per his report dt. 15.07.2021, the value of constructed residential property was determined at Rs. 2,40,80,000/-. The appellant contended that out of the aforesaid valuation at Rs. 2,40,80,000/-, the cost of semi-furnished flats was at Rs. 1,93,04,000/- which has been duly recorded /reflected in the books of accounts of Malpani family. Regarding the balance cost of extra items of Rs. 47,76,000/-, the appellant contended that the said amount has been from the withdrawal reflected in the seized tally file of SM 19-20, Alok Malpani Capital Account. However, the AO did not accept the contention of the appellant and stated that there is a significant difference in the cost of extra items as well as cost of movable items in comparison to the valuation report of the DVO and accordingly rejected the valuation report submitted by the appellant and after allowing the self-supervision charges of Rs. 18,06,000/- @7.5% on the valuation of the property determined at Rs. 2,40,80,000/-, added an amount of Rs. 2,22,74,000/- u/s 69 r.w.s. 115BBE of the Act.

(ii) Before me, Ld. AR of the appellant contended that the AO has not considered the cost of acquisition of Rs.1,93,04,000/- declared in the books of account of the appellant and his family members and the net difference in the cost of construction/furnishing of the four flats after considering the declared cost of Rs. 1,93,04,000/- remains at Rs.29,70,000/- (Rs.2,22,74,000/- minus Rs. 1,93,04,000/-) only which is of about 15% and is ignorable.

(iii) I have considered the facts of the case and the contentions of the appellant and it is observed that the AO has made the addition of Rs 2,22,74,000/- on the basis of the registered valuer's report produced by the appellant and not on the basis of the report of the DVO. It is also observed that the AO has considered the entire amount of cost of construction as determined by the registered valuer at Rs.2,40,80,000/- upon which he has allowed self-supervision charges of Rs. 18,06,000/- @ 7.5% and has accordingly made an addition of Rs. 2,22,74,000/-. However it is also observed that the AO has ignored the cost of semi-furnished flats at Rs. 1,93,04,000/- declared by the appellant and his family members in their books of accounts which is not justified as the AO has not made any

reference on this account in the body of the assessment order as to whether there is any falsity of the claim made by the appellant and his family members in their books of accounts. Therefore, due cognizance is required to be given to the cost declared by the appellant and his family members in their books of accounts. Further, allowing of 10% discount on account of self-supervision charges. appears to be proper and in conformity with the practice prevalent at various benches of Hon'ble ITAT, Jaipur for which reliance is placed on the decision of Hon'ble ITAT in Hindustan Engineering Works Jodhpur vs. ITO and Shri Vishnu Prasad Heda vs. ITO and also in case of Shri Prakash Chand Surana vs. ITO in ITA No. 164/JP/77- 78/Ajmer/1973-74 wherein the Hon'ble Benches have also accepted the deduction of 10% on account of owner's self-supervision. Accordingly, the AO is directed to allow the rebate of 10% on account of owner's self-supervision which is worked out at Rs. 24,08,000/-. The appellant gets a relief of Rs. 6,02,000/- on this account and the balance addition of Rs. 23,68,000/- (Rs. 2,40,80,000 Rs. 1,93,04,000 Rs. 24,08,000) is confirmed. However, since the aforesaid 4 flats have been purchased by Smt. Kiran Malpani, Smt. Rinku Malpani, Sh. Akhilesh Malpani and the appellant. therefore the entire addition of Rs. 23,68,000/- cannot be sustained in the individual hands of the appellant. Accordingly, an amount of Rs. 5,92,000/- being of the aforesaid unexplained investment is being sustained in the hands of the appellant. The AO is directed to work out the taxability of unexplained investment in the aforesaid property in the hands of the other members of the Malpani family. The Ground of Appeal No. 2 is treated as partly allowed.”

10. The Id. DR is heard who relied on the findings of the assessing officer and supported the contentions raised in his order. The Id. DR submitted that as the revenue did not accept the findings of the Id. CIT(A) because the AO was not confronted on the contentions raised by the assessee before him.

11. Per contra, the Id. AR of the assessee reiterated from the paper book the submission made before the Id. CIT(A) and heavily relied upon the reasoned finding which is not fully accepted by the assessee but to the

extent of the relief granted by the Id. CIT(A) he relied upon his findings. As the submission of the assessee is already recorded in the order of the Id. CIT(A) the same is not repeated. But on this issue the Id. CIT(A) has granted the relief which is briefly summarized as under :

Valuation as per valuation report	Rs. 2,46,48,000/-
Investment declared in the books	Rs. 1,99,42,000/-
Difference of valuation and amount disclosed	Rs. 47,06,000/-
Less; Self supervision rebate @ 10 %	Rs. 24,64,800/-
Addition sustained	Rs. 22,41,200/-

