

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

(through web-based video conferencing platform)

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER AND
SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

ITA Nos. 832 & 833/Ind/2018

निर्धारण वर्ष/Assessment Year : 2007-08 & 2008-09

Assistant Commissioner of Income-tax, Circle 2(1), Bhopal	Vs.	Shri Jai Narain Chouksey, 31, Shyamla Hills, Bhopal (M.P.) PAN : ACYPC 2632 A
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ITA No. 769/Ind/2018

निर्धारण वर्ष/Assessment Year : 2009-10

Shri Jai Narain Chouksey, 31, Shyamla Hills, Bhopal (M.P.) PAN : ACYPC 2632 A	Vs.	Assistant Commissioner of Income-tax, Circle 2(1), Bhopal
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Sumit Nema, Sr. Advocate & Shri Hitesh Chimnani, AR
Revenue by :	Ms. Simran Bhullar & Shri P. K. Mishra, CIT-DR

सुनवाई की तारीख/Dates of Hearing : 29.09.2022 / 19.12.2022

घोषणा की तारीख /Date of Pronouncement : 25.01.2023

आदेश/O R D E R

PER MS. MADHUMITA ROY, JUDICIAL MEMBER:

This bunch of appeals filed by the Revenue (AYs 2007-08 & 2008-09) and assessee (AY 2009-10) are directed against a common order dated 31.07.2018 passed by the Learned Commissioner of Income-tax (Appeals)-1, Bhopal (MP) (hereinafter referred to as “the Act”), arising out of orders dated 29.12.2011 passed by the Learned Asstt. Commissioner of Income-tax-2 (1),

Bhopal under Section 143(3)/ 143(3) r.w.s. 153A of the Act for Assessment Years 2007-08 to 2009-10 respectively. Since all the matters pertain to the common search proceedings and relate to the same assessee, these cases are heard analogously and are being disposed of by a common order for the sake of convenience.

ITA No. 832/Ind/2018 – AY 2007-08 – Revenue’s appeal

2. ITA No. 832/Ind/2018 has been taken as the lead case.
3. In Ground No.1 of this appeal, the deletion of addition in respect of insurance premiums amounting to Rs.1,26,936/- is challenged by the Revenue.
4. The brief facts leading to this case is that, during the course of search, details of insurance policies in the name of assessee and his minor daughter Miss. Poojashree Chouksey were found. In spite of direction by the Learned Assessing Officer to furnish/explain the source of such investments made in insurance policies, no evidence was furnished by the appellant and having no other alternative, the amount in question was added by the Assessing Officer to the total income of the assessee which was in turn confirmed by the Learned CIT(A). Hence, the instant appeal before us.
5. We have heard the rival submissions made by the respective parties and also perused the relevant material available on record including the cash flow statement appearing at page no. 48-53 of the paper-book filed before us by the assessee.
6. Before the learned First Appellate Authority, the assessee submitted as follows:-

“1. In the reply filed by the assessee during assessments proceedings, the details of insurance policies and the annual premium paid were given.

2. As regards non-furnishing of cash book, first of all in view of the nature of income of assessee i.e. income from other sources being honorarium, consultancy income, agriculture income etc, he was not required to maintain books of accounts.

3. In view of the nature of income, the insurance premium were explained to be deposited out of assessee's current year's income and past savings. AO was satisfied with the same and did not ask further. The AO chose shortcut and convenient method of making addition by stating that assessee has not furnished any cash book. We are hence enclosing herewith, data wise cash flow statement showing availability of cash on the date of payment of insurance premium u/s 46A as additional evidence (Copy at page 48-53).

In view of above, the addition made by AO amounts to double taxation because the source and application both have been taxed by AO and since all the insurance premiums were paid out of already offered income hence the unlawful addition made by AO may kindly be deleted by your honour.”

7. Along with the aforesaid submission, the assessee duly submitted cash flow statement showing availability of the cash on the date of payment of insurance premium under Section 46A of the Act as additional evidence. A remand report was called for by the Learned CIT(A) on the basis of the said additional evidence produced by the assessee whereupon the Learned Assessing Officer commented that the submission made by the assessee was an afterthought and he, therefore, sought to justify the addition made. However, the learned CIT(A) deleted the addition with the following observations:-

“12.7 A perusal of the cash flow statement shows that the appellant has explained all insurance premiums as having been paid out of cash in hand available as on the date of deposits from the various sources of income already shown in the regular returns of income filed. However, it is observed that the opening cash balance as on 01.04.2003 has been taken at Rs. 5,47,000/-. The source of the same is shown to be carried forward balance from F.Y. 2002-03. It is seen that the appellant has shown opening cash balance of Rs. 4,00,000/- as on 01.04.2002. The appellant has not explained source of such huge cash in hand. I consider it reasonable to treat only Rs.50,000/- as explained cash in hand as on 01.04.2002. Therefore, out of Rs.5,47,000/- cash in hand on 01.04.2003 only Rs.1,97,000/- is treated as explained and Rs. 3,50,000/- is found as unexplained. The effect of opening balance of cash in hand is given in subsequent paragraph while dealing with other addition. The A.O. has not found any other source of income other than that declared by the appellant. The A.O. has also not proved that the income offered by the appellant in the return of income was spent / consumed by the appellant in making some investment or

incurring some expenditure and consequently, the cash was not available with the appellant. The amounts shown in the receipt side of the cash flow statement have already been offered by the appellant in the return of income. It is observed that the insurance premium have paid from the cash in hand available out of such taxable income. The addition of cash deposits in the bank account amounts to double taxation of the same income because the source and application both have been taxed. In view of the same this addition made in all the years is unjustified and is therefore, deleted.”

8. Upon careful reading of the submission made by the assessee and the cash flow statement submitted before us, it appears that the assessee is having the nature of income on account of honorarium, consultancy, agriculture income etc. and, therefore, according to him, the books of account is not required to be maintained. Further, it is observed that the cash flow statement filed by the assessee shows the availability of the cash on the date of payment of insurance premiums and such evidence is nothing but a compilation of entries regarding the cash in hand, bank deposits and income earned. Under these circumstances, the observation made by the Assessing Officer that the same was an afterthought and cooked-up evidence is not acceptable. It is also a fact that the Learned Assessing Officer has not found any other source of income other than that declared by the appellant, neither proved that the income offered by the appellant in the return of income was spent/consumed by the appellant in making some investment or incurring some expenditure and, therefore, the cash was not available with the assessee to deposit for such insurance premiums. We also find that the amounts shown in the receipt side of the cash flow statement have already been offered by the appellant in the return of income and have been duly taxed. The insurance premiums were paid from the cash in hand available out of such taxable income as it is appearing on record. In that view of the matter, once the assessee has already paid tax, the application of such income cannot be taxed twice. Under this premise, the Learned CIT(A) deleted the addition made by the Assessing Officer, which according to us is just and proper without any ambiguity so as to warrant interference. Hence, this ground

of appeal preferred by the Revenue is found to be devoid of any merit and hence, dismissed.

9. By way of Ground No.2 raised by the Revenue in its appeal, the deletion of addition on account of cash deposits in the bank account to the tune of Rs.5,60,000/- has been challenged before us. The brief facts of the case leading to this issue is that upon verification of the material available on record, it was found by the Learned Assessing Officer that following cash amounts have been deposited in various bank accounts of the assessee during the year under consideration:-

Shri J.N. Chouksey	Bank of India Professor Colony	Account No. SB 9291
Date		Amount
03.06.2006	CASH	210000
21.09.2006	CASH	50000
	TOTAL	260000

Shri J.N. Chouksey	Vidisha Bhopal Ksehtriya Gramin Bank	Account No. SB 20021
Date		Amount
06.09.2006	CASH	100000
10.11.2006	CASH	10000
16.11.2006	CASH	12000
	TOTAL	122000

Shri J.N. Chouksey	ICICI Bank	Account No. 005501514835
Date		Amount
19.07.2006	CASH	30000
23.08.2006	CASH	40000
24.08.2006	CASH	35000
30.08.2006	CASH	40000
27.10.2006	CASH	8000
21.11.2006	CASH	15000
27.02.2007	CASH	10000
	TOTAL	178000

10. It is the case of the assessee before the Learned Assessing Officer that the said cash has been deposited out of income of the current year. As the assessee has not furnished any evidence with regard to the source of such cash deposited in the bank account, the Learned Assessing Officer added the impugned amount

to the total income of the assessee which was in turn deleted by the Learned CIT(A). Hence, the instant appeal.

11. Before the learned First Appellate Authority the assessee submitted the following:-

“1. As regards non furnishing of cash book, first of all in view of the nature of income of assessee i.e. income from other sources being honorarium, consultancy income, agriculture income etc, he was not required to maintain books of accounts.