Since there were four owners of the property same was worked in the case of the assessee at Rs. 5,60,300/- and sustained accordingly as per the findings given by the Id. CIT(A). The Id. AR of the assessee further submitted that the as per the decision of the jurisdictional high court in DB ITA NO. 78/2009, the deduction for self-supervision is required to be calculated @ 12.5 % instated of 10 % calculated by the Id. CIT(A) as against 7.5 % calculated by the AO. The Id. AR alternatively argued that the sustained difference being less then 10 % of the property of the value the same is required to be ignored. For this contention he relied upon the decision of the Chandigarh bench of this tribunal in the case of Charu Agarwal Vs. DCIT in ITA NO. 310/Chd/2021 dated 25.03.2022. He also

submitted that even the law is also amended by the Finance Act, 2020 and consider the difference to be ignored if it within 10 %. Based on this argument he has submitted that even the amount sustained by the Id. CIT(A) is also required to be vacated.

12. We have considered the rival contention and perused the orders of the lower authorities, material available on record, arguments advanced by both the parties and also gone through the judicial decision relied upon by both the parties to drive home to their respective contentions. On this issue the Id. DR did not controvert the finding of the Id. CIT(A) nor the Id. AO raised any specific objection of taking the investment recorded by the assessee's group on their respective books in the submission made by him though the Id. DR.

12.1 The issue before us is granting of self supervision which is granted by the Id. AO at 7.5 % of the value of property and the Id. CIT(A) considered it @ 10 % of the property valuation. At the same time Id. AR of the assessee has also not objected to the valuation of the property at Rs. 2,46,48,000/- considered by the revenue. Thus, now the issue contested by the parties that the addition made by the Id. AO is to be sustained or not and if yes at

what amount. The bench noted that relief granted by the Id. CIT(A) to the assessee based on the fact that the amount reflected in the books of account of the property owned is correctly reduced and there is not controverting argument advanced by the Id. DR.

12.2 So far as the contention of the Id. DR that the Id. AO did not receive opportunity before CIT(A) is not sustainable as the notice of hearing in the case fixed before CIT(A) also goes to the AO. Therefore, the contention of the Id. DR that the AO did not get an opportunity to represent his case is not correct. Now the issue left is that whether the deduction for self-supervision is to be granted @ 7.5 % as given by the Id. AO or @ 10 % given by the Id. CIT(A). The Id. AR of the assessee based on the jurisdictional high court decision claimed that the same be considered @ 12.5%. The bench observed that even if the self supervision considered @ 10 % the balance difference is less than 10 % and valuation being the technical matter and it is nothing but mere estimate of the value of the property and in every valuation there exist a difference and even the two valuation cannot remain same. Not only that recording cost and valuation also differ looking to this aspect even the difference in the stamp value and document value if it is within a reasonable limit the said difference is also

not to be added as per the amended law w.e.f. 01.04.2021 this limit is 10%. The Id. AR has cited the decision Chandigarh Bench in Charu Agarwal Vs. DCIT in ITA NO. 310/Chd/2021 and decision of this bench in ITA no. 273/JP/2017 and considering the amendment in tolerance limit to the extent of 10 %, the balance amount sustained by the Id. CIT(A) being less than 10 % of the valuation of the flats and actual investment recorded in books after considering the self supervision deduction, the difference is less than 10 % as compared the valuation. Considering the overall facts and arguments placed before us we are of the considered view that Id. CIT(A) should have considered this balance difference being less than 10 % should have deleted the entire addition which he has sustained for an amount of Rs. 5,60,300/-.

12.3 Respectfully following the decision relied upon by the Id. AR as reiterated here in above we agree that the balance difference is less than 10 % between the value given in the valuation report and the value reflected in the books after adjusting the self supervision charges @ 12.5%. In terms of this observation, we vacate the addition sustained by the Id. CIT(A) and therefore, the cross-objection ground no. 1 & 2 raised by the assessee is allowed and the ground no. 2 raised by the revenue in their

appeal has not merits and thus the same is dismissed in terms of the above findings and observations on facts.

13. Apropos ground no. 4 raised by the revenue the relevant finding recorded by the Id. CIT(A) is relevant and the same is recorded vide para 5.2, and the same is reiterated here in below for the sake of brevity;

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The fact remains that during the course of search proceedings, Tally Data was found & seized in 8 pen drives inventorized as Exhibit-1 to 8 of Annexure PD found from the residential premises of Sh. Alok Malpani situated at Kishangarh Pride as per which the Profit & Loss Account, Capital Account and Balance Sheet of various concerns related to the appellant were found. The AO observed that these Profit & Loss Accounts, depicted opening stock, gross profit and net profit of these concerns and the Balance sheet depicted opening asset of these concerns, the details of which have been tabulated in the assessment order. On perusal of the data of the Tally, the AO observed that the capital of Rs. 5,09,09,586/- appeared to have been introduced for the first time in the year under consideration. The AO observed that the appellant had owned up the net profit figures shown in the above table and declared the same in the Income Tax Return and paid due taxes thereon. In view of the above, the AO held that the onus was upon the appellant to explain the source of capital introduction of Rs. 5,09,09,586/- also and therefore added the aforesaid amount in the hands of the appellant and Sh. Mukesh Somani considering that all the transactions mentioned in the said concern are admitted to be the joint venture of the appellant and Sh. Mukesh Somani and also due to the fact that the net profit reflecting from these concerns were jointly owned up by these two and accordingly half of the amount of Rs. 5,09,09,586/- i.e. Rs. 2,54,54,793/- was added in the hands of the appellant.

(ii) Before me, the appellant has contended that the AO has made the addition of Rs. 2,54,54,793/- on the basis of the Tally data seized during the course of search whereas on perusal of the Tally, it is evident that the similar amount has been transferred from the Tally SM and has been credited in the Tally SGM and

that there is no introduction of any fresh capital by the appellant in the year under consideration and therefore no such addition can be made on this issue.

(iii) During the course of appellate proceedings, Sh. G.D. Sharma, DCIT, Central Circle, Ajmer, the present AO, appeared before me and submitted that the intra branch transfer has been examined by him and found to be correct.

(iv) I have carefully considered the rival submissions furnished during the appellate proceedings and case laws relied upon by the appellant. It is observed that the AO has made an addition of Rs. 2,54,54,793/- in the hands of the appellant, being the capital introduced for the first time in the year under consideration, though the appellant has contended it to be inter head transfer of the appellant and his related concerns. The AO has made the impugned addition u/s 69 of the Act on the basis of Tally data found and seized in the 8 pen drives found during the course of search from the residential premises of Sh. Alok Malpani. I find that the present AO in the course of appellate proceedings has accepted the inter head transfer which has also been examined by me for which necessary evidences seized during the course of search has been produced by the appellant. In view of the above facts, I find that there is no introduction of any fresh capital during the year under consideration and therefore the AO is not found is justified in making an addition of Rs. 2,54,54,793/- as fresh capital introduced during the year. Accordingly, the addition of Rs. 2,54,54,793/- is directed to be deleted and the Ground of appeal No. 3 is treated as allowed.”

14. The Id. DR is heard who relied on the findings of the assessing officer and supported the contention raised by the Id. AO. The Id. DR submitted that as the revenue did not accept the findings of the Id. CIT(A) because the AO was not confronted on the issue.

14.1 On the ground raised by the revenue two written submission were made dated 13.10.2022 and 31.10.2022 the same is reproduced for the sake of convenience:

“As per Assessment orders in brief:-

- Search & Seizure action u/s 132 of the L. T. Act, 1961 was carried out at the Residential and Business Premises of the assessee and his family members of the Group (Saini-Gupta-Jain-Malpani-Somani Group of Ajmer) on 13.02.2020.
- 1st issue in the case of Shri Alok Malpani: During the course of search proceedings the assessee was asked that the Malpani Family has purchased 04 residential properties in the Kishangarh Pride'. During the search valuation of these properties were made as per which the Fair Market Value was determined on 14.02.2020. As per which the cost determined as under:-

1	Cost of Land & Building	Rs. 2,02,69,200
2	Cost of extra items (based on market rates)	Rs. 1,28,76,225
	Total	Rs. 3,31,45,425/-

The assessee was asked to explain the source of the cost of extra items of Rs. 1,28,76,225/-.

In its reply assessee mentioned that:

An independent valuation was also carried on by registered valuer on request of assessee and as per his report dated 15.07.2021 the value of constructed residential property is Rs. 2,40,80,000/- Moreover, details of 04 residential properties of Malpani Family are as under tabular format:-

Name of owner	Flat No.	SBU Area (Sq. ft.)	Cost of Semi-furnished Flats
Smt. Kiran Malpani	T3- Pent House-2, 9 <sup>th</sup> Floor, Kishangarh Pride	2671	53,42,000
Smt. Rinku Malpani	T3 R-802, 8 <sup>th</sup> Floor, Kishangarh Pride	1518	30,36,000
Shri Akhilesh Malpani	T3 Premium-2, 8 <sup>th</sup> Floor, Kishangarh Pride	2803	56,06,000
Shri Alok Malpani	T3- DX-2, 8 <sup>th</sup> & 9 <sup>th</sup> Floor, Kishangarh Pride	2660	53,20,000
Accumulated Cost of Sem-furnished flats:			1,93,04,000
Cost of Building as per Valuer Report dated 15.07.2021			2,40,80,000
Difference amount should be treated as Cost of Extra Items:			47,76,000