2. Secondly, entire deposits made by the assessee during the year in the bank account, either in cash or through cheque, were offered as income under the head “other income” as under (copy at pg 1-18)

Particulars	AY 2004-05	AY 2005-06	AY 2006-07	AY 2007-08	AY 2008-09	AY 2009-10
Honorarium	0	0	120000	0	0	0
Consultancy / Other Income	252315/-	236700/-	547727/-	484546/-	895000/-	150000/-
Interest Income	0	0	7678/-	13183/-	24000/-	38101/-
Agriculture Income	242390/-	134500/-	61355/-	30000/-	0	0
Undisclosed Income	0	0	0	0	0	10000000/-
Gross Total Income	494705/-	371200/-	736760/-	527729/-	919000/-	10188101/-

3. In view of the nature of income, the cash deposits were duly explained showing that the assessee had sufficient cash available out of his current year's income and past savings. AO was satisfied with the same and did not ask further. The AO chose shortcut and convenient method of making addition by stating that assessee has not furnished any cash book that would indicate the date wise cash balance available on a particular date. Had the AO asked for date wise cash flow, the same would have been provided. We are hence enclosing herewith, date wise cash flow showing availability of cash on the date of deposits in bank u/r 46A as additional evidence (Copy at pg 48 - 53).

4. It will also be seen that the ld. AO conveniently chose to consider only the cash deposits in bank and ignored cash withdrawals also made by the assessee from his bank accounts.

5. Without prejudice to above, following mistakes have also been noted:

A.Y. 2006-07

i. In A.Y. 2006-07 the AO has made an addition of Rs. 84000/- on account of cash deposited in bank of India a/c no. 900610100009291 on 14.12.2005. It is submitted that no such cash was deposited as alleged. In fact it is DD No. 5707 paid of Rs. 84000/- copy of bank statement of bank of India professor colony branch Bhopal in the name of the assessee reflecting aforesaid transaction is enclosed. Copy at pg 24.

ii. Similarly AO had made addition of Rs. 130,000/- on account of cash deposited in IDBI Bank a/ c no. 0131080569300 as under:

<i>IDBI Bank A/C No. 0131080569300</i>		
<i>Date</i>		<i>Amount</i>
<i>18.08.2005</i>	<i>Cash</i>	<i>40000</i>
<i>24.08.2005</i>	<i>Cash</i>	<i>10000</i>
<i>25.08.2005</i>	<i>Cash</i>	<i>40000</i>
<i>Not mentioned by AO</i>	<i>Cash</i>	<i>40000</i>
	<i>Total</i>	<i>130000</i>

The ld. AO has not mentioned any date against deposit of Rs. 40000/-, as above. Please find enclosed herewith copy of bank statement of IDBI Bank account 0131080569300 at pg. 21 - 23. wherein it will seen there are cash deposits of Rs. 40,000, 10,000 and 40,000 totaling to Rs.90,000/- only. There is no further cash deposit of Rs. 40,000/-. It seems addition of Rs, 40000/- has been inadvertently repeated without any such deposit in the bank account.

A.Y. 2008-09

i. The AO has made an addition of Rs.65765/- on account of cash deposited in Standard Chartered Bank a/c no. 80110013172 on 30.09.2007. It is submitted that no cash was deposited as alleged. In fact it is closing balance, as on September 30th, 2007 in the said bank account. Copy of bank statement in the name of the assessee reflecting aforesaid balance is enclosed Copy at pg 45.

In view of the above, the addition made by the A.O. amounts to double taxation because the source and application both have been taxed by A.O. and since all the cash deposits in the bank (including cheque deposits) were already offered as income hence the unlawful addition made by A.O. may kindly be deleted."

12. A remand report was sought for by the ld. CIT(A) from the Assessing Officer, whereupon the learned Assessing Officer simply reiterated the stand taken by him during the course of assessment proceedings. As it is not the case of the ld. AO that any income deposited in the bank has remained untaxed, the addition has been said to be a double taxation as per the submission made by the assessee before the learned First Appellate Authority. It is relevant to mention that upon the perusal of the bank statement, it appears that whatever deposits were made by the assessee during the year under consideration in all bank

accounts, the same have already been offered for taxation. More so, all cash deposits were made out of cash in hand available as on the date of deposits from various sources of income as we have already discussed in the preceding paragraph while dealing with earlier ground of appeal preferred by the appellant. We find that the Learned CIT(A) deleted the addition by observing as under:-

"16.6 A perusal of the cash flow statement admitted u/r 46A shows that the appellant has explained all cash deposits made in the bank accounts as having been made out of cash in hand available as on the date of deposits from the various sources of income already shown in the regular returns of income filed. The opening cash balance as on 01.04.2003 has been taken at Rs. 50,000/- only which is found to be reasonable and acceptable in view of the fact that the appellant was a regular income tax assessee, filing income tax returns and had declared substantial income in the earlier assessment years. The A.O. has not found any other source of income other than that declared by the appellant. The A.O. has also not proved that the income offered by the appellant in the return of income was spent/ consumed by the appellant in making some investment or incurring some expenditure and consequently, the cash was not available with the appellant. The amounts shown in the receipt site of the cash flow statement have already been offered by the appellant in the return of income. It is observed that the deposits in the bank account have been made from the cash in hand available out of such taxable income subject to some addition made while deciding household expenses issue rejecting the part opening cash in hand as on 01.04.2003. The addition of cash deposits in the bank account amounts to double taxation of the same income because the source and application both have been taxed. In view of the same this addition made is found to be unjustified and is therefore, deleted."

13. Upon considering entire aspect of the matter, particularly the cash flow statement filed by the assessee, we find that it is not the case of the Revenue that the assessee is having any other source of income other than the declared one, neither the assessee has spent/consumed such income in making some investment or incurring some expenditure and consequently the cash was not available with the assessee. When the deposits are being found to be made from the cash in hand available out of such taxable income, the impugned addition of cash deposits in the bank accounts tantamount to double taxation. In that view of the matter, the deletion of addition made by the learned CIT(A) is found to be

justifiable and thus confirmed. This ground of appeal preferred by the Revenue, therefore, fails.

14. In Ground No.3 of its appeal, the Revenue has challenged the deletion of addition in respect of household expenditure to the tune of Rs.4,80,610/-. The brief facts of the case relating to this issue, as culled out from the records, are that during the course of search, huge cash and jewellery worth crores of rupees were found and seized from the premises of the assessee. It was also found that the assessee and his family members were living in palatial house fitted with latest amenities and gadgets and they were using fleet of luxurious vehicles. The Assessing Officer also observed that assessee's were the members of various clubs and using multiple credit cards; and, they are staying in a posh locality of Bhopal and thus maintaining a very high standard of living. As no details and evidences in respect of household expenditure and source thereon were not furnished before the Assessing Officer, the impugned addition was made. The case of the assessee is thus that they live a very simple life, neither any family members is holding membership of any club, nor using multiple credit cards; the children of the assessee are grown up, major and had completed their education and they are independent income-tax assessee's; the entire family is living in own house and sharing common kitchen. The arguments advanced by the learned Counsel before the authorities below and even before us are that since there is no incriminating material found during the course of search, the addition made on estimated basis in relation to the household expenditure is not sustainable. In support of the case made out by the assessee, a consolidated chart of household withdrawals by entire family, cash flow statement of assessee, his daughter and son were duly submitted. Apart from that, it has also been stated by the assessee that the assessee owns agriculture land and the grains obtained from agriculture fields are being used for personal consumption. In reply to a remand report as asked for by the learned CIT(A), the learned

Assessing Officer reiterated the stand taken by him during the course of assessment proceedings. However, he found from the cash flow statement that the appellant has shown sufficient withdrawals for household expenses. However, the withdrawals made by the assessee's children on account of household expenses were not accepted by the learned CIT(A). In other words, the impugned addition of Rs.4,80,610/- is found to be explained even after making other expenses for the year under consideration and, therefore, the credit for withdrawal shown by the assessee only in his cash flow statement submitted before the First Appellate Authority was allowed which according to us is without any ambiguity for the reason mentioned hereinabove. We do not find any reason to interfere on such order passed by the learned CIT(A) in deleting the addition made on account of household expenditure for the year under consideration. Thus, the order of the CIT(A) on this issue is hereby upheld and this ground of appeal preferred by the Revenue is, therefore, found to be devoid of any merit and thus dismissed.

15. In Ground No. 4 of appeal preferred by the Revenue, deletion of addition in respect of unexplained investment in Fixed Deposit in the name of minor daughter to the tune of Rs.3,47,077/- is the subject matter before us.

16. The brief facts leading to this case are that during the course of search, various FDRs in the name of assessee's minor daughter were found. The investment of FDRs amounting to Rs.3,47,077/- for AY 2007-08 was also included. As the assessee did not furnish any evidence regarding the source of the said investment and no books of accounts or cash books etc were produced in support the said investment, the same was treated as unexplained investment and added to the total income of the assessee which was in turn deleted by the learned First Appellate Authority; hence, the instant appeal before us.

17. Before the First Appellate Authority, the assessee submitted as follows:-

“1. Copy of Annexure A being inventory of valuable documents / FDR seized in the case of Shri J N Chouksey was provided to the assessee wherein a/c no, amount and banks names is mentioned. Photocopies of these FDR's have not being provided to the assessee by the Id. AO. Kindly, therefore arrange to provide us the copy of the FDRs so as to enable us to make effective compliance.

2. Further, if your honour will peruse the FDR amounts it will be seen that it is a case of renewal of old FDR's in the name of assessee daughter. These FDRs have been made with maturity amounts consisting of odd figures even with paise. Normally, if a new FDR is made with the bank, it is made with round off figures like say Rs. 25,000/- or 1,00,000/- which is not the case of the assessee.

3. The assessee daughter was born in 1990. Since then cash gifts received by his daughter Miss. Poojashree Chouksey on her birthdays and festive occasions have been accumulated and FDRs were made in her name which got renewed from time to time on maturity over the years.

4. Assessee tried to obtain certificate from bank but the same was not given till the date of assessment order. The assessee is following up for the same with the bank but since the data being very old, bank has not been able to provide the same till date therefore further time may kindly be granted to the assessee.”

18. The case of the assessee is this that these FDRs are of the period prior to the search assessment period, i.e. before 01.04.2003. In support of the same, certain certificates issued by the bank were filed by the assessee before the learned First Appellate Authority which was not controverted by the learned Assessing Officer in remand report. In fact, it appears from the record that the FDRs were originally made prior to search assessment period, i.e. prior to 01.04.2003, which were got renewed from time to time. In that view of the matter, the addition deleted by the learned CIT(A) is found to be without any ambiguity so as to warrant interference. This ground of appeal preferred by the Revenue is found to be devoid of any merit and hence dismissed.

19. By way of next Ground, i.e. Ground No.5, deletion of addition on account of cash deposits to the tune of Rs.3,52,000/- in the bank account of minor daughter is challenged by the Revenue.

20. In the absence of any supporting evidence with regard to the source of deposit in the bank account, the impugned addition was made by the learned Assessing Officer which was in turn deleted by the learned CIT(A). Hence, the instant appeal before us.

21. The First Appellate Authority, upon perusal of the documents particularly the cash flow statement, found that all cash deposits made in the bank account were out of cash in hand available as on the date of deposits from various sources of income as already shown in the regular return of income filed by the assessee. The appellant was a regular income-tax assessee and he declared substantial income in the earlier years as well. The learned Assessing Officer neither found any other source of income other than that declared by the assessee, nor proved that the income offered by the appellant in the return of income was spent/consumed by the appellant in making some investment or incurring some expenditure and as a result of which the cash was not available with the assessee. The documents particularly the cash flow statement established the fact of depositing the amount in the bank account out of the cash in hand available with the assessee. Once the tax has been paid on the undisclosed income, the impugned addition of the same again tantamount to double taxation; and, on that premise, the deletion of addition made by the learned CIT(A) is found to be in accordance with law and, therefore, not interfered with. The order of the learned CIT(A) on this issue is upheld and this ground of appeal preferred by the Revenue is thus dismissed.

22. Ground No.6 relates to deletion of addition of Rs.5,00,000/- on cash loan given by the assessee to Shri Roop Singh.

23. It appears from the agreement executed on stamp paper seized from the Shamla villas that the said Roop Singh has acknowledged to have received loan

of Rs.50,000 only and the balance amount of Rs.4,50,000 was to be obtained later on 22.01.2007 for which separate receipt was promised to be given by the borrower. The same was also confirmed by the statement recorded under section 132 of the Act, in reply to question number 16 therein. As there is no evidence to that effect on records found that the remaining amount of Rs.4,50,000 was given by the assessee to the said Roop Singh, the addition of Rs.5 lakhs has been found to be unjustified and unsustainable by the CIT(A), which in our considered view is just and proper in view of the reason recorded therein. The same is, therefore, upheld. This ground of appeal preferred by revenue is, does, dismissed.

24. Ground No.7 relates to deletion of addition of Rs.5,25,00,000/- on account of unaccounted receipt from Shri Ram Singh Dhakre based on loose paper seized during search operation.

25. The facts emanate from the order of Ld. CIT(A) also culled out from the records before us is as follows:

“36.5 During the course of search, certain documents were seized from the residential premises of the assessee. Page 14 to 16 of LPS 2/25 is an unsigned agreement between Shri Ram Singh Dhakre and J. N. Chouksey made on 09.02.2007 along with an undated covering letter on the letter head of Maharana Pratap College of Technology signed by Shri Ram Singh Dhakre (seized page no. 15). The agreement shows that the Pratap Wahini Samaj Kalyan Sansthan is running two colleges viz. M.P.C.T. and M.P. C.D. & R.C. in which both the parties have 50% share. The agreement further shows that Shri Dhakre would transfer his share in Bilaspur and Indore to Shri Chouksey and Shri Chouksey would Transfer his share in colleges at Gwalior to Shri Dhakre. As per the agreement, in consideration of this transaction Shri Ram Singh Dhakre would pay Shri JN Chouksey an amount of Rs. 10.50 crores which was to be paid in two installments; one within one month of the agreement and the second installment by 15 August 2007. From the seized covering letter of Shri Ram Singh, Dhakre it is seen that Mr. Ram Singh Dhakre is referring to agreement between himself and Shri Chouksey in presence of one Shri V.V. Shrivastava. It is mentioned that the said agreement is being sent after some amendment. Shri Dhakre has requested that the agreement may be finalized and signed (समझौता लिख दिया जाए) so that first installment may be paid. It is further mentioned that payment will be made only after signing of agreement the time period of the same will be one month.”

36.6 Statement of Shri Jai Narayan Chouksey was recorded u/s 132(4) on 24.07.2009 in which he stated that this was an agreement regarding management of Maharana Pratap, Gwalior. (Q. no. 27). Further, in his statement recorded u/s 132(4) at his residence 31, Shyamla Hills, Bhopal on 22.08.2009, Shri J.N. Chouksey clarified by that the said Maharana Pratap College Gwalior was run by him and Ram Singh Dhakre's family members; there was a dispute before two years and accordingly an agreement was made that they (Dhakre) will pay them an amount of Rs. 10.50 Cr. and he (J.N. Chouksey) will withdraw his membership. It has been further stated that Dhakre took over the control of the college by fraud and did not comply with the said agreement. Thus, he (J.N. Chouksey) did not get the amount as per the agreement (Q. No. 4).

36.7 The A.O. has relied upon the statement of appellant that Mr. Dhakre took over possession of the college by fraud and no amount was paid. The A.O. was of the view that this statement of Mr. J.N. Chouksey clearly establishes that the possession of the College has already been taken over from them for which the said agreement was made. The A.O. has observed that the claim that the said possession was taken over by fraud is not supported with any evidence. He was of the view that if the possession was taken by fraud then police complaint would have been filed and a suit must have been filed in the Court of law. As no such evidence was filed during assessment, the A.O. concluded that it was impossible to believe that Mr. J.N. Chouksey had given possession of the said colleges without receiving the consideration of Rs. 10.50 crore. The AO, therefore, inferred that the appellant had received the said amount of Rs. 10.50 crore as per the terms of agreement i.e. Rs. 5.25 crore in the month of March 2007 (F.Y. 2006-07) and the remaining amount of Rs. 5.25 Crores in the month of August 2007(F.Y. 2007-08) and added a sum of Rs. 5.25.00.000/- each in A.Y. 2007-08 and 2008-09.”

26. Thus, it appears as per the assessee, Mr. Dhakre took over the possession of college by fraud and no payment was made. However, since such fact was not corroborated by any evidence, the Ld. AO assumed that the assessee has given possession only upon receipt the impugned amount i.e. Rs.5,25,00,000/- in the Month of March 2007 and remaining amount of Rs.5.25Crore was added in Assessment Year 2008-09. During the appellate proceeding, the appellant duly filed the copy of the order passed by the Hon'ble M.P. High Court dated 17.10.2012 under Section 46A of the Act evidencing protracted litigation was going on. The said was against R.S. Dhakre and his family members on the same issue of fraudently taken over the possession of the society in 2008 i.e. prior to search on 23.07.2009. The copy of each of the complaint filed to the Police Station, Thatipur, Gwalior, S.P. Gwalior, Registrar of Firm & Society, Bhopal complaint filed with the society Commerce & Industrial Department,

M.P. Government, Bhopal on the same issue were duly filed before the Ld. CIT(A). Upon going through these facts and evidences, we find that the addition made by the Ld. AO was merely on suspicion and not borne out from records rather the record speaks absolutely different. Hence, in our considered opinion, taking into consideration, the entire aspect of the matter and the order passed by the Hon'ble M.P. High Court, the addition was rightly deleted by Ld. CIT(A). Hence, Ground No.7 is found to be devoid of any merit and thus dismissed.