From above table it can be clearly discern that the total cost of 04 residential property as per valuation report to the tune of Rs.2,40,80,000 and out of this cost of semi furnished Pets in 1,93,04,000 and some has been duly recorded/reflected in the books of account of Malpani Family For remain balance for cost of extra items of Rs. 47,76,000 assessee claimed that investigation wing cannot refer the matter for valuation and secondly the matter was referred for valuation to ascertain the fair market value as on 14.02.2020 and No incriminating document was found during the course of search

which justify the reference to the valuation or ascertain undisclosed investments. Assessee further claimed that the said amount for cost of extra things has been withdrawal from seized tally file of SM 19-20 Alope Malpani Capital account in support of our claim a copy of capital account of Alok Malpani has been enclosed herewith for your kind verification and marked as "Annexure- 13". Hence there is no unexplained investment and no addition is to be made in this count.

It was revealed that the reply of the assessee was considered carefully. The assessee has furnished a copy of Valuation Report of Registered Valuer Shri Shesh Nath Pandey who has valued the construction, extra items and movable items at Rs 2,40,80,000/-. After perusing the submission of the assessee as well as the Valuation Report submitted by the assessee it was gathered that there was a significant difference in the cost of extra items as well as cost of movable items in comparison to the Valuation Report of Shri Nagendra Choudhary under taken by the Department. Accordingly, the unexplained investment on account of construction of house property in the hands of assessee being key person managing all the affairs of business activities comes to Rs. 2,22,74,000/- (after allowing the self supervision charges of Rs 18,06,000/- @ 7.5%), which was being considered for addition u/s 69 r.ws. 115BBE of the 1.T. Act, 1961 in the AY 2020-21.

- Ld CIT(A) has stated that Assessing officer has ignored the cost of semi-furnished flats at Rs. 1,93,04,000/ declared by the appellant and his family members in their books of accounts which is not justifiable. Accordingly, relief of Rs. 1,93,04,000/ was granted by the Ld. CIT(A) on this issue.
- Further, on the issue of self supervision charges. Ld. CIT(A) has directed to allow 10% Le Rs. 24,08,000/ instead of 7.50% Le. Rs. 18,06,000/- made by the assessee officer. Accordingly, the assessee gets relief on this issue.

Further, it is also stated that balance addition which is confirmed Le. Rs. 23,68,000/- (2.40,80,000-1,93,04,000-24,08,000) is pertains to four family members including the assessee that are Smt kiran Malpani, Smt Rinku Malpani and Shri Akhilesh Malpani. Hence, out of confirmed addition i.e. Rs. 23,68,000/- an amount of Rs. 5,92,000/- is pertains to the assessee. Accordingly, overall an addition of Rs. 5,92,000/- is confirmed on this issue in the case of the assessee.

It is also directed by the Ld. CIT(A) to work out the taxability of unexplained investment in the aforesaid properties in the hands of the other members of the Malpani Family.

Rest of the addition was deleted by Ld. CIT(A)

1<sup>st</sup> issue in the case of Shri Mukesh Somani:

During the course of search proceedings valuation of property purchased by Somani Family situated at Kishangarh Pride was determined on 14.02.2020. As per which the cost determined as under:-

1	Cost of Land & Building	Rs. 2,09,39,100
2	Cost of extra items (based on market rates)	Rs. 1,28,76,225
	Total	Rs. 3,38,15,325/-

The assessee was asked to explain the source of the cost of extra items of Rs.1,28,76,225/-.

In its reply assessee mentioned that:

An independent valuation was also carried on by registered valuer on request of assessee and as per his report dated 15.07.2021 the value of constructed residential property is Rs. 2,46,48,000/-. Details of 04 residential properties of Somani Family are as under tabular format:-

Cost of semi-furnished Flats	Subject Matter	SBU Area (Sq. Ft.)	Amount (Rs.)
Smt. Sudha Somani	T3- Pent House-1, 9 <sup>th</sup> Floor, Kishangarh Pride	3044	60,88,000
Smt. Poonam Somani	T3 L-801, 8 <sup>th</sup> Floor, Kishangarh Pride	1549	30,98,000
Shri Sarveshwar Somani	T3 DX-1, 8 <sup>th</sup> & 9 <sup>th</sup> Floor, Kishangarh Pride	2660	53,20,000
Shri Mukesh Kumar Somani	T3- Premium-1, 8 <sup>th</sup> Floor, Kishangarh Pride	2718	54,36,000
Accumulated Cost of Semi-furnished flats			1,99,42,000
Cost of Building as per Valuer Report			2,46,48,000
Difference amount should be treated as Cost of Extra Items.			47,06,000

From above table it can be clearly discern that the total cost of 04 residential property as per valuation report to the tune of Rs.2,46,48,000 and out of this cost of semi furnished flats in 1,99,42,000 and same has been duly recorded/reflected in the books of account of Somani Family and for remain balance for cost of extra items of Rs. 47,06,000 it is humbly submitted that the said amount for cost of extra things has been withdrawal from seized tally file of SM 19-20 Venture Mukesh Somani Capital account

and Sarveshwar Somani Capital Account in support of our claim a copy of capital account of Mukesh Somani and Sarveshwar Somani has been enclosed herewith for your kind verification and marked as "Annexure-17". Hence there is no unexplained investment and no addition is to be made in this count."