27. The appeal preferred by the Revenue is thus dismissed.

ITA No. 833/Ind/2018 - Revenue's Appeal (A.Y. 2008-09)

28. Ground No.1 relates to deletion of addition amounting to Rs.1,26,936/- on account of annual insurance premium. The decision in Ground No.1 of ITA No. 832/Ind/2018 for A.Y. 2007-08 shall also apply mutatis mutandis in this ground.

29. Ground No.2 relates to deletion of addition amounting to Rs.2,64,765/- on cash deposits. The decision in Ground No.2 of ITA No. 832/Ind/2018 for A.Y. 2007-08 shall also apply mutatis mutandis in this ground.

30. Ground No.3 relates to deletion of addition amounting to Rs.5,35,064/- for household expenditure. The decision in Ground No.3 of ITA No. 832/Ind/2018 for A.Y. 2007-08 shall also apply mutatis mutandis in this ground.

31. Ground No.4 relates to deletion of Rs.50,000/- on account of unexplained investment in Kotak Life Insurance policy Premium which is under challenge before us.

32. Facts leading to this ground is this that the premium of Rs.50,000/- was due on 01.7.2007. On the other hand, the cash-flow statement admitted u/s 46A shows that the appellant has made the payment on 01.11.2007 out of the cash in hand available from the various sources of income.

33. We have already discussed in respect of other additions made by the AO. Furthermore, when the cash-flow statement had already been offered by the appellant in return of income, addition of that particular amount of Rs.50,000/- on account of premium paid to Kotak Mahindra tantamounts to double addition. Hence, the same addition is found rightly deleted by the Ld. CIT(A). Thus, ground No.4 raised in the appeal of the Revenue is dismissed.

34. Ground No.5 relates to deletion of Rs.3,75,000/- on account of unexplained expenses made during marriage of assessee's son is under challenge before us.

35. Facts leading to this ground is this that this expense was found to be incurred on the marriage of the assessee's son. The assessee admitted on statement recorded during search the spending of Rs.5 to 6 lacs on this marriage. However, this did not include other expenses like accommodation of guests, reception, gifts to guests, relatives etc. and therefore, the AO estimated the marriage expenses at Rs.20 lacs in addition to Rs.3,78,740/- as revealed from the seized evidence. However, the Ld. CIT(A) with the following findings deleted the addition of Rs.3,75,000/- as the same was found explained: -

"23.7 The appellant has claimed to have met expenditure of Rs. 7,25,000/- out of cash in hand with the appellant and his son Shri Anupam Chouksey on different dates. Rs. 75,780/- paid to Cox and Kings is claimed to having been made by M/s Priyanka Builders by cheque. It is observed from the cash flow statement that the appellant has incurred cash expenses of Rs. 3,75,000/- on marriage of son. Regarding, claim of withdrawal by Shri Anupam Chouksey, it is observed that he must have incurred huge personal expenses on personal clothing, parties, shopping etc. in view of the financial status of the family. Therefore, whatever withdrawal has been made by them must have been consumed/utilized by them in meeting these expenses. Therefore, the claim that son has also contributed to the

marriage expenditure is not found to be plausible and acceptable. Further, no evidence in respect of cheque of Rs. 75,780/- to Cox and Kings by M/s Priyanka Builders has been submitted. No bank account of Priyanka Builders showing the amount of cheque debited and books of accounts have been produced. It is not known as to why Priyanka Builders would issue cheque for the honeymoon trip of appellant's son. It is not known as to how this payment, if any made, has been treated in the books of accounts of Priyanka Builders. Therefore, this amount also is not found as explained."

36. As the appellant has incurred the expenses of Rs.3,75,000/- which is substantiated from the cash-flow statement, deletion to that extent made by made by the Ld. CIT(A) is, in our considered opinion, needs no interference. Hence, the same is upheld. Thus, ground no.5 raised in the appeal of the Revenue is dismissed.

37. Ground No.6 relates to deletion of addition amounting to Rs.5,25,00,000/- on account of unaccounted receipt from Shri Ram Singh Dhakre based on loose paper seized during search operation. The decision in Ground No.7 of ITA No. 832/Ind/2018 for A.Y. 2007-08 shall also apply mutatis mutandis in this ground.

38. Ground No.7 relates to deletion of Rs.27,08,930/- on account of unexplained investment noticed in the books of account of Rishiraj Singh Memorial Welfare Society.

"22.12 In respect of Rishiraj Singh Memorial Welfare Society, the appellant has filed ledger account in the books of the society for F.Y. 2003-04 (A.Y. 2004-05) and copy of audited financial statements of Rishiraj Singh Memorial Welfare Society comprising of balance sheet, income and expenditure account and relevant schedules for the F.Y. 2002-03 to 2007-08 as additional evidence u/r 46A, which shows opening balance of Rs. 27,06,500/- as on 01.04.2003 and addition of Rs. 2,430/- in A.Y. 2004-05 (F.Y.2003-04) which is duly reflected in assessee's cash flow statement. It is, therefore, clear that no fresh advances were given by appellant to Rishiraj Singh Memorial Welfare Society in financial year i.e. F.Y. 2007-08 (A.Y. 2008-09) which has been added by the A.O.

22.13 These facts have been duly mentioned in CIT(A)'s order in the case of Rishiraj Singh Memorial Welfare Society, Bhopal in ITA No. CIT(A)- I/BPL/IT-105 to 111/12-13 dated 12/8/2013 at page 178-179, para 27.3.

22.14 Therefore, the addition made by the AO in A.Y. 2008-09 is found to be unjustified and unsustainable in law and on facts as the investment which has been added does not pertain to the AY 2008-09 but to earlier years and therefore, the same cannot be added to the total income for AY 2008-09. The addition in A.Y. 2008-09 is therefore, deleted."

39. Upon consideration of above, we find that the Ld. CIT(A) having considered and verified the audited accounts appearing at page Nos. 164 -174 of the paper book filed before us is as also tabulated in the impugned addition at Page No.81 and the facts and circumstances of the case reached to the above conclusion and even before us, the Revenue could not controvert the finding of the Ld. CIT(A) by bringing any contrary material on record. We have further considered the audited balance sheet of Rishiraj Singh Memorial Welfare Society which is also found in line. Thus, we do not find any infirmity in the order of the Ld. CIT(A). Hence, the order of the Ld. CIT(A) is upheld on this point. Thus, ground no.7 raised in the appeal of the Revenue is dismissed.

40. The appeal preferred by the Revenue is thus dismissed.

ITA No.769 of 2018 – Assessee’s Appeal (A.Y. 2009-10)

41. Ground No.1 - The assessee has challenged the upholding of the addition of Rs.7,99,411/- by the Ld. CIT(A) out of total addition of Rs.12 lacs made by the AO on account of estimated household expenditure.

42. The case of the assessee is that the withdrawals made by the entire family members of the assessee are enough to satisfy that the household expenses for the year under consideration is duly met up by them. According to the assessee, all the family members are independent income-tax assesseees. However, we find that the this issue has already been dealt by us in ITA No.832/Ind/2018 wherein the credit for withdrawn shown by the assessee only in his cash flow statement has been allowed and the withdrawals shown by Anupam Chouksey and Poojashri Chouksey have not been considered for household expenses of the family members of the assessee for the reason mentioned by the Ld. CIT(A) itself. Thus, we do not find justification in interfering with the order of the Ld.

CIT(A). Thus, the addition is confirmed and ground no.1 raised in the appeal of the assessee is dismissed.

43. By way of Ground No.2, the assessee has challenged the upholding of the additions of Rs.1,20,000/- in respect of investment in HK Kalchuri Education Trust and investment of Rs.2,50,000/- in Hai Hay Kshatriya Education Society made by the AO.

44. It is the case of the assessee that no proper opportunity of being heard to the assessee was given by the authorities below. Moreso, the impugned additions of Rs.1,20,000/- and Rs.2,50,000/- though have been claimed to be covered by the income disclosed at Rs.50 lacs during search. However, we are not inclined with such submission of the assessee in the absence of proper narration to that effect. Hence, additions are upheld. Thus, ground no.2 raised in the appeal of the assessee is dismissed.

45. Ground No.3 relates to restriction of Rs.2,70,00,000/- out of Rs.3,00,00,000/- on account of investment in Hotel Neena Palace.

46. The brief facts of the case is this that during the course of assessment proceeding, it was found that commercial property situated at Halalpur Bust Stand, Bhopal land admeasuring about 18600 sq.ft. and built up area more than 10000 sq.ft. was purchased by the assessee and one Khalid Khan from Kaveri Grih Sahkari Samiti for a consideration of Rs.1,50,00,000/-. The same is found from the registered deed dated 02.09.2008. The market value of the property was of Rs.2.89 Crores as opinion of the Revenue. The case of the assessee is that that the said property was purchased by M/s. Priyanka Enterprise alongwith his partner Shri Khalid Khan who was running the said Hotel. It was recorded under Section 132(4) of the Act by the assessee that investment of Rs.20-30 Lakhs made out of his books of accounts. Other than that the total investment

including registration and hotel furniture to the tune of Rs.2.75 Crores out of which Rs.2 Crore was a loan taken from the Bank. The said Mr. Khalid Khan invested Rs.45 Lakhs in the said Hotel. In support of the same, the different documents were furnished before the Ld. AO. The explanation was not found to be acceptable and the addition to the tune of Rs.1.5 Crore in respect of purchase of the said property was added to the total income of the assessee on account of undisclosed investment under Section 69 of the Act. So far as the renovation is concerned, no satisfactory explanation in that respect was made by the assessee, neither any books of account regarding said investments were found to be maintained by the assessee and in that view of the matter, the investment in renovation of the property Hotel Neena Palace has been estimated at Rs.1,50,00,000/- and the same has been added to the total income of the assessee as unexplained investment under Section 69 of the Act, which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

47. Before the First Appellate Authority, the assessee submitted as under:

“20.2 The appellant has made following submissions during the appeal:-

1. The ld. AO has made addition on account of the investment in Hotel Neena Place under the following heads:

<i>For investment in semi finished structure</i>	<i>Rs.1,50,00,000/-</i>
<i>For renovation</i>	<i>Rs.1,50,00,000/-</i>
<i>Total</i>	<i>Rs.3,00,00,000/-</i>

2. The above additions have been made solely on the basis of statement of the assessee recorded u/s 132(4) on 22.08.2009. Copy at pg 107

3. Hence, it would be relevant to reproduce here the relevant text of the above statement of assessee, which runs as under :

"Question No. 24. I am showing you LPS 1 0 which contains sale deed dated 21.03.2009 of one semi constructed complex at Halalpura Bhopal on land measuring 18600 sq.ft and constructed area measuring 30000 sq.ft purchased by you and Shri Khalid khan. Its value is shown at Rs. 1.5 crores as against market value of Rs. 2.89 crore. Please explain the source of investment and give details of further investment after purchase. In whose accounts details are recorded.

Answer 24. We have formed a new firm namely Priyanka Enterprises in which Shri Khalid khan and my self are partners. We are running a hotel there under. I have invested Rs. 20 to 30 lakhs in the said hotel which is out of books. Total investment including registry and hotel furniture is about Rs. 2.75 crores of which Rs. 2 crores is loan. And the balance amount is invested by me and Khalid khan and loan has been taken which I do not remember. No books of accounts are presently kept"
(English translation and Italics supplied by us)

4. Before we delve into the relevant facts demonstrating that as to how the arbitrary and casual approach of the AO was in making the subject addition, it is very disheartening to place on record that so far as the addition of Rs.1,50,00,000/- towards purchase of the semi finished structure is concerned, the assessee had wholesomely explained complete source of investment thereof before the the AO during assessments proceedings itself on 15.12.2011 (Copy of reply at pg 63-81) as under: -

i. The entire investment of Ps. 1,50,00,000/- in the subject semi finished structure was made by m/s Priyanka Construction, a division of M/s Shivam builders and contractors from its bank account and its own sources; no investment was made by assessee. It was also explained that M/s Shivam builders and contractors is a separate income tax assessee bearing PAN No. AAZFS9909H.

ii. That the major payments were made by M/s Priyanka constructions from its bank account with Vidhsha Bhopal Gramin Bank, Bairagarh Chichli Branch, Bhopal and even the copy of said bank statement evidencing the subject payment were filed before the AO . Copy at pg 64-70, 68, 83-94.

iii. It was categorically explained that the cheque no. 96476 dated 30.06.2008 of Rs. 1,07,66,369/- appearing in the payment schedule of the registered sale deed found during search was issued from the aforesaid bank account of M/s Priyanka construction with Vidisha Bhopal Gramin Bank, Bairagarh Chichli Branch, Bhopal, as filed before AO. Similarly, another payment through cheque no. 2314 dated 02.01.2008 of Rs.25,00,000/- was also paid by M/s Priyanka constructions out of its account with State Bank of Indore. Thus, it was clearly stated that the entire investment in purchase of semi finished structure was made by M/s Priyanka construction, a division of m/s Shivam builders and contractors which is a separate income tax assessee bearing PAN No. AAZFS9909H.

iv. But, to our dismay, the AO has grossly brushed aside the aforesaid vital evidences brought on record by assessee during assessment proceedings and arbitrarily added the same in the hands of the assessee terming it as investments made by him. Such whimsical and punitive approach of the AO does not have legal sanctions and therefore deserves to be repelled by yourhonour.

5. Without prejudice to above, to repeat, the sole basis of addition by AO was the statement of the assessee recorded u/s 132(4). Hence, the entire contents of the very statement has to be read word by word and nothing can be expunged, sliced away or ignored while taking legal cognizance of the said statement for the purpose of making assessment, as done by Id. AO. But, from the bare reading of the above statement of assessee, it is more than clear that the assessee has stated, in loud and clear terms, that this investment was only to the extent of Rs. 20-30 lakhs. The assessee accordingly surrendered Rs. 30 lakhs in the same statement recorded (Copy at pg 112) as income and paid tax thereon. The AO has not given credit for even Rs. 30 lakhs surrendered by the assessee.

6. The assessee also clearly stated that the total investment in the said hotel was to the extent of Rs. 2.75 crore including the cost of semi finished structure. He also asserted in the same statement that the out of the total investment in the hotel to the extent of Rs. 2.75 crores, a sum of Rs. 2 crore was met out of loan. The Id. AO was satisfied with the same and did not pursue the matter further but surprisingly made the addition at the end of the day. Hence, since no opportunity was given by the AO in the matter, we are enclosing herewith u/r 46A at pg 87, 83-88 copy of statement of bank loan availed by M/s Priyanka constructions to the extent of Rs. 2 crore for this purpose.

7. Moreover, it is the trite law that any document used against the assessee for making assessment has to be read as a whole and the same cannot be used in a pick and choose manner on piece meal basis to the advantage of the AO, as wrongly done by him. Hence, if we resort to the conjoint reading permeated on the subject statement u/s 132(4), heavily and solely banked upon by Id. AO, it would be seen that no addition was called for on the basis of the very statement of the assessee because the source of entire investment of Rs. 2.75 crore was duly explained by the assessee as under:

Total investments in the hotel averred by assessee in the statement	2.75 crore
Less : loan from bank	2.00 crore
Balance	0.75 crore
Less : investment surrendered by assessee	0.30 crore
Balance investment by Mr. Khalid khan as per statement of assessee	0.45 crore

8. Moreover, as regards investment of Rs. 15000000/- towards semifinished structure, it was duly explained with evidence to the AO through the bank account of m/s Priyanka constructions, as aforesaid.

9. Now, as regards the further addition of Rs. 1,50,00,000/- made by the AO towards renovation in the hotel, the casual approach of the AO is further reflected in his action in which he has made addition of Rs. 1,50,00,000/- whereas the AO himself earlier stated, though wrong, that assessee had not explained sources of investment of Rs. 1,25,00,000/- towards cost of renovation. Such a casual approach of Id. AO speaks for itself.

10. Actually, the Id. AO had estimated the cost of renovation at Rs. 1,25,00,000/- by deducting Rs. 1,50,00,000/- from estimated total investment of Rs. 2,75,00,000/- in the hotel as per statement of the assessee. But, no such addition was called for because the assessee duly explained the entire source of total investment of Rs. 2,75,00,000/- in the hotel as aforesaid."

11. It was also not the case of the AO that he found or put forth any unaccounted bills etc. towards the investment in the said hotel having been made by the assessee.

In view of aforesaid, since the entire addition was based on the statement of the assessee u/s 132(4) and nothing else and because the assessee duly surrendered Rs. 30,00,000/- income for which even credit was not given by the Id. AO, no addition was called for in the hands of the assessee without any adverse material or evidence put forth by the Id. AO and hence the addition made by the Id. AO may kindly be deleted by your honour."

48. Certain additional evidences were also filed during the course of Appellate proceedings whereupon remand report was sought for in regard to the explanation/evidences which were not furnished before the Ld. AO regarding the nature and source of the amount utilized for the purchase of the property; the submission made by the assessee, was not accepted by the Ld. AO.

49. Upon receiving the remand report, the assessee submitted as follows:

“20.4 In the rejoinder to the remand report, the appellant has submitted as follows:-

“The assessee clearly stated in the statement recorded on oath that the total investment in the said hotel was to the extent of Rs. 2.75 crore including the cost of semi finished structure. He also asserted in the same statement that the out of the total investment in the hotel to the extent of Rs. 2.75 crores, a sum of Rs. 2 crore was met out of loan. The Id. AO was satisfied with the same and did not pursue the matter further but surprisingly made the addition at the end of the day. Hence, since no opportunity was given by the AO in the matter. We are enclosing as additional evidence copy of statement of bank loan availed by M/s Priyanka constructions to the extent of Rs.2 crore for this purpose.”