It was revealed that the reply of the assessee was considered carefully. The assessee has furnished a copy of Valuation Report of Registered Valuer Shri Shesh Nath Pandey who has valued the construction, extra items and movable items at Rs.2,46,48,000/-. On perusal of the submission of the assessee as well as the Valuation Report submitted by him it is gathered that there is a significant difference in the cost of extra items as well as cost of movable items in comparison to the Valuation Report of Shri Nagendra Choudhary under taken by the Department. Therefore, considering the above defects the Valuation Report submitted by the assessee has not been found acceptable. Accordingly, the unexplained investment on account of construction of house property in the hands of assessee being key person managing all the affairs of business activities which comes to Rs. 2,27,10,508/- (after allowing the self supervision charges of Rs. 18,48,600/- @ 7.5%), which is being considered for addition u/s 69 r.w.s. 115BBE of the I.T. Act, 1961 in the A.Y.2020-21.

- Ld CIT(A) has stated that Assessing officer has ignored the cost of semi-furnished flats at Rs. 1,99,42,000/- declared by the appellant and his family members in their books of accounts which is not justifiable. Accordingly, relief of Rs. 1,92,42,000/- was granted by the Ld. CIT(A) on this issue. Further, on the issue of self supervision charges, Ld. CIT(A) has directed to allow 10% i.e. Rs. 24,64,800/- instead of 7.5% i.e. Rs. 18,48,600/- made by the assessee officer. Accordingly, the assessee gets relief on this issue.

Further, it is also stated that balance addition which is confirmed i.e. Rs.22,41,200/- (2,46,48,000 - 1,99,42,000 - 24,64,800) is pertains to four family members including the assessee that are Smt. Sudha Somani, Smt. Poonam Somani and Shri Sarveshwar Somani. Hence, out of confirmed addition i.e. Rs. 22,41,200/-, an amount of Rs. 5,60,300/- is pertains to the assessee. Accordingly, overall an addition of Rs. 5,60,300/- is confirmed on this issue in the case of the assessee.

It is also directed by the Ld. CIT(A) to work out the taxability of unexplained investment in the aforesaid properties in the hands of the other members of the Malpani Family.

Rest of the addition was deleted by Ld. CIT(A)

- Decision of Ld CIT(A) was not acceptable in both the cases. Ld CIT(A) simply rely on the contention of respective assessee and didn't considered the finding of AO made in assessment order that it was unexplained investment of assessee in

the name of himself & his family members. Further, Ld CIT(A) has allowed 10% self supervision charges against 7.5% which was allowed by AO. Further, Ld CIT(A) had divided the unaccounted expenditure in 4 parts and sustained only th part in the case of assessee by ignoring the finding of AO that respective assessee is the key person managing all the affairs. Being key person it was the unaccounted income of assessee which was utilized/invested by him in the name of his family members. Hence, Decision of Ld CIT(A) is not acceptable on merit in view of findings of AO made in assessment order and material on record.

- 2nd Issue: . During the course of search proceedings tally data was found and seized in 8 Pen Drives inventorized as Exhibit-1 to 8 of Annexure-PD found from the residential premises of Sh. Alok Malpani situated at Kishangarh Pride as per which the P&L account, capital a/c and Balance Sheet of various concerns related to the assessee were found. These P&L accounts, depicting opening stock, Gross Profit and Net profit of these concerns. The Balance Sheet depicts opening asset of these concerns the details of are tabulated below:-

S.No.	Name of the concerns	FY	Opening stock	Gross Profit	Net Profit	Capital A/c
1	SMP	2019-20	65803200	7276818	7276818	70408000
2	SG	2019-20	0	8969924	10807271	111351741
3	Shakti Eng	2019-20	0	-4108952	3974945	4164600
4	Shakti Rewari	2019-20	12155000	-10676440	-10676440	12273776
5	SM	2019-20	13475490	46172456	44326005	320585703
6	SGM	2019-20	0	4410179	4937828	50909586
				52043985	60646427	

The assessee was asked to explain the transaction mentioned in the tally data of these concern and to verify the same from the regular books of accounts of the concern. In response to that the assessee furnished written submission which is reproduced hereunder:-

"With reference to your query raised for the opening balance of Capital Account in the tally, it is submitted that it was infact a manipulated figure and not a capital. It includes many figures like creditors and other liabilities. No cash was found during the search which may establish that we are not having such much capital.

This figure was put into tally for the purpose to arrive at the profit and it an imaginary figure.

We have prepared a consolidated sheet of all the divisions from which it appears that there is a negative cash balance on dated 07-06-2018 of

Rs.167,70,585/- and which has been divided equally between Alok Malpani & Mukesh Kumar Somani.

We have prepared a sheet showing Profit earned in all the divisions Rs.6,87.24,410 which has been divided equally between Alok Malpani & Mukesh Kumar Somani.

Thus, the total income of each partner of these businesses tune to Rs 3,43,62,205 and we already have declared that business income in our return."

It was reveled that the reply of the assessee was considered but not found satisfactory. Out of the capital mentioned in the above table only the capital of Rs. 5,09,09,586/- was introduced first time in the year under consideration. The others were introduced in the F.Y. 2018-19 which are discussed in the order of A.Y. 2019-20. Since, the assessee had owned up the Net Profit figure shown in the above table and declared the same in the income tax return and paid due taxes thereon, then the onus is upon the assessee to explain the source of capital introduction of Rs. 5,09,09,586/-.

As the assessee failed to give any satisfactory explanation with regard to the source of this capital introduction. The assessee simultaneously failed to provide the details of the said creditors on a/c of which the said entries were said to be mentioned in the Balance Sheet. Therefore, the amount of Rs. 5,09,09,586/- was held as the unexplained investment u/s 69 r.w.s. 115BBE of the LT. Act, 1961. Since, all the transactions mentioned in the said divisions mentioned in the table are admitted to be the joint venture of Shri Alok Malpani and Sh. Mukesh Somani and the Net Profit reflecting from these concerns were jointly own by hese two, therefore, the half amount of Rs. 5,09,09,586/- i.e. Rs. 2,54,54,793/- was added in the total income of the each of both assessee.

- Ld CIT(A) deleted the addition on 2nd issue made by AO. Ld CIT (A) in her finding mentioned that the present AO in the course of appellate proceedings has accepted the inter head transfer which has been examined by her (CIT-A) for which necessary evidences seized during the course of search has been produced by the appellant. Accordingly, Ld CIT(A) didn't considered the same as fresh capital and deleted the addition made by AO.
- It is further to mention that on the identical/similar issue in AY 2019-20 Id CIT(A) had granted relief to assessee but reasons for relief are different.
- Decision of Ld CIT(A) is not acceptable. Submission given by assessee before CIT(A) are quite different from the reply/submission during

assessment proceedings and Ld CIT(A) simply relied upon them, and ignored the findings of AO made in assessment order. Ld CIT(A) hasn't even noticed/considered that why submission of assessee which was made before her was not made by assessee before AO? Ld CIT(A) simply rely on the contention of assessee and didn't considered the finding of AO made in assessment order that it was the fresh unaccounted capital of assessee documents. as evident from seized

Ld CIT(A) even ignored the findings of AO made in assessment order that the assessee simultaneously failed to provide the details of the said creditors on a/c of which the said entries were said to be mentioned in the Balance Sheet.

Order of Ld CIT(A) cannot be accepted in view of findings made in assessment order that the said capital was introduced first time in the year under consideration and net profit mentioned in the said table had already declared by the assessee in his return of income. Hence, said capital shown in that tally is also his unaccounted money introduced by assessee in the form of capital in the year under consideration. As can be understood from the assessment order that it was undoubtedly unaccounted capital of assessee which was introduced first time in books by him in the year under consideration.

Hence, Decision of Ld CIT(A) is not acceptable on merit in view of findings of AO made in assessment order and material on record.

Accordingly, further appeal before Hon'ble ITAT was filed in both the cases as per order of worthy Pr. Commissioner of Income-tax (Central), Rajasthan, Jaipur on the grounds mentioned in the order of worthy PCIT. Said appeals were filed online as well as offline subsequently. Alongwith the appeals Original Authorizations letters of PCIT (Central), Rajasthan, Jaipur, Form No.36, Orders of CIT(A), Form No.35, Assessment Orders, Grounds filed by the assessee before the CIT(A) were also submitted. Copy of the same were also provided to PCIT (Central), Rajasthan, Jaipur, Sr. DR, ITAT, Jaipur and JCIT, Central-Range, Udaipur.

Copies of 8 Pen Drives inventorized as Exhibit-1 to 8 of Annexure-PD found from the residential premises of the Shri Alok Malpani situated at Kishangarh pride are enclosed.”