50. The Ld. CIT(A), upon perusal of the same, restricted addition to the tune of Rs.2,70,00,000/- with the following observations:

“20.5 A perusal of statement of the appellant recorded u/s 132(4) on 22.08.2009 shows that on being confronted with the relevant sale deed dated 21.03.2009, in response to question no. 24, the appellant has clearly stated that the total investment in the said hotel was to the extent of Rs. 2.75 crore including the cost of semi finished structure. He also stated that the out of the total investment in the hotel including registry and furniture was about Rs. 2.75 crores of which a sum of Rs. 2 crore was met out of loan. It was informed that the investment has been made in the new firm M/s Priyanka Enterprises in which Shri Khalid Khan and the appellant were partners. It was also admitted that rupees 20-30 lacs investment was made by the appellant in the said hotel which was unaccounted.

20.6 In support of claim of Rs. 2,00,00,000/- obtained through bank loan, the additional evidence submitted during the assessment which are in the nature of bank statement has been carefully perused. It is observed that the bank statement is in respect of account no. 502153 in Vidisha Bhopal Gramin Bank, Bairagarh Chichli Branch. The statement is for the period 01.04.2006 to 07.06.2010. The same shows name of the account holder as M/s Shivam Builders and Contractor, JK Park site office, near Sarvdharm Colony C, Kolar Road, Bhopal. The same shows sanctioned limit of Rs. 2,00,00,000/-. It is observed that the withdrawal has started from 24.11.2006 and the peak debit balance as on 31.07.2007 of Rs. 2,10,63,431/-. There have been frequent withdrawals and deposits on the balance as on 23.12.2010 is Rs. NIL.

20.7 It is seen that in the statement recorded u/s 132(4), the appellant had informed that the construction has been done by M/s Priyanka Constructions. The same name has been

quoted in the submission during appeal. However, the bank statement is in the name of Shivam Builders and Contractor. The appellant could not explain as to how this bank statement can be treated as that of M/s Priyanka Constructions. No books of accounts, copy of return, partnership deed etc. in respect of M/s Priyanka Constructions has been filed during appeal. Further, it is observed that there are large number of high value deposits in the said bank account and the entire loan has been repaid by 23.12.2010. No source of repayment of such huge loan has been explained by the appellant. The explanation as to the source of Rs.2,00,00,000/- is, therefore, not acceptable.

20.8 Further, the appellant has claimed investment of Rs. 45,00,000/- made by his partner one Shri Khalid Khan. However, no details or evidence in this regard has been filed. No identification details of Shri Khalid Khan, confirmation, his copy of return, bank statement, his sources of finance etc. have been filed. In absence of any such details/evidence the claim that Rs. 45,00,000/- has been invested by Shri Khalid Khan cannot be accepted.

20.9 It is observed that the appellant admitted Rs.30,00,000/- being unaccounted investment in Hotel Neena Palace. It has been informed that the appellant has shown this income in his return and tax thereon has been duly paid. The A.O. has not given credit for this Rs.30,00,000/-. In view of the facts and circumstances, the A.O. has erred in not giving credit of this amount while making the addition.

20.10 In view of the overall discussion made above, out of the total investment in the Hotel of Rs 3,00,00,000/- only Rs.30,00,000/- being income surrendered in this respect and shown in the return, is found as explained. The balance of Rs. 2,70,00,000/- is found to be unexplained. Thus, out of total addition of Rs. 3,00,00,000/-, the addition of Rs. 2,70,00,000/- is sustained while the appellant will get a relief of Rs. 30,00,000/-.”

51. Upon perusal of the entire set of documents, it appears that the bank statement of M/s. Priyanka in the name of M/s. Shivam Builders, is a division of M/s. Shivam Builders and the assessee is the partner in Priyanka firm. It further appears that the entire investment of Rs.1,50,00,000/- in semi finished construction made by M/s. Priyanka Construction. It appears that the major payments had been made by M/s. Priyanka Construction as it is evident from the bank account of Vidisha Bhopal Gramin Bank, Bhopal available at page 68 of the paper book filed before us. Further that, from the payment scheduled on registered sale deed, a payment made by Cheque No. 96476, dated 30.06.2008 has been made to the tune of Rs.1,07,66,369/-. The same was made by M/s. Priyanka Construction with Vidisha Bhopal Gramin Bank. Further amount of Rs.25Lakhs was made by Cheque No.2314 dated 2nd January, 2008 by M/s. Priyanka Construction out of his own account with State bank of Indore, Bhopal. It also appears that said M/s. Priyanka Construction has taken on loan of Rs.2 Crores from the Bank. The assessee has already surrendered the amount

of Rs.30Lakhs as invested in the said property. Rs.45Lakhs has been invested by the said Khalid Khan as per his statement. The loan availed by M/s. Priyanka Construction M/s. Priyanka Construction is appearing from page Nos. 83 to 94 of the Paper Book filed before us. We do not find any evidence or basis for making further addition of Rs.1,50,00,000/- on account of renovation where investment of Rs.2.75 Crore out of Rs.3 Crore has duly been explained before the Ld. AO and the First Appellate Authority too. On the contrary, when the addition has been made clearly on the basis of statement made under Section 132(4) of the Act, wherein the assessee has already surrendered Rs.30Lakhs, we do not find any credit has given to that effect by the Ld. AO. Under these circumstances, going to the entire source of amount duly explained by the Bank, loan and other component and in the absence of unaccounted bills on record to support the addition of investment to the tune of Rs.1.5Crore by the assessee is found to be without any basis. It is also an admitted fact that the Ld. AO did not refer the matter to the DVO for valuation of the property. Thus, under these circumstances, having regard to the explanation rendered by the assessee with corroborative evidence as regards the investment made by the assessee and Khalid Khan, the partner, we do not find any reason for making addition in respect of the investment in semi-finished structure and for renovation of the property. Thus, restricting addition to the tune of Rs.2,70,00,000/- made by the Ld. CIT(A) is found to be not sustainable and, thus, deleted. This ground is, thus, allowed.

52. Ground No.4 relates to the addition of Rs.2,88,55,066/- is the subject matter before us.

53. The documents seized from the residence of the assessee reveal execution of an agreement between the assessee prepared on the letterhead of Congress Chunav Abhiyan Samiti dated 24.06.2008. The agreement was executed between the assessee and between Shri T. S. Keer in regard to sale of societies,

namely, Rishiraj Singh Memorial Welfare Society and Rishiraj Memorial Education and welfare Society for a total consideration of Rs.17 Crores. It was agreed upon that the properties of both societies shall be handed over to the assessee. Certain amounts were agreed to be paid within certain specified date mentioned in the said agreement. The payment of Rs.14,11,44,934/- paid by the assessee has been substantiated by the details provided to the Ld. AO. However, in the absence of any details regarding balance payment of Rs.2,88,55,066/-, the Ld. AO was of the opinion that since the societies – colleges mentioned hereinabove are already in control of the appellant Chouksey Group, it is clear that the said agreement has duly been executed upon payment of balance amount of Rs.2,88,55,066/-. Hence, the same was added to the total income of the assessee, which was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

54. Before the First Appellate Authority, the assessee submitted as follows:

“25.2 The appellant has made following submission in this regard:-

“1. First of all, the assessee, as a trustee, vehemently denies all the allegations of the AO and places on record that no payments were made by the subject trust / societies for purchase of society / college, as wrongly apprehended by Id. AO. In the submissions made by the assessee in respect of following societies / trust detailed in the chart here-in-after, we have elaborately explained the reasons and the circumstances under which the subject sums were paid; we still rely on the same and in order to avoid repetition, the same are not reproduced here. However, copy of one of the submissions is enclosed at pg 381-392.

2. Further, without prejudice to above and without accepting the allegations of the AO, no addition was called for in the hands of the assessee individual at all because the some-AO- has- himself already added a total sum of Rs. 19,14,85,888/- in excess of Rs. 17,00,00,000/- on account of the subject agreement found during the course of search in the hands of various societies /trusts as under:

<i>In the hands of</i>	<i>Amount of addition by AO</i>	<i>AO order Pg/para</i>	<i>Hon'ble CIT(A) order</i>	<i>Appeal No./date of order</i>	<i>Hon'ble CIT(A) appellate order Pg/Para</i>
<i>H K Kalchuri Education Trust</i>	<i>10,00,00,000/-</i>	<i>Pg 73-76 Para 16</i>	<i>Deleted in first appeal</i>	<i>ITA No. 91-97/12-13 Dated 12-8-</i>	<i>Pg 229-238 Para 44</i>

				13	
Jai Narain Shiksha Samiti	2,00,00,000/-	Pg 64-66 Para 11	Deleted in first appeal	ITA No. 98- 104/12-13 Dated 12-8- 13	Pg 202-204 Para 39
Rishiraj Singh Memorial welfare Society	85,60,348/-	Pg 69-71 Para 12	Deleted in first appeal	ITA No. 105- 111/12-13 Dated 12-8- 13	Pg 189-193 Para 35
Rishiraj Memorial education and welfare society	6,29,25,540/-	Pg 67-70 Para 12	Deleted in first appeal	ITA No. 112-118/12- 13 Dated 13-8- 13	Pg 241- 251 Para 40
Total	19,14,85,888/-				

3. It is thus palpable from the above chart itself that since the Id. AO has already made addition in excess of Rs. 17,00,00,000/- as mentioned in the seized agreement in the hands of above societies/ trust, there was no question of making any further addition on the same account in the hands of the assessee-individual again as it tantamount to double taxation impermissible in law. On this score alone, the addition made by AO needs to be deleted by yourhonour.