14.2 On the ground raised by the revenue 2<sup>nd</sup> written submission were made dated 31.10.2022 the same is reproduced for the sake of convenience:

“3. The desired paper book was submitted as per reference no 2 mentioned above to your goodself through proper channel. The same included a brief note (Page 01 to 29) and a pen drive containing copies of relevant exhibits of seized material part of which has been discussed in respective assessment orders (Copies of 8 Pen Drives inventorized as Exhibit-1 to 8 of Annexure-PD found from the residential premises of the Shri Alok Malpani situated at Kishangarh pride, Copies of an Ikrarnama relating to transfer of shares in Paradizo resort & relevant whatsapp chats extracted from the mobile phone of Shri Ashok Jain and Copies of relevant digital data obtained from the Mobile Phone of Shri Omanshu Sharma and relevant Annexure-CF in the case of Shri Omanshu Sharma).”

15. Per contra, the Id. AR of the assessee reiterated his submission from the paper book submitted before the Id. CIT(A) and heavily relied upon the reasoned finding of the Id. CIT(A). The Id. AR of the assessee submitted the addition made by the Id. AO rightly deleted by the Id. CIT(A). He relied upon the submission made before the Id. CIT(A) and the same is not repeated as the same is already incorporated in the order of the Id. CIT(A). The brief related to this addition is that based on the 8 pen drive seized from the premises of the appellant assessee the Id. AO prepared a chart where in he calculated a difference in the opening capital account and the said difference is reproduced here in below:

S.No.	Name of the	FY	Opening stock	Gross Profit	Net Profit	Capital A/c
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	concerns					
1	SMP	2019-20	65803200	7276818	7276818	70408000
2	SG	2019-20	0	8969924	10807271	111351741
3	Shakti Eng	2019-20	0	-4108952	3974945	4164600
4	Shakti Rewari	2019-20	12155000	-10676440	-10676440	12273776
5	SM	2019-20	13475490	46172456	44326005	320585703
6	SGM	2019-20	0	4410179	4937828	<b>50909586</b>
				52043985	60646427	

16. Based on the above table Id. AR submitted that the difference of Rs. 5,09,09,586/- is nothing but passing of journal entries. The same is extracted here in below to substantiate contention of the submission made by the assessee

SGM Ksg Capital Account Group Summary 1-Apr-2015 to 8-Feb-2020		
Particulars	Closing Balance	
	Debit	Credit
Alok Capital		3,43,51,786.00
Gtv Capital Ac		1,65,57,800.00
<b>Grand Total</b>		<b>5,09,09,586.00</b>

sm 19-20 Balance Sheet 1 Apr-2018 to 8 Feb-2020			
Liabilities	as at 8-Feb-2020	Assets	as at 8-Feb-2020
Capital Account	32,05,85,703.31	Loans (Liability)	5,50,58,080.61
Profit & Loss A/c	4,43,26,005.93	Current Liabilities	21,10,93,578.61
Opening Balance		Investments	82,10,000.00
Current Period	4,43,26,005.93	Current Assets	9,05,50,050.02
<b>Total</b>	<b>36,49,11,709.24</b>	<b>Total</b>	<b>36,49,11,709.24</b>

sm 19-20 78

**Capital Account**  
Group Summary  
1-Apr-2019 to 8-Feb-2020

Particulars	Closing Balance	
	Debit	Credit
Alok		21,57,94,986.45
Anoop Mundra		2,65,91,392.46
Mukesh Somani		20,66,80,464.40
Sarveshver	10,29,750.00	
Sgm Capital Ac	3,43,51,786.00	
Shakti Granite Cap Ac	4,90,01,741.00	
Shroc Capital Ac	1,04,57,863.00	
Smp Capital	3,36,40,000.00	
<b>Grand Total</b>	<b>12,84,81,140.00</b>	<b>44,90,66,843.31</b>

(-) +  
32,05,85,703.31

SGM 70  
Ksg

**Alok Capital**  
Ledger Account  
1-Apr-2019 to 31-Mar-2020

Date	Particulars	Vch Type	Vch No.	Debit	Credit
18-7-2019	By Arun Thekedar	Journal	1		50,000.00
	By Kaddi Exp	Journal	2		6,000.00
20-7-2019	By Woodwool Exp	Journal	9		6,700.00
28-7-2019	By Misc Exp (General Exp )	Journal	16		3,170.00
31-7-2019	By Cash	Receipt	1		5,00,000.00
1-8-2019	To Sm Loan Ac	Journal	26	1,00,00,000.00	
9-8-2019	By Cash	Receipt	2		5,00,000.00
	To Cash	Payment	23	99,00,000.00	
31-8-2019	By Fixed Investment in Plant	Journal	128		6,97,43,716.00
	To Gtv Capital Ac	Journal	129	1,65,57,800.00	
				3,64,57,800.00	7,08,09,586.00
	To Closing Balance			3,43,51,786.00	
				<b>7,08,09,586.00</b>	<b>7,08,09,586.00</b>