4. Without further prejudice to above, even the figure of payment of Rs. 14,11,44,934/- is also incorrect for the reason that yourhonour has categorically held in the appellate order of above trust / societies mentioned in the chart supra that total payment of Rs. 15,83,87,434/- was actually paid out of the aforesaid amount of Rs. 17,00,00,000/- giving detailed breakup of payments made by various societies / trust, and not Rs. 14,11,44,934/- as stated by AO.

5. Moreover and without further prejudice to above, it is humbly submitted that even otherwise, no addition was warranted in the hands of the assessee-individual for the reasons below:

i. The addition made by AO is guided by his pure surmises and conjectures as no iota of evidence even worth the name was found in the search or put forth on record by the Id. AO regarding the subject payment by the assessee.

ii. Even the assessee has nowhere stated that he has personally made payment of any sum in excess of Rs. 15,83,87,434/- (stated at Rs. 15.63 cr. in the statement) made through cheque by above societies / trust. Infact in the statement recorded u/s 132(4) on 22.08.2009 in Q. 3 (Copy at pg 97), the assessee simply stated as under:

"My family and family of Shri Tanivant Singh Keer were jointly managing Rishiraj Dental College, Bhopal and Rishiraj Engineering College, Indore. Due to dispute, it was decided that Mr. Keer and his family would like to separately manage similar institutions. For taking those institutions upto this status, institutions managed by Chouksey family has paid by way of grant, donation and payment a sum of around Rs. 15 Crore 63 Lakhs by Rishiraj Memorial Society and H K society and our other institutions to Shri Keer's institutions and trust.....".

iii. *Even the subject recipient societies / trust have never stated to have received any amount in excess of Rs. 15,83,87,434/- from assessee individual. Neither the corresponding subject difference (i.e Rs. 17,00,00,000-15,83,87,434) was found to have been paid to or received by these societies / trust or was ever added in the hands of the recipients assessed by the same AO. This shows the arbitrary, dwindling and light-hearted approach of the AO.*

iv. *It is grossly incorrect on the part of the AO to aver that no bank passbooks were produced for verification because all the bank statements of assessee were duly available before AO and from those bank statements only, additions were made by him towards cash deposits in bank etc."*

55. It is also a fact that there is no specific observation and/or comment as to how the addition could be made in the hands of the assessee. However, considering the entire aspect of the matter, the addition was sustained by the First Appellate Authority with the following observations:

"25.5 It is observed that the Page no. 52 of LPS 29 was seized from the residence of Shri Jai Narain Chouksey. The same is a signed agreement on the letterhead of Congress Chunav Abhiyan Samiti dated 24-06-08 between Shri T.S Keer and Shri J.N. Chouksey regarding sale of the societies namely Rishiraj Singh Memorial Welfare Society and Rishiraj Memorial Education and Welfare Society for total consideration of Rs. 17 Crores. It is mentioned that control on both the Societies, along with properties, shall be handed over to Shri J.N. Chouksey for a total consideration of Rs. 17 crores. It is further mentioned in the agreement that Rs. 1 crore has already been paid and Rs. 3 crores are to be paid by 26-06-08 and remaining 13 crores are to be paid by 15-08-08. In view of the clear nature of the agreement which is dated, signed by both the parties i.e. appellant and Shri T S Keer and containing complete details of the transactions, the presumption u/s 132(4A) is to be drawn against the appellant that the said loose paper belongs to the appellant and it contains appellant's actual transactions. The appellant Shri Jai Narain Chouksey in his statement recorded u/s 132(4) on 22.08.2009 has himself stated that. Rs. 15.63 crores were paid upto 2009 to Shri Keer's societies/concerns through cheque as donation/grant and recorded in the books of accounts. From the above details it is seen that the payment amounting to Rs 14,11,44,934/- has been made by the entities of Chouksey Group to various persons and concerns of Keer Group in connection with the purchase of Societies/Colleges as per the agreement mentioned above. However, it is seen that as per the agreement the deal was for a total sum of Rs 17,00,00,000/- and details of payment of Rs 14,11,44,934/- only as tabulated in the assessment order been established. There are no details regarding the balance payment of Rs 2,88,55,066/-. The appellant has not argued that there is any dispute with regard to the total consideration of Rs 17 crores decided in the said deal. It is also a fact that the deal is completed and control over the two societies has already been taken by the members of Chouksey Group. As the Societies/colleges mentioned in the said agreement are already in control of Chouksey Group, it is clear that the said agreement has been duly executed and terms of the agreement have been fulfilled by the appellant. Therefore, the only conclusion that can be drawn is that the appellant/his group has made payment of Rs. 17,00,00,000/- in terms of the aforesaid agreement. As the details for the balance payment of Rs.2,88,55,066/- have not been furnished by the appellant, it is concluded that the said payment has been made by Shri Jai Narayan Chouksey, being one of the party to the agreement and head of the Chouksey Group, out of his income from undisclosed sources.

25.6 The arguments raised by the appellant are general in nature. The appellant has failed to commit that payment of Rs. 14,11,44,934/- only has been made. No affidavit of the other party or the appellant himself has been filed. The appellant has failed to explain that no further amount has been paid when the agreement was very clear and unambiguous that the total consideration to be passed on for acquiring societies/trusts was Rs.17,00,00,000/-. As one part of the transaction i.e. takeover of the said societies/trust is complete, there is no doubt that the payment part must have been complete as per the agreement. In view of the totality of facts and circumstances, the addition of Rs 2,88,55,066/- made by the A.O. as unexplained investment u/s 69 of the Act is correct and justified. The addition is, therefore, confirmed.

25.7 This ground of appeal is dismissed.”

56. Before us and before the authorities below, the appellant submitted as follows:

The same AO himself already added the total sum of Rs.19,14,85,888/- in excess of Rs.17,00,00,000/- on account of agreement found during the course of search in the hand of the following four societies, namely, H K Kalchuri Education Trust, Jai Narain Shiksha Samiti, Rishiraj Singh Memorial Welfare Society and Rishiraj Memorial Education & Welfare Society of an amount of Rs.10Crore, Rs.2 Crore, Rs.85,60,348/- & Rs.6,29,25,540/- respectively. Further fact brought to our notice by the appellant that the Ld. CIT(A) in appeals preferred by all these institutions deleted those above additions. Further that, Hon'ble Co-ordinate Bench by and under dated 17.05.2016 in the appeal preferred in IT(SS)A No. 273 & 275/Ind/2013 & Ors. for A.Ys. 2007-08 to 2009-10, A.Y. 2010-11 & 2006-07 in the case of H K Kalchuri Education Trust, Bhopal & Ors. Upheld the deletion of addition made by the Ld. CIT(A). The addition made against the said H K Kalchuri Education Trust and three others as already mentioned hereinabove was totalling to Rs.19,14,85,888/-.

57. Once the disputed amount of Rs.19,14,85,888/- has been deleted by the Tribunal, the above component of Rs.2,88,55,066/- cannot be added by the same AO on the ground that details of the said issue has not been established by the assessee. We find substance in such submissions made by the Ld. AR which is supported by corroborative evidence before us. Needless to mention, the same were also made available before the authorities below which in our

considered opinion was not taken into consideration in its proper perspective either by the Ld. AO or by the First Appellate Authority.

58. In that view of the matter, the order passed by the ITAT is also annexed to the paper book filed before us, perusal of which confirms such facts enunciated from the submissions made by the Ld. AR. Thus, taking into consideration the entire aspect of the matter, we do not find any merit in such addition made by the authorities below. The same is, thus, deleted.

59. Ground No.5 relates to the Addition of Rs.34,91,700/- on account of unexplained expenditure is a subject matter before us.

60. During the course of search, at the premise No.48, Gomantika Parisar, Jawahar Chowk, Bhopal, certain loos papers and documents were seized alongwith jewellery. The assessee and Smt. Poonam Chouksey had owned up entire cash, jewellery and other documents seized from the said premises. The owner of the residence Smt. S. Chouksey resides outside India. The Ld. AO is of the opinion that documents pertain to assessee and Smt. Poonam Chouksey kept at the same premises. The seized documents consist of entries made in the following manner:

<i>Particulars</i>	<i>Amount</i>
<i>Nagar Palika, Kolar</i>	<i>200000</i>
<i>Dharmendra (Mentri)</i>	<i>300000</i>
<i>Dharmendra (Rat)(Golu)</i>	<i>100000</i>
<i>Jai Delhi 02.05.08</i>	<i>200000</i>
<i>Dr.Kamal J.K</i>	<i>62000</i>
<i>Dharmendra 07.05.08</i>	<i>300000</i>
<i>Sagar(Kotak Ins)</i>	<i>60000</i>

<i>P</i>	40000
<i>Sanjay Chauksey (Sanaj)</i>	20000
<i>Golu (Sichai PCB)</i>	50000
<i>Dr.AndanSaxena J.K.</i>	50000
<i>Registry (Goluke pass)</i>	250000
<i>Total</i>	1632000

On the backside of the said page following entries have been recorded:

<i>Particulars</i>	<i>Amount</i>
<i>Ashok Rai (LNCT)</i>	90
<i>Anand Saxena</i>	1
<i>mishra</i>	30
<i>kailash</i>	25 —
<i>Jai</i>	05
<i>GoluanandSaxena</i>	22
<i>Sweets</i>	07
<i>Sweets</i>	7600
<i>Shamia Rohit</i>	25000
<i>Dr. Col. Saxena</i>	32000

Page no. 33 to 35 of the said seized documents contains the following entries:

<i>Particulars</i>	<i>amount</i>	<i>Date</i>
<i>J.P. Rai</i>	300000	23.07.08
<i>Khalid Bhai</i>	300000	
<i>G.P. Rai</i>	300000	
<i>G.P. Rai</i>	40000	
<i>JyotiMedam</i>	87600	

JNC	100000 +17000	25.07.08
Lal Bag	200000	28.07.08
Ashok Rai	90000	20.08.08
Sagar	5000	21.08.08
Old RCDC (Laxman)	70000	17.05.08
RCDC	30500	24.01.07
RID Draft	25000	21.12.06
Total	15,65,100	

Page no. 36 of the said seized documents contains the following entries :

particulars	Amount	Date
Dr. KamalSaxena	62000	04.09.08
Bhagwan Das Vanshkar	15000	05.09.08
Total	77,000	

61. The assessee was directed to explain the source of investments/payments with necessary evidences. While explaining, the assessee submitted that such expenses and / or payments related to Trust or Societies where the assessee are merely the office bearers. These do not pertain to the assessee in their individual capacity. However, such plea was of the assessee was not found to be acceptable and with the following observations, the Ld. AO added the entire amount of Rs.34,91,700/- in the hands of the assessee:

"I have carefully considered the submission made by the assessee and I have also verified the relevant materials available on the record. In his reply Shri J.N. Chouksey has submitted that the documents belong to some society / trust wherein he is a office bearer. However , no specific details thereof has been furnished like to which society it belongs and whether and how the said transactions are recorded in the regular books of accounts of the said society. As per the provisions of section 132(4A)/292C(1) of the Income Tax Act 1961 in case of any books of accounts or other document found in the possession or control of any person during the course of search, it may be presumed during the course of search and the assessment

proceedings that the said books of accounts or other document belongs to such person and that the contents of such books of accounts or documents are true.

It is the primary duty of the assessee to explain the noting in the said document containing certain amounts mentioned against his name. The onus lies on the assessee to explain the transaction appearing in the said document duly supported by necessary evidences.

The assessee has not produced the books of accounts and other relevant materials for verification in spite of allowing sufficient opportunity. No specific explanation regarding the payments mentioned in the seized document is given. The assessee has not even furnished the name of the society/Trust to which the said paper/document belongs. Under the circumstances, I am left with no option but to draw inference on the basis of the material available on record. Considering the totality of the circumstances and the magnitude of transactions of the assessee, I have reason to believe that the payments mentioned at the back side of page no. 11 of the seized material are not otherwise than in Rs. Thousands.

As already mentioned earlier Shri Jai Narayan Chouksey and Shrimati Poonam Chouksey have owned up the documents seized from the said premises as the assets and documents belonging to Shri J.N. Chouksey and Smt. J.N. Chouksey and Smt. Poonam Chouksey were kept at the said premises. Considering the totality of the circumstances and the material on record I have reason to believe that the transactions noted on the said documents belong to Shri Jai Narayan Chouksey and therefore the said payments are considered in the hands of the assessee.

The total payments as per the seized document are to the tune of Rs 34,91,700/-

<i>Page 11 front side</i>	<i>Rs 16,32,000/-</i>
<i>Page 11 back side and Rs 64,600 normal)</i>	<i>Rs 2,17,600/-(Rs 1,53,000 in code</i>
<i>Page 30 to 35</i>	<i>Rs 15,65,100/-</i>
<i>Page 36</i>	<i>Rs 77,000/-</i>
<i>Total</i>	<i>Rs 3491700/-</i>

In the absence of any clarification whatsoever from the assessee, the said payments are treated as unexplained expenditure and added to the total income of the assessee u/s 69C of the IT. Act 1961. Penal proceedings u/s 271AAA of the I.T. Act has been initiated separately."

Such addition was further confirmed by the First Appellate Authority. Hence, the instant appeal before us.

62. The Ld. CIT(A) harped upon this particular aspect that no specific details in regard to the expenses made by the Trust and/or Societies was provided by the assessee. These papers demonstrated some accounts alongwith date mentioned therein showing those expenses pertains to A.Y. 2009-10 as the nature and contents of the paper, the transaction under Section 132(4A)/292C(1) of the Act. To this effect, in case of any books of accounts or other documents found in the possession or control obtained during the course of search, it may be presumed during the course of search or in the subsequent assessment proceeding that those books of accounts and other documents belong to such

person and the contents thereof would operate against such person only. Merely stating that those loose papers and/or the contents whereof pertains to these trusts and/or societies, the appellant cannot be absolved of the onus cast upon him under law unless he proves the payments pertains to the specific Society or trust in whose books of accounts the transactions are recorded. According to the assessee, the notings were not made in assessee's own handwriting. Trusts/societies in respect of which these notings were at all made, the assessee was only merely office bearers. Moreso, those papers were not found in the possession of the assessee. No presumption under Section 132(4A) of the Act can be drawn against the assessee that those loose papers belong to the assessee and much less that, it contains the assessee's actual transaction. On this aspect, assessee relied upon the judgment in case of *Jaya S. Shetty vs. ACIT* (1999) 64 TTJ 557, wherein it has been held that even if at all the provision of Section 132(4A) of the Act are applicable to assessment of income under Section XIV-B of the Act, no presumption to the effect that it should be assessee's transactions or assessee's handwriting can be drawn against the assessee. Apart from that no statement of assessee was recorded under Section 132(4A) of the Act, neither assessee was examined by the Ld. AO as regards to the impugned rough noting. Moreso, those documents are rough and unsigned and the jottings are, therefore, dumb and those dumb documents do not show any transaction as to whether these receipts, payments, sales, purchase etc. Under these circumstances, the presumption that they represent income liable to tax is not permissible under Section 132 (4A) of the Act. On this aspect, following judgments were further relied upon:

- * *Madanlal Narendra Kumar vs ACIT* (2003) 31 ITC 123, 146-147 (Indore)
- * *CIT vs Raj Homes Pvt Ltd.* (2009) 13 TTJ 658 (Indore)
- * *Ashwani Kumar vs. ITO* 39 ITD 183 (Delhi ITAT)

63. We have considered these judgments and find substance in such submission made by the assessee. After careful consideration of the ratio laid down by different judicial forum as mentioned hereinabove, particularly, when no corroborative evidence is being forthcoming from the Ld. AO to support the allegation culminating into addition made against the assessee, the same appears to be on the basis of surmises and conjunctures and has no legs to stand upon. Under these circumstances, we do not hesitate to hold that in the absence of any contrary documents, these loose papers cannot be the sole reason for making addition by the Revenue in the absence of any cogent evidence against the assessee directly. Hence, the addition is found to be not sustainable and deleted.

64. The appeal preferred by assessee is partly allowed.

65. In the combined result, appeal filed by the assessee is partly allowed and both appeals filed by Revenue are dismissed.

This Order pronounced on 25/01/2023

Sd/-
(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

Ahmedabad, dated 25/01/2023 True Copy

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Indore,
6. गार्ड फाईल /Guard file.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

(Sr. Private Secretary)
ITAT, Indore

1. Date of dictation-
2. Date on which the typed draft is placed before the Dictating Member 09.01.2023
3. Other member
4. Date on which the approved draft comes to the Sr.P.S./P.S. -
5. Date on which the fair order is placed before the Dictating Member for Pronouncement
6. Date on which the file goes to the Bench Clerk.....
7. Date on which the file goes to the Head Clerk.....
8. The date on which the file goes to the Assistant Registrar for signature on the order.....
9. Date of Despatch of the Order.....