The Id. AR of the assessee submitted that the Id. AO has based on the credit appearing in the tally account marked as extracted here in above taken a view that there is a fresh introduction of capital for an amount Rs. 5.09,09,586/- [ 3,43,51,786/- + 1,65,57,800/- ] in the SGM account but the

Id. AO has not appreciated said fact appearing on the same set of evidence there exist a debit in SM for similar amount and the same is extracted here in above. The bench noted that the Id. AO has doubted only this credit entries in SGM account and for rest of the account Id. AO categorically confirmed that in the other account the same has been introduced in financial year 2018-19. On careful observation of the above extract of the account reproduced it is beyond doubt that the credit appearing in SGM is correspondingly coming as debit in SM account. Thus, the transaction has no revenue impact in the group. As regards the profit reflected in these tally accounts there is no dispute as the same has been duly considered by the group in their disclosure. The contention of the Id. DR that revenue / Id. AO was not confronted on the above issue at the time of first appeal is not sustainable as the notice of hearing in the case fixed before CIT(A) also goes to the Id. AO. Therefore, the contention of the Id. DR that the Id. AO did not get an opportunity to represent his case is not correct. Even at the time of the hearing before us when the status report was called for all the group case listed the Id. AO has not controverted with any evidence to prove that the finding of the Id. CIT(A) is incorrect on facts, against the set of facts available. Based on these set of facts we see no infirmity in the detailed and reasoned finding of the Id. CIT(A) on this issue of transfer of

capital from one account to another and it does not have any effect of income in the hands of the assessee. Based on these set of facts ground no. 4 raised by the revenue is dismissed.

17. In the result the appeal of the revenue in ITA No. 335/JPR/2022 is dismissed.

18. The fact of the case in ITA No. 352/JPR/2022 are similar to the case in ITA No. 335/JPR/2022 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the assessee in this appeal in ITA No. 335/JPR/2022 is equally similar on set of facts, grounds and in arguments. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 335/JPR/2022 for the Assessment Year 2020-21 shall apply mutatis mutandis in the case of Mukesh Kumar Somani in ITA No. 352/JPR/2022 for the Assessment Year 2020-21.

19. In the result the appeal of the revenue in ITA No. 352/JPR/2022 is dismissed.

20. Now, we take up the cross objection filed by the assessee Shri Alok Malpani in CO/24/JPR/2022 wherein effectively five grounds of cross objections raised by the assessee.

21. The cross-objection Ground no. 1 & 2 relating to the addition of the property owned by the assessee. The same has been decided by us in revenue's appeal in ITA No. 335/JPR/2022 vide ground no. 2 vide para 12 above and in terms of observation recorded by us we allow the ground no. 1 & 2 raised in the cross objection raised by the assessee. Ground no. 3 is related to challenging the proceeding on account of mechanical approval u/s. 153D of the Act, since we have concurred the findings of the Id. CIT(A) on merits therefore, these ground No. 3 becomes technical and infructuous does not require any adjudication. As regards ground no. 4 related to charging of interest u/s. 234B which is consequential in nature for which AO is directed to give the necessary effect as per law. Ground no. 5 is related to levy of the penalty and the levy of penalty is not subject matter of challenge before us. Therefore, the same is premature which does not require adjudication.

22. In terms of these observations the cross objection filed by the assessee is allowed for statistical purpose in CO No. 24/JPR/2022.

23. The fact of the cross objection in CO No. 29/JPR/2022 are similar to the facts of the cross objection in CO No. 24/JPR/2022 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this cross objection [CO] No. 29/JPR/2022 are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised. Hence, the bench feels that the decision taken by us in CO No. 24/JPR/2022 for the Assessment Year 2020-21 shall apply mutatis mutandis in the case of Shri Mukesh Kumar Somani in CO No. 29/JPR/2022 for the Assessment Year 2020-21.

In the result appeals of the revenue in ITA Nos. 335 & 352/JP/2022 are dismissed and the cross objections filed by the assessee in CO Nos. 24 & 29/JP/2022 are allowed for statistical purpose.

Order pronounced in the open court on 08/12/2022.

Sd/-

(डा० एस. सीतालक्ष्मी )  
(Dr. S. Seethalakshmi)  
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 08/12/2022

\*Ganesh Kumar

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

1. अपीलार्थी / The Appellant- DCIT, Central Circle, Ajmer
2. प्रत्यर्थी / The Respondent- Sh. Alok Malpani, Ajmer  
Sh. Mukesh Kumar Somani, Ajmer
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 335 & 352 /JP/2022 and CO No. 24 & 29/JP/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar