

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

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

**IT(SS)A No.169&170/Ind/2016**

**WITH  
CROSS OBJECTION No.46 and 47/Ind/2016  
Assessment Year : 2008-09&2009-10**

**AND  
IT(SS)A.No.24/Ind/2017  
Asst.Year : 2010-11**

**AND  
ITA No.25, 244, 309/Ind/2017& 441/Ind/2018  
Asstt.Years : 2011-12, 2012-13, 2013-14& 2014-15**

DCIT/JCIT(OSD), Ward-2(1) Indore.	Vs.	Shri Keshav Kumar Nachani 614, Usha Nagar Extension. Narendra Tiwari Marg Indore. PAN : AAXPN 8516 F
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/(Respondent)</b>
Assessee by :	Shri S. S. Deshpande, CA
Revenue by :	Shri P.K. Mishra, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : **24-29/11/2022**  
घोषणा की तारीख /**Date of Pronouncement**: **25/01/2023**

**आदेश/O R D E R**

**PER BENCH:**

These are Revenue's appeals and assessee's cross objection against orders of the ld.Commissioner of Income-tax (Appeals)-1, Indore. For better understanding, the details of appeals filed by the Revenue and CO by the assessee are summarized in the following tabular form:

Appeals by Revenue against Shri Keshavkumar Nanchani:

Sr.No.	Asstt.Year	CIT's order dated
1	2008-09	29-4-2016 against order under section 153A read with section 143(3) of the Act
2	2009-10	29-4-2016 against order under section 153A read with section 143(3) of the Act
3-4	The assessee has filed Cross Objections in above appeals of the Revenue.	
5	2010-11	5-10-2016 against order under section 153A read with section 143(3) of the Act
6	2011-12	5-10-2016 against order under section 143(3) of the Act
7	2012-13	12-12-2016 against order under section 143(3) of the Act
8	2013-14	4-01-2017 against order under section 143(3) of the Act
9	2014-15	1-02-2018 against order under section 143(3) of the Act

2. All these appeals have arisen consequent upon search action under section 132 of the Income Tax Act, 1961 carried out at the premises of M.P.Bullion group of cases, where the assesses are part of the said Group. Since facts, circumstances and the issues are inter-related, we proceed to dispose of all these appeals by way of this consolidated order for the sake of convenience.

**IT(SS)A.No.169/Ind/2016 : AY 2008-09**

4. In the Asstt.Year 2008-09, by way of Ground no.1 to 3, the Revenue challenges deletion of addition of Rs.3,67,49,655/- made by the AO under section 68 of the Act. These grounds read as under:

*"1. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in allowing the appeal of the assessee by deleting the addition for Rs.3,67,49,655/- made by the AO without appreciating entire facts.*

*2. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in allowing the appeal of the assessee referring the decision of the ITAT in the case Shri Ajit Jhavar, whereas this decision was given without appreciating all the facts highlighted by not only the AO but by the CIT (A) also.*

*3. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in deleting the addition made by the AO u/s 68 of the Act, ignoring the common modus operandi of providing fictitious accommodation entries to persons in the grab of share transaction, adopted by M/s Link House industries Ltd. and transaction in shares was manipulated by them.”*

5. Brief facts leading to the issues are this that the assessee is an individual, engaged in the business of bullion, future trading and real estate and belonged to M.P. Bullion group of cases. A search was conducted at the business and residential premises of the assessee on 25.11.2010. During the course of search, some loose papers, cash and jewellery were found and seized by the Department, and in a statement recorded under section 132(4) of the Act, the assessee declared an additional income of Rs.15 crores. Consequently, notice under section 153A of the Act was issued on 28.11.2011 and served on the assessee requiring to file return of income. In response to the same, the assessee filed return of income on 23.01.2012 declaring total income at Rs.4,61,30,091/-. Thereafter, notice under section 143(2) was also served on the assessee on 23.1.2022 and in continuation thereof notices under section 142(1) were also issued to the assessee from time to time.

6. During the assessment proceedings, the ld.AO noticed that the assessee has earned income from proprietorship concerns viz. M.P. Bullion, M/s.M.P. Bullion Future Trading, M/s.Radhika Enterprises, M/s.Sagar Enterprises, Gold Avenue. The assessee had also shown loss from real estate project viz. M/s.Gold Avenue of Rs.3,50,000/- and income from other sources. The ld.AO further noticed that the assessee had also shown income from share in profit in partnership firm M/s.Rohit International at Rs.25,56,208/- and claimed it as

exempt. The assessee has also shown long term capital gain on sale of shares at Rs.3,67,49,555/- and claimed as exempt. In a statement made under 132(4) of the Act the assessee has surrendered an amount of Rs.15 crores as undisclosed money, and out of which in the return filed in response to the notice under section 153A, the assessee has disclosed Rs.3,50,00,000/-.

7. While framing assessment, the Id.AO has taken note of long term capital gain of Rs.3,67,49,555/- claimed by the assessee as exempt. On verification of the details furnished by the assessee, the Id.AO noticed that the assessee had purchased total shares of 15 lakhs of Link House Industries Ltd. in physical form at a price of Rs.2/- by paying cash on 7.4.2004 and 10.4.2004 from three companies viz. M/s.Sarton Commerce Ltd., Ludhiana, M/s.Narendra Impex Ltd., Guwahati and M/s.Spirit Investment and Finance P.Ltd. After the shares were demated on 9.9.2005, the company had announced split of shares on 7.11.2005 and one share of face value of Rs.10/- was converted to 10 shares of the face value of Re.1/-. Thereafter, the company announced one bonus shares per share on 23.12.2005. During the year, the assessee had sold 17,12,690 shares after split and issuance of bonus share for a consideration of Rs.3,67,49,555/- which was claimed as LTCG. On the basis of record and some calculation, the Id.AO doubted this claim of the assessee as share of Re.1/- was sold at an average price of Rs.26.50 per share i.e. an appreciation at 2650% over the short period of time. According to him, such huge appreciation was artificial and fabricated one in connivance with the share brokers. The AO was of the view that looking at the books of the accounts of the company, the company was not making any operating profit in order to declare issuance of bonus shares and cause appreciation in the price of the share in the market. According to the AO, the increase in price of shares of the

company was not driven by market forces, but by manipulation by the vested group of persons. The AO accordingly show caused the assessee as to why the impugned share transactions should not be treated as non-genuine and should not be treated as adventure in the nature of trade and be treated as business income. The assessee explained that all the share transactions are genuine and carried out through reputed brokers, and all sales have been made through banking channel, and therefore, there was no reason for doubting the impugned share transactions and denying the claim of the assessee under section 10(38) of the Act. The AO however was not satisfied with the explanation of the assessee. He was of the view that the impugned shares were purchased from the parties in cash in order to bring cash under the cover of non-taxable LTCG. He accordingly made an addition of Rs.3,67,49,555/- claimed as LTCG and treated the same as unaccounted cash and added the same under section 68 of the Act. However, looking to the nature of transactions, the ld.AO treated the same under “business income”.

8. In the appellate proceedings, the assessee reiterated submissions as were made during assessment proceedings. Besides, the assessee also contended that no incriminating documents were found and seized related to the assessment year under appeal. The AO while framing assessment under section 153A r.w.s. 143(3) no reference was made to any incriminating material found during the course of search. All the details and disclosure were properly accounted for in the books of account prior to the date of search. The impugned share transactions are genuine and all the details and evidences right from the financial year 2004-05 had been furnished both during the assessment proceedings and appellate proceedings. Addition was made by the AO on the ground of presumption without any base or substance. In the present case each and every

transaction was accounted, documented and properly supported with evidences, therefore there was no ground for suspicion. Even during the preceding assessment years i.e. 2005-06 and 2006-07, similar claim of the assessee was accepted by the Department with similar set of documents and evidences and accordingly order under section 143(3) was passed. The documents and loose papers found during the course of search were the same and already available with the department. Apart from that no incriminating document or evidence indicating any doubtful nature of the impugned transactions of shares were found in the course of search. The assessee has also filed detailed submissions along with various case laws to support his case that no addition on account of long term capital gain under section 10(38) of the Act can be made in the absence of any incriminating material found during the course of search. These submissions and case laws referred to by the assessee are reproduced by the Id.CIT(A) in his impugned order. The Id.CIT(A) after considering detailed submissions of the assessee and case laws cited and the fact that identical issue involved in the case of the assessee for AY 2007-08 has been decided in favour of the assessee, allowed claim of the assessee. The Id.CIT(A) while holding so, relied on the decision of the jurisdictional ITAT in the case of Ajit Jhavar Vs. ACIT, ITA No.328 and 329/Ind/2013 dated 30.11.2015, which was direct on the issue on hand. Aggrieved by the deletion of impugned addition Revenue is in appeal before the Tribunal.

9. Before us, the Ld.DR supported orders of the AO, while relying on the order of the Id.CIT(A) reiterated submissions and contentions that were made before the lower authorities.

10. We have considered submissions of both the parties; gone through the orders of the Revenue authorities, and the material

available on record. We find that the impugned claim of exemption under section 10(38) of the Act of Rs.3,67,49,655/- was denied by the AO on the basis of alleged incriminating documents found during the course of search. While the assessee has claimed that all the relevant documents and evidences were already provided to the AO during the regular assessment proceedings, and what was seized during the search was those documents which were already on the record of the Department; that the impugned share transactions are genuine and bona fide and properly recorded in the books of accounts of the assessee and the same were furnished before the AO, and the AO has not pointed out any defect; and therefore, there is no reason to disbelieve the same. It is also the case of the assessee that similar claim for the AY 2004-05 and 2006-07 were also accepted by the Department, and the ld.CIT(A) rightly taken note of the same, and allowed the claim of the assessee. The impugned shares were held as investment made out of own funds and no borrowed funds were being utilized. These shares were sold after more than one year, and sold the same periodically. The acquisition of the shares was duly disclosed and recorded in the return of income filed by the assessee for the AY 2005-06. Simply because the assessee has earned a reasonable profit on sale of the shares, the ld.AO presumed that share prices are artificially increased with some vested interest group. This presumption of the AO is without any basis or without any incriminating documents found during the course of search. While holding so, the ld.AO has not made any reference to any documents or any positive evidences to validate the presumption. It is settled proposition of the law that in the case of completed assessment, then addition can be made only on the basis of incriminating documents or undisclosed assets etc. found during the course of search. The ld.CIT(A) while appreciating the submissions of the assessee and

various case laws cited, held that the impugned transactions were not of doubtful nature so as to deny the exemption under section 10(38) of the Act. While holding so, the also relied on the decision of the ITAT Indore Bench in the case of Ajit Jhawavar Vs. ACIT (supra) wherein share transactions of the same company held to be genuine and allowed the claim of the assessee. In view of the above finding and observations of the Id.CIT(A) on the issue, which is based on the identical facts of earlier years, we do not find any infirmity so as to warrant our interference. Thus, the ground no.1, 2 and 3 of the assessee for AY 2008-09 are allowed.

11. Next grounds i.e. Ground No.4 & 5 raised in AY 2008-09 is against the deletion of addition made on the basis of loose papers found at the premises of Shri Manjit Singh Rajpal. These two grounds read as under:

*“4. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the additions of Rs.53,19,36,960/- substantially in the hands of Shri Nachani, without appreciating the very fact that as per statement of Shri Rajpal, materials seized, were directly related to Shri Nachani.*

*5. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deciding the appeal in case of Shri Keshav Nachani first, without deciding the appeal in case of Shri Manjeet Singh Rajpal, in whose hand he has directed to retain substantial addition till the decision of appeal comes in that case”*

12. The impugned search under section 132 was also conducted at the premises of one Shri Manjeet Singh Rajpal, who was stated to be employee of the assessee, and certain loose papers were found and seized from his premises. On examination of the alleged documents seized, statement and submission of the said Shri Manjeet Singh Rajpal, the AO was of the view that these documents were belonged to the assessee, and he accordingly issued show cause notice to the assessee as to why suitable addition on account of credit/debit

(jama/name) entries mentioned in these documents should not be made. In reply the assessee categorically denied the same as belonged to him, and in view of provisions of section 132(4A) read with section 292C of the Act, legal presumption is that such document belongs to the persons from whose possession and control it was found. It was also contested by the assessee that the said Shri Manjeet Singh Rajpal was not now employee of the assessee, and left the assessee much earlier. Further, whatever statement made before the AO the same was not evidenced by any documents to indicate the assessee's involvement in the impugned transactions. Further, no documents were in the hand-writing of the assessee nor bear the signature of the assessee. Finally, Shri Rajpal has himself owned up the papers found during the search as well as the contents thereof and declared additional income on account of commission earned by and to the extent he has raised his income by offering additional income for and from assessment years 2007-08 to 2011-12 aggregating to Rs.55 lakhs. He was admitted of arranging transactions between seller and purchasers and earning commission come, and such income has been offered to tax. There was nothing on record to attribute the same to the assessee so as to make the proposed addition. It was reiterated therefore, that such documents could not be treated as belonged to the assessee and based on which no addition could be made. However, the AO did not satisfy with the explanation of the assessee. He made protective addition of Rs.53,10,62,849/- in the hands of Shri Manjeet Singh Rajpal and substantive addition of Rs.53,19,36,960/- in the hands of the assessee, which was in turn deleted by the Id.CIT(A). Hence, the present the instant appeal before us.

13. Aggrieved, assessee went in appeal before the Id.CIT(A). The Id.CIT(A) after considering the submissions of the assessee and the

alleged documents seized from the premises of Shri Manjeet Rajpal and also observations of the AO, came to the conclusion that the impugned loose papers were not belonged to the assessee, rather they were belonged to the said Manjeet Rajpal, and therefore, no adverse inference could be draw against the present assessee more so in view of provision of section 293C which provides legal presumption that the document belongs to the persons from whose possession and control it was found. Accordingly, the impugned addition of Rs.53,19,36,960/- was deleted. Dissatisfied with the action of the Id.CIT(A), Revenue is now appeal before the Tribunal.

14. Before us, the Id.DR while opposing the order of the Id.CIT(A), reiterated and supported order of the AO on this issue.

15. The Id.counsel for the assessee supported order of the CIT(A). He also drew our attention to page no.61 to 67 of the CIT(A)'s order, where the Id.CIT(A) has reproduced submissions of the assessee made during the appellate stage. The Id.counsel for the asseesee reiterated the stand taken before the Revenue authorities. He further relied on the provisions of section 292C to the proposition that the documents belong to the person in whose possession and control the said documents found and seized. He accordingly prayed that no addition can be made in the hands of the assessee, and the order of the Id.CIT(A) on this issue be confirmed.

16. We have considered rival submissions; gone through orders of the Revenue authorities. The moot question before us is, whether the alleged documents seized from one Shri Majeet Singh Rajpal, who was ex-employee of the assessee, were belonged to the assessee, and on the basis of which, the impugned addition could be made by the AO ? We find that the assessee right from the assessment stage denied

contents of the alleged documents seized from Shri Manjeet Rajpal as that belonged to the assessee. There was no adequate material in the possession of the AO to conclude that the transactions in the seized documents were the transactions of the assessee which remained unexplained or undisclosed. We find force in the contentions of the assessee that the presumption under section 292C can be made only in respect of documents in possession or control of the assessee, which situation absolutely non-existent in the present case. We find that the ld.CIT(A) after taking into consideration the submissions of the assessee and facts of the case has given an elaborative finding, while deleting the addition made by the AO. The relevant finding read as under:

*Page No.119 & 120 of CIT(A)'s order*

*From the material placed on record it is an admitted fact that the seized documents which have been made the basis of making the addition of Rs. 531936960/- were not found from the premises of the appellant. It is also not in dispute these were found from the premises of Shri Manjeet Singh Rajpal. It is also an admitted fact on record that the documents are not in the hand writing of the appellant and are admittedly written by Shri Manjeet Singh Rajpal. It is also denied by the appellant that at the time of action u/s 132 Shri Manjeet Singh Rajpal was in his employment. This fact was categorically denied right from the beginning as the appellant stated that 'Shri Rajpal was in his employment only till February 2010 whereas the action u/s.132 had taken place on 25/11/2010. The appellant has therefore rightly pointed out that in view of the provisions of section 132(4A) and section 292C the presumption has to be drawn that the documents belonged to Shri Manjeet Rajpal the person who has written those documents and in whose possession they were found. The appellant has cited various decisions in support of the said contention. No doubt the presumption as stated by the appellant has to be drawn against the person from whom the documents have been found and who has written/signed the documents however the said presumption is a rebuttable presumption. On this count also no adverse inference in the case of the appellant can be drawn on the basis of the material placed on record. On the contrary the record shows that on being confronted by the denial of the appellant Shri Manjeet Rajpal admitted the documents as representing his transactions from which transactions he claimed that he had only earned the commission income. It is also important to note that out of all the papers only one paper has been admitted by the appellant as belonging to him. The entries in this paper have been tallied by the appellant with his books of accounts and no specific adverse inference on this paper has been drawn. It has also been pointed out by the appellant that the page no. 80 of LPS gives the details of the bank*

*account in which the cash was deposited. It has also been pointed out by the appellant that the hand writing on page 80 is different from the hand writing on the other pages which were written by Shri Rajpal. It is also pointed out that even the stationery of page 80 is different from that of the other pages and hence it cannot be inferred that the other papers were identical to the page no. 80 and were hence linked and belonged to the appellant. Another significant fact which has been pointed out during the course of appeal proceedings is that the page Nos. 89 to 103 of LPS-4 which was found from the residence of the appellant are pertaining to A.Y.2011-12. The pages 101,102 and 103 are in original and written in pencil and are relating to the period just prior to the date of search. During this period the appellant was not an employee of the appellant yet the papers found have been written in identical manner and contain the same type of entries as written in the papers relating to earlier years. There is no explanation on record of Shri Rajpal as to how when he was not in the employment of the appellant he was recording transactions of the appellant. This fact coupled with the fact that Shri Rajpal admitted the papers to relate to his spot bullion purchase and sale establishes without any doubt that the papers on which reliance has been placed by the AO to conclude that these pertained to the mixed transactions of hawala and unaccounted trading of bullion business of the appellant do not belong to the appellant at all. From the above discussion it is thus evident that the papers were admitted to be written by Shri Rajpal, they were found from the possession of Shri Rajpal, all papers were written in the same style which contained the same type of entries even for the period for which Shri Rajpal was not an employee of the appellant and these were also admitted by Shri Rajpal as belonging to him and he filed returns of income declaring the unaccounted commission income earned on the transactions as noted in these papers. Thus both on facts and as per law no adverse inference on the basis of these papers can be drawn against the appellant. The appellant cannot be fastened with any liability in the eyes of the law on the basis of these documents. These documents have to be considered on merits on substantive basis in the hands of Shri Majeet Singh Rajpal. In view of the above the addition of Rs.53,19,36,960/- is directed to be deleted. This ground of the appellant is therefore allowed.*

17. Considering the totality of the facts and circumstances of the case and considering the provisions of section 292C of the Act, we are of the considered view that the Ld. CIT(A) has rightly deleted the addition made by the AO. Therefore, we do not find any infirmity in this order of the Ld.CIT(A) on the issue, which we confirm, and ground no.4 and 5 of the Revenue are rejected.

18. Ground No.6 to 9 (Asst.Year: 2008-09) : Sole effective issue raised in these grounds relates to disallowance of interest paid on unsecured loans. These grounds read as under:

*“6. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the additions, of Rs. 2,36,839/- and Rs. 10,697/- on account of 'disallowance of interest' paid on ingenuine unsecured loan, holding that these additions have not been made on the basis of incriminating materials or documents found during Search action.*

*7. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in interpreting section 153 A of the I. T. Act while deleting the additions , of Rs. 2,36,839/-and Rs. 10,697/-.*

*8. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law in not appreciating the Circular No. 7 of 2003 dated: 05.09.2003 issued by the CBDT while deleting the additions, of Rs.2,36,839/- and Rs. 10,697/-.*

*9. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law while deleting the additions, of Rs. 2,36,839/- and Rs.10,697/- by not appreciating the fact that there is no precondition for initiation as well assessment/reassessment u/s.153A of the Act, that documents pertaining to each of the assessment year falling under provisions of section 153A/ 153C should be found.”*

19. During the assessment proceedings, the Id.AO noticed that the assessee was proprietors of Radhika Enterprises and Sagar Enterprises. The assessee has taken loans from certain parties, details of which were given in assessment order at page no.12 and 13. These parties were simply accommodation entry providers and the alleged loans were given in the guise of unsecured loan/share application money. The assessee has accordingly claimed interest expenses of Rs.2,36,839/- and 10,697/-, which were denied by the AO on the ground the alleged unsecured loans were not genuine, and accordingly added to his income under section 68 of the Act.

20. Dissatisfied with the addition, the assessee went in appeal before the Id.CIT(A). Before the Id.CIT(A) the assessee *inter alia* pleaded that in the regular assessments for the Asst.Year 2005-06 to 2007-08 under section 143(3) have already been completed earlier wherein the said loans and interest paid thereupon have been accepted as genuine. All details related to the impugned unsecured loans were furnished during the course of assessment proceedings,

which were already on the record of the Department, and that the availing of the loans and subsequent repayments were already disclosed in the return, and therefore, was no reason for the AO to doubt the same, and therefore, impugned additions under section 68 liable to deleted. The ld.CIT(A) in turn deleted the same, by holding that no incriminating documents/evidences in respect of these loans were found during the course of search and those additions were outside the purview of section 153A. Therefore, since the loans taken were found to be genuine, disallowance of interest on such loans was not valid, and accordingly, the ld.CIT(A) has directed the AO to delete the same. Aggrieved Revenue is now before the Tribunal.

21. Before us, the ld.DR supported order of the AO, while the ld.counsel for the assessee supported order of the ld.CIT(A) and reiterated submissions as were made before the Revenue authorities.

22. We have considered submissions of the both the parties and gone through orders of the Revenue and also material placed on record. The AO made the impugned disallowance of interest on the ground that loans taken by the assessee were not genuine. However, the ld.CIT(A) deleted the same by finding that these loans have been treated as genuine and the additions have been deleted in the earlier years and as such no addition could be made on this count. To this, our attention was drawn to relevant finding and observation of the ld.CIT(A) at page 121 of the CIT(A)'s order which read as under:

*“On careful consideration of the facts of the case it is seen that in regular assessments u/s 143(3) for A.Y. 2005-06,2006-07 & 2007-08 the loans taken have been accepted and no additions have been made to the total income on account of the said loans. In the assessment made under section 153A subsequent to the search the loans were treated as unexplained cash credits and added u/s.68 for these years. The appeal for the above years were decided by the CIT(A)-I Indore in Appeal No.IT-328,329 & 331/2013-14 and it has been held that in view of the fact that no incriminating documents/evidences in respect of these loans were found during the course of search*

*such additions were outside the purview of section 153A. Consequently on the issue the current position is that the loans stand accepted as genuine. In view of the above for the year under consideration the disallowance of interest on such loans on the ground that loans were treated as unexplained cash credits in earlier years is not a valid finding any more. The disallowance is therefore directed to be deleted. These grounds of the appellant are therefore allowed.*

The ld.DR has not controverted to this fact recorded by the ld.CIT(A). Therefore, looking to above findings, we do not find any infirmity in order of the ld.CIT(A), which is upheld, and these ground no.6 to 9 of the Revenue's appeal stand rejected.

23. Ground nos.10 & 11 are with regard to protective addition of Rs.20,66,81,265/- in respect of alleged unaccounted receipts and substantive addition of Rs.25,00,000/- on the basis of the alleged credit entries found from the data contained in the pen-drive seized from the premises of M/s.C21 Malls P.Ltd during the search action. These grounds read as under:

*"10. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by restricted the addition of Rs.20,66,81,265/- up to 3,35,10,500/- and while deleting the addition of Rs.25,00,000/- by wrongly taking the peak of all entries when there was no such proof to establish the link that all entries are out of same sum of money.*

*11. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricted the addition of Rs.20,66,81,265/- up to 3,35,10,500/- and while deleting the addition of Rs.25,00,000/- ,by accepting the malafide attempt of assessee to relate all unaccounted income derived from seized material in group cases to his undisclosed income offered in search proceedings.*

24. Brief facts as can be noticed from orders of the Revenue authorities are that during the course of search a pen-drive inventorised as BS-1 was seized from premises M/s.C-21 Malls P. Ltd. at 263 Orbit Mall. The said pen-drive contained both unaccounted and accounted data of M/s.C-21 Malls P.Ltd. and related to real estate projects carried by the assessee group. It was an admitted fact that

the transaction entered through banking channels were recorded, while cash transactions were not recorded in the books of the accounts. The assessee had admitted in the statement recorded on 21.1.2011 that the transactions shown in the files were belonged to him and to the group companies, who were engaged in the real estate development. The assessee stated that he was looking after the construction and other related works, and he had arranged financial requirements for the transactions undertaken by him in respect of three projects viz. 21B CenturyMall, Bhopal, BM Globus Mega, Bhopal and Bhopal Hoshangabad projects. He further stated that the impugned cash transactions were also done by him and names appearing in the pen-drive were simply used to identify rotation of funds for different purposes. In view of this statement and admission by the assessee, he submitted that the peak amount in rotation alone should be considered and accordingly the assessee offered an amount of Rs.15 crores as unaccounted income earned in the different years which were relatable to the years mentioned in the pen-drive seized during the search action. However, the Id.AO did not accept the explanation of the assessee stating that the integration of three different accounts contained in the pen-drive related to the different real estate projects carried out was artificial as there was no intermingle between these three projects and such artificial integration shown by the assessee was aimed only at reducing the peak, more so when as per the data available in the pen-drive, the assessee has maintained separate accounts. The Id.AO further held that peak credit theory is applied when transactions are between two persons or transaction without any names are found and nature of the business is established and also source of cash is explained. Aggrieved by the order of the AO, the assessee went in appeal before the Id.CIT(A).

25. Before the Id.CIT(A) the assessee reiterated the submissions made during the assessment proceedings. He further submitted that the impugned additions were made on hypothetical grounds but nothing has been found which can be said that incriminating in nature and/or forming part of undisclosed transactions. All the material facts were disclosed in the original return filed under section 139 of the Act. It was further submitted by the assessee that impugned substantive addition of Rs.25.00 lakhs as being the alleged cash credits found recorded in the name of "Kamal" in the computerised data in fold "21b/RSJNRS.DBF" forming part of Sl.No.1 Annexure-BS-1 of Rahul Pendrive; and protective addition of Rs.20,66,81,265/- being made on the basis of alleged cash credits found recorded in the same folder under name "Rahul Pendrive" without considering the fact that the same were already owned up by the assessee and he has offered as income on the basis of peak credit forming part of total surrender of Rs.15 crores under section 132(4) of the Act. Therefore, the assessee submitted that since the assessment was framed illegally and without any justification, the same should be deleted. The Id.CIT(A) considering the submissions of the assessee, and the observations and finding of the Id.AO substantially accepted the contentions of the assessee and partly allowed the claim of the assessee. While doing so, the also relied on the decision of the ITAT, Indore Bench in the case of Explorer Marketing P. Ltd. Vs. ACIT, and relevant part of the decision has been reproduced in the impugned order of the Id.CIT(A). Dissatisfied with the order of the Id.CIT(A) the Revenue is before us.

26. Before us, the Id.DR heavily relied on the order of the AO and urged the Bench to confirm the same.

27. On the other hand, arguments of the ld.counsel for the assessee are in line with the arguments made before both the authorities below. He further submitted that the assessee was in-charge of the projects and made investment. The assessee has accepted the cash transactions mentioned in the pen-drive as that belonged to him, and accordingly, an amount of Rs.15 crores was surrendered by the assessee in the statement recorded under section 132(4) of the Act. Copies of all the transactions mentioned in the pen-drive have been filed and part of the record. He further submitted that three sections were recorded in this pen-drive "21-B" (Pageno.1 to 38) was the day book which contained debits and credits and all JV entries; that the amount of agreed sale value of units has been debited and credited irrespective of the fact whether cash was received or not. The booking amount was credited in the name of Mall and other parties' accounts were debited. In these journal entries, there is no cash receipt or payment. The cheque entries are also mentioned in the file. The amounts of cash invested and cash withdrawn from the project are debited and credited in various names of the persons who were working for the same. The amounts sent from Bhopal to Indore are debited in the name of HO. The cash expenses made are also debited in this account. He stated that the AO asked the assessee to remove the bank entries and statement was prepared. In this regard, he drew our attention to pages 39 to 62. He further drew our attention to pageno.63 to 67 being the amounts received by cheque and also by cash. Page no.68 is being page-wise summary of the transactions. Page No.68A is the summary of total entries after removing the entries of Mall and bank transactions. Pages 68A to 105 are journal entries of Mall and the bank transactions. Page 106 is the bifurcation of expenses and income. PageNo.107 to 140 are the working of peak entries. Similarly, page 141 onwards are the entries of BM Projects

as in the case BS-21. As for the working of the peak, he submitted that the assessee has taken all date-wise cash entries in three projects for debits and credits. The entries of expense have been removed while computing the peak because the amounts have gone out of the hands of the assessee. While framing the assessment, the AO did not accept the merging of three sections on the ground that they were separate projects and has been merged to minimize the peak entries. He was of the view that total credits or the debits are income from undisclosed sources and has made huge additions. The Id.CIT(A) accepted the working of the peak amount by the assessee, and his relevant discussions contained in para 4(e) to 4(f) at pageno.121 and relied on the judgment of ITAT, Indore Bench in the case of Explorer Marketing P.Ltd. as the issue under consideration there was identical to that of the present assessee. Accordingly, the Id.counsel for the assessee summarized his submissions in the following lines:

*“It is humbly submitted that the assessee owned all the cash transactions and declared additional income. The amounts received and paid to various projects have been taken while working the peak. Once it is established that the assessee was looking after all the three projects, then the cash received and paid would be out of the cash balance which has to be worked out jointly. The AO has taken all the entries separately, thereby taxing the entry doubly or triply because the amounts sent from Bhopal are rotated and again kept in the cash balance and from the same cash balance, if the amount is sent to Bhopal, it is again treated as income. Thus, it would amount to multiple additions of the same amount while arriving at the total transaction. Under these circumstances, the Ld CIT(A) was right in deleting these additions. It may be mentioned here that a search has taken place and every nook and corner has been searched. The Ld. AO has also made the addition of more than Rs. 200 crores which has not been found during the course of the search. If the assessee had earned this income then that amount should have been found somewhere in the investment/asset. In view of the above, it is prayed that the order of the learned CIT(A) be maintained.”*

28. We have heard the rival submissions and perused the material available on record. We find that the Ld. CIT(A) while partly allowing the assessee's claim he *interalia* found that the explanation given by the assessee regarding unrecorded and recorded transactions as

appearing in the pen drive belonged to him and all the transactions were owned up by the assessee. He also found that the assessee is beneficiary of all the transactions, and he was in-charge of the company affairs and managing and controlling financial affairs. Even for presumption of section 292C read with section 132(4A) the assessee is only competent to explain the data mentioned in the pen drive seized, because from his premises the pen-drive was impounded and that the search premise was belonged to the assessee. The entries in the pen drive clearly established rotation of the funds, and therefore, the assessee was eligible for such rotation in the form of working of the peak. He therefore restricted the addition to the extent of peak amount worked out by the assessee for each year. For the year under consideration, the Id.CIT(A) restricted to Rs.3,35,10,500/- which was the amount of peak worked out by the assessee. He however deleted Rs.25.00 lakhs which has been made on substantive basis because of the fact that the assessee, because that amount formed part of peak amount worked out by the assessee of Rs.3,35,10,500/-. The relevant findings of the Id.CIT(A) contained in page nos.121 to 127 are worth to note, which are reproduced hereunder for better understanding of the issue on hand:

*“The detailed facts of the case pertaining to the above disputed additions as per the assessment order are reproduced at Para No. 2 page 16 to 31 above and the detailed submissions of the appellant on the merits of the issue are reproduced at Para No. 3 page 70 to 80 above. The remand report of the AO and the comments of the appellant are reproduced at Para No. 4 above.*

*Both the above additions have been made by the AO on the basis of entries recorded in the folder 21B/RSJNRS.DBF in the Rahul Pendrive seized from 263 Orbit Mall. It is an admitted fact that the transactions recorded in the said pen drive are related to the real estate projects carried by the appellant group. It is also an accepted fact that the transactions recorded in the pen drive are both accounted transactions and unaccounted transactions. This is evident from the fact that the transactions by cheque/banking channels recorded in the pen drive are duly recorded in the books of accounts maintained. The cash transactions are not recorded in the books of accounts. From the first statement of the appellant recorded on the pen drive on 21.1.2011 the appellant has taken the stand that the transactions belong to*

*him and not to the companies of the group carrying out the real estate projects. It has been stated by him that he was looking after the construction and other related works and he had arranged the affairs in such a way as to see that the financial requirements are met and it was these transactions undertaken by him that were recorded in the pen drive which were stated to be out of his unaccounted income. Appellant has also pointed out that the cash transactions in the name of different persons appearing in the pendrive were also done by him and the names were merely used for identifying the rotation of funds for different purposes. In view of the above the appellant has contended that the peak amount in rotation alone should be considered and accordingly the appellant worked out the peak and offered the amount of Rs.,15 Crore as unaccounted income earned in the different years covered by the period mentioned in the pendrive.*

*AO has rejected the explanation of the appellant stating that the integration of the three different accounts in the pendrive relating to the different real estate projects carried out was artificial as there was no intermingling between these three projects and such artificial integration was aimed only at reducing the peak. AO also remarked that the amount introduced in all the three accounts was by the customers for booking of shops/residential units etc which was then spent on construction activity. AO also noted that as per section 292C of the I.T. Act where any books of account, other documents, money, bullion, jewellery or other valuable article or thing are or is found in the possession or control of any person in the course of a search u/s 132 it can be lawfully presumed that such books of account, other documents, money, bullion, jewellery or other valuable article or thing belong or belongs to such person and the contents of such books of account and other documents are true and hence the integration of all the three accounts, as per the convenience for telescoping and determining peak credit cannot be allowed. It is also pertinent to mention that had these accounts been of integrated, interdependent and related nature the assessee would not have maintained three separate accounts as found in rahul pen drive. Further Shri Keshav Kumar Nachani has owned up the transactions mentioned in various names like Ravi, Kamal, Bharat, Ujjwal and various other names who have introduced their unrecorded cash in the real estate projects run by these three companies. Thus by owning the cash amount found in these three separate accounts Shri Keshav Kumar Nachani tried to save all these persons from tax net and that is why during the course of assessment proceedings Shri Keshav Kumar Nachani very smartly, intentionally, deliberately, willfully did not recognize and identify any person whose names were found in these three separate accounts.*

*AO also rejected the peak working stating that peak credit theory is applied when transactions are between two persons or transactions without any names are found and nature of the business is established and also source of cash is explained.*

*The AO has thus not accepted the explanation of the appellant and has rejected the peak working and added the total amount of credit/debit to the income of Century 21 Malls Pvt. Ltd. stating that the transactions pertain to Construction of the Mall at Bhopal carried out by the said company and the cash receipts represent the cash advances /deposits received for booking/sale of shops etc.*

*The arguments are duly considered and it is seen that the AO has added the entire amount on substantive basis in the hands of the company. A company is a legal entity, a paper entity, brought into existence by the legal documents evidencing the company. Any unrecorded transactions which have not been recorded in the books of the company thus have to be seen in the light of the fact that who is the beneficiary of such unrecorded transactions. Clearly once the transactions are not forming a part of the legal documentation of the company the company cannot be recognized as the beneficiary. The company works through its directors etc. and if the unrecorded transactions are benefiting the directors in their capacity as directors of the company only than can the company said to be beneficiary however if the directors are the beneficiaries in their individual capacity as distinct from their capacity as directors of the company than it cannot be said that the company is the beneficiary of the unrecorded transaction. From the material placed on record it is seen that the impugned pen drive was found from 263 Orbit Mall Indore which was not the registered office of the company Century 21 Malls Pvt. Ltd. It was the office of the company at Indore which was being managed by the appellant. The appellant from his very first statement regarding the pen drive recorded on 21.1.2011 owned up the pen drive as belonging to him. It was again and again reiterated by the appellant that the transactions in the pen drive were recorded at his instance as he was looking after the construction projects. He was thus arranging the affairs in his individual capacity as distinct from his capacity as the director of the company in the understanding that he would be remunerated for the same. He thus explained the manner in which the transactions were recorded in the pen drive and also identified the transactions which pertained to the company and were recorded in the books of the company and owned up the transactions which were not recorded in the books of accounts of the company as belonging to him and representing his unaccounted income.*

*AO has stated that the unrecorded cash advances were received not from the appellant but the customers and hence cannot be accepted to be integrated in the peak. The AO has however failed to establish the receipt of such cash advance from even one customer of the company Century 21 Malls Pvt. Ltd. This assumes significance in the light of the explanation given by the appellant that the names of the customers were used to introduce unaccounted income in the garb of advances for financing the construction of the mall. This statement stands uncontroverted. Further AO has also failed to note that even in the alternative if the advance is held to be received from the customers it does not assume the character of income as the sale was not concluded because the construction of the mall was still underway during the period under consideration.*

*As regards the integration of the three accounts, AO has noted that the three projects were distinct and there was no mixing of the financial transactions which would be only limited to the finance introduced by directors/shareholders/promoters. This fact has also not been established as the AO has not brought any material on record in the form of any statements/documents of any other directors/shareholders of the company owning the transactions noted in the pen drive or disproving the explanation offered by the appellant. This fact thus does not carry force in the light the explanation given by the appellant that the finances were being managed by him and hence there were no watertight compartment of the finances*

*envisaged by the AO. The AO has not placed on record any evidence from the persons identified by way of their examination to disprove the contentions made by the appellant.*

*The AO has rejected the peak stating that peak can be worked out only if there are two persons and or there are no names. The above argument of the AO is also not tenable in the light of the fact that none of the persons have been identified and examined to disprove the appellant's explanation. On the validity of peak working the appellant has drawn support from the judgement of the jurisdictional ITAT in the case of Explorer Marketing Pvt. Ltd. Indore vs ACIT Circle 4(1) Indore wherein the following observations// have been made:-*

*"During the course of search, the addition was made on the basis of entries found recorded in the seized paper marked as BS-4. The noting so found on the seized paper indicated cash transaction of the assessee company and its Managing Director, Shri Alok Agarwal with others showing the rotation of money. It was contended by the Id. Authorized Representative that at the time of search, the seized papers BS-4 could not be examined and hence the amount of Rs.40 lakhs was offered on the safer side. However, in the returns so filed, peak was worked out at Rs.16,93,308/- in the assessment year 2006-07 and Rs. 61,742/- in the assessment year 2007-08.10. It is pertinent to mention that the assessee had made surrender of Rs. 40 lakhs during the course of search itself.*

*However, at the time of making the surrender, the seized papers BS-4 could not be examined, hence the amount of Rs.40 lakhs was offered on the safer side. During the course of assessment proceedings, the assessee has filed detailed working in respect of calculation of peak amounts. When the Assessing Officer questioned method of working the peak amount, the assessee explained that whatever was found unexplainable or unrecorded was arranged date-wise/amountwise beginning from financial year 2005-06 in running manner and this exercise resulted in a peak credit amounting to Rs.16,93,308/- for the assessment year 2006-07. The Assessing Officer has examined the working of peak, however, no defect was pointed out. It was clearly explained by the assessee that the peak was worked out disregarding the nature of the unexplained entries and also disregarding the persons with whom such entries relate i.e. whether those entries pertain to the company or any other individual. It was also explained that all the entries, which were found unrecorded or was noticed or found unexplainable in the seized records was included in such working of peak. However, the Assessing Officer has declined to accept the same merely on the plea that there were different persons and hence entries should be segregated peak be arrived at for each person separately. As per our considered view when the assessee has owned all the transactions, therefore, there was no necessity to segregate the entries. The Assessing Officer also observed that there was no rotation of the amount, hence peak is not proper method to determine the maximum investment. We found that there was rotation of fund marked as, A to A, B to B etc, and 1 to 1 and 2 to 2 etc, as per the details furnished at paper book-page no. 532 to 541.*

*In the chart of peak credit so submitted, there was no amount, which has gone irretrievably. There was no finding by the Assessing Officer that money was applied for any expenses § or investment. There was continuous rotation of the amount. The assessee has also reduced the peak of earlier years from the peak of subsequent years. As per the peak statement, we found that total receipts of Rs.63,08,793/- was added to the income by the Assessing Officer without taking into account rotation of the fund in the very same account. The payment was to the tune of Rs. 49,18,477/- giving the difference of Rs.13,90,316/-. However, as against this, the assessee surrendered Rs.16,93,308/- for the assessment year 2006-07 and Rs. 61,742/- for the assessment year 2007-08 by date-wise arranging the debit and credit. There is no dispute to the proposition that statement u/s 132(4) has a greater evidentiary value till it is proved to be incorrect. In the instant case, surrender was made without going into the details of the documents. During assessment proceedings, the assessee has explained the documents fully and also filed statement of working the peak credit in which no defect was pointed out. It is also settled position of law that admission made by the assessee u/s 132(4) is an important piece of evidence but the same is not conclusive and it is open to the assessee, who made the admission to show that it is incorrect and the same was made under a mistaken belief of facts or law. We had verified the peak statement placed on record wherein each receipt and payment is arranged datewise/amount-wise beginning from financial year 2005-06. Peak of Rs.16,93,308/- is worked out in assessment near 2006-07, whereas peak of Rs. 61,742/- is worked out in assessment year 2006-07. Accordingly, we modify the orders of lower authorities and direct the Assessing Officer to restrict the addition to the extent of peak amount worked out at Rs.16,93,308/- for the assessment year 2006-07 and Rs. 61,742/- for the assessment near 2007-08."*

*The facts of the appellant's case are nearly identical to the facts of the above case as far as the nature of entries in the documents found during the course of search and the working of peak adopted. The appellant in the present case has right from the first statement recorded on the entries in the pen drive stated that the cash entries in different names, not recorded in the books of accounts, belong to him and are out of his unaccounted income. Thus the appellant has owned up the transactions and has given the working of the peak. The peak has been worked out disregarding the nature of the unexplained entries and also disregarding the persons with whom such entries relate by including all entries datewise and cash in rotation has been taken into account. The entries clearly show that there was rotation of fund marked as A to A. B to B etc, and 1 o 1 and 2 to 2 etc. and various other permutations. Also wherever the cash has irretrievably gone out as expenses etc. the entry has been recorded and cash has been accordingly reduced and not taken back into rotation. The peak has been worked out on the basis of the Annexure A enclosed with the order for A.Y.2008-09 in the case of the company Century 21 Malls P.Ltd. wherein the issue has been discussed in detail and has formed the basis of the impugned additions. Apart from the above Annx A the entries in other loose papers found and seized and held to be unaccounted are also integrated in the working of peak and a consolidated working for all the years is enclosed as Annx.A to his order. The peak working has been verified during the course of appellate proceedings and no defect has been noticed. The AO has also not pointed out*

*any defects in the working of the peak both during assessment proceedings as well as Hiring remand proceedings. It has been further pointed out by the appellant that while making the addition of Rs. 206681265/- the AO has added an. amount of Rs. 100465885/- being the price of the shops/ office/ flat etc. without noticing the fact that this was merely a statement of the total sale consideration receivable on sale of the said unit and the said amount was not received. This contention of the appellant is also found to be logical in the light of the entries made and the fact that the sale was not concluded. The receipts against the total sale consideration are also reflected in the entries made in the pen drive and had already been considered while making the addition and hence it amounted to double addition.*

*The Appellant has also contended that an amount of Rs. 1653680/- has also been added by the AO although the said transactions are through bank and are already recorded in the books of accounts. The above contentions are also noted and taken into account in the working of the peak. Attention has also been drawn by the appellant to the fact that as a result of search action u/s 132 of The Act the undisclosed investments found do not match the undisclosed income assessed and hence also the additions made to the total income were not justified as these were far removed from the concept of real income.*

*AO has also noted the provisions of section 292C and section 132(4A). The explanation offered by the appellant has also to be seen in the light of the above provisions. No doubt that the pen drive was found from 263 orbit mall which was stated to be the office of the company Century 21 Malls Pvt. Ltd. but it is to be noted that this was not the registered office of the company. It was an office belonging to the appellant where the appellant was maintaining the records of various businesses being carried out by him. The appellant was also one of the directors and admittedly was looking after the day to day affairs of the company. The appellant was therefore not only competent to explain the entries in the pen drive but was the person against whom the presumption u/s 292C and 132(4A) was required to be drawn. No explanation version/or clarification from any other director / manager / shareholder or responsible person of the company has been brought on record in support of the interpretation adopted by the AO. No version is on record to disprove the interpretation given by the appellant. In the light of the above the presumption under section 292C and section 132(4A) has to be drawn considering the explanation on record which has been given by the appellant owning up all the unrecorded transactions.*

*Considering all the facts in totality it is therefore logical to uphold the explanation given by the appellant that the unrecorded transactions as appearing in the pen drive belong to him as the affairs were being managed by him. Accordingly it is held that the transactions relate to the appellant and not the company. These are therefore to be considered on substantive basis in the hands of the appellant and not in the hands of the company. The appellant has therefore to be considered as the beneficiary of the said transactions in the .light of the circumstantial evidence on record and riot only on his own admission alone. The entries in the pen drive clearly establish rotation of the funds and therefore appellant is eligible for benefit of such rotation in the form of working of the peak accordingly, the AO is directed to restrict the addition to the extent of peak amount worked out for each year.*

*For the year under consideration the peak has been worked out at Rs. 3,35,10,500/- and hence the addition of Rs. 2,06,681,265/- is directed to be restricted to Rs. 3,35,10,500/- which is to be taken on substantive basis in the hands of the appellant. As the appellant has already offered an amount of Rs.35000000/- on account of such peak which is greater than the peak now worked out at Rs.3,35,10,500/- therefore no further addition is called for. As regards the addition of- Rs. 25,00,000/- which has been made on protective basis in the hands of Shri Kamal Nachani and on substantive basis in the hands of the appellant no separate addition is called for as the amount is included in the working of the peak and therefore forms part of the addition of Rs. 3,35,10,500/- confirmed on substantive basis in the hands of the appellant. The -addition of Rs.25,00,000/- is therefore directed to be deleted. These grounds of the appellant are therefore partly allowed.”*

29. We find that the ld.CIT(A) has analysed the issue in great length and he found the ld.AO has no incriminating material to rebut the claim of the assessee. What prompted the AO to make the impugned additions is the discovery of a pen-drive. The Assessing Officer while making additions has not relied on any incriminating material but has made additions on the basis of data available in the pen-drive. Therefore, above findings of learned CIT(A) along with the findings of Assessing Officer clearly demonstrate that there was no incriminating material except a pen-drive on the basis of which the Assessing Officer had made the additions. We find substance in the contention of the assessee that once the peak credit method is accepted, then the combined peak credit worked out on the basis of combined debits and credits of all the transactions is the only correct method for determining the undisclosed income. Therefore, the peak-amount worked out by the assessee is rightly accepted by the ld.CIT(A).

30. In this view of the matter, and in the absence of any controverting material brought on record by the Revenue at the time of hearing before us, we do not find any infirmity in the order of the Ld. CIT(A) and the same is hereby upheld. Therefore, the ground nos.10 & 11 being devoid of any merit are rejected.

31. **Ground No.12 & 13** : These ground relates to disallowance of loss claim in project “Gold Avenue” of Rs.4,52,000/-. These two grounds reflected in the following manner:

*“12. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.4,52,000/- by not appreciating the fact that each assessment year is a separate assessment year and acceptance of book results in earlier years cannot be ground of acceptance of books in relevant year.*

*13. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.4,52,000/- by not giving any contrary findings from those mentioned in the assessment order by the Assessing Officer.”*

32. We have heard both the sides on this issue. Short issue is regarding disallowance of loss claimed by the assessee in the project “Gold Avenue” of Rs.4,52,000/-. As can be noted from the orders of the Revenue authorities that the ld.AO while examining profit & loss account, the assessee has shown work-in-progress at Rs.6,50,000/- and sale of flat at Rs.3,00,000/- and recorded a net loss of Rs.3,50,000/-. When the AO sought for details, the assessee was unable to produce the books of accounts, stating that they were seized during the search action on 25.11.2010. The explanation of the assessee was accepted by the AO on the ground that copies of records were provided to the assessee. Accordingly, the ld.AO claim of loss of Rs.3,50,000/- was disallowed and further profit 8% under section 44AD was determined at Rs.52,000/-, making a total disallowance to the tune of Rs.4,52,000/- (Rs.3,50,000/- plus Rs.52,000). Aggrieved by the disallowance made by the AO, the assessee went in appeal before the ld.CIT(A).

33. Before the ld.CIT(A) the assessee submitted that during the regular assessment framed under section 143(3) of the Act i.e. for the AY 2005-06 to 2007-08, the book results of the above project were accepted as proper, and under 153A proceedings also found no

incriminating material to controvert the findings of earlier regular assessments. It was further argued that the provisions of section 44AD were not applicable to the case of the assessee as the assessee was a builder and not a civil contractor. After considering the submissions of the assessee, the Id.CIT(A) deleted the impugned disallowance, hence, the Revenue has now come appeal before the Tribunal.

34. On due consideration of the facts and circumstances of the case, and the submissions of the assessee that in the regular assessment in the immediately preceding years book results had been accepted by the AO and in the 153A proceedings also no incriminating materials were found to controvert the finding made in the earlier regular assessment years, and the fact that provision of section 44AD of the Act was not applicable to the case of the assessee, we do not find any infirmity in the order of the Id.CIT(A) in deleting the impugned disallowance. These two grounds of the Revenue are accordingly rejected.

35. **Ground No.14 & 15:** Issue raised in these two grounds relates to share of profits of Rs.25,56,208/- from partnership firm "Rohit International" treated the same as "unexplained". These two grounds read as under:

*14. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 25,76,208/- by not giving any contrary findings from those mentioned in the assessment order by the Assessing Officer as well as those mentioned in the remand report on this issue.*

*15. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 25,76,208/- by ignoring the fact that in the assessment order for A.Y. 2007-08 which is applicable for A.Y. 2008-09 w.r.t this issue of addition on account of share of profit received from M/s Rohit International the issue of last profit margin shown by the assessee w.r.t capital introduced have not been examined by the assessing officer in*

*her order u/s 143(3) r.w. 148, so the same cannot form the basis of deletion of the addition.*

36. Brief facts of the case are that the assessee was having 90% share of profit in M/s.Rohit International. He received an amount of Rs.25,76,208/- as share of profit in the firm and claimed the same as exempt under section 10(2A) of the Act. The ld.AO rejected the same on the ground that no details with regard to the same were furnished during the assessment proceedings. In appeal before the ld.CIT(A), the assessee submitted that the assessee has retired from the said firm w.e.f. 1-4-2008 and therefore, he was not having any control over the records of the said partnership concern. It was further submitted by the assessee that in the regular assessment under section 143(3) for the assessment year in question, the assessee had shown the share of the profit, and the AO accepted the same after enquiries. Further, the ld.AO could not bring any contrary material on record to dispute the claim of the assessee. It was further submitted that the said firm was assessed to tax and the accounts were audited and filed income tax returns. Even assessment reopened in the case of the firm under section 143(3) r.w.s. 148 of the Act, the ld.AO of the firm had accepted the income of the assessee as proper, and therefore, the addition of Rs.25,76,208/- was bad in law and liable to be deleted. The ld.CIT(A) after considering the submissions of the assessee, deleted the impugned addition. Aggrieved Revenue is now in appeal before the Tribunal.

37. The ld.DR supported the order of the AO and submitted that the ld.AO has justified in making impugned addition on the ground that the genuineness of the firm, and no details with regard to the earning of the share of profit were furnished during the assessment proceeding. On the other hand, the ld.counsel for the assessee relied on the order of the ld.CIT(A) the Rohit International was assessed to

tax and the assessment reopened under section 143(3)/148 and has accepted the income of the firm and also genuineness of the activities. Therefore, no addition is warranted in the case of the assessee, since the income was already taxed in the hands of the firm, and taxing again in the hands of the assessee amount to double taxation. He accordingly prayed for confirmation of the ld.CIT(A) on this issue.

38. Having heard both the parties, and considering the material available on record, we are of the view that the factum of reassessment of the firm under section 143(3) read with section 148 wherein the impugned share of profit was offered to tax was completed and accepted by the Revenue. There is no material with the AO to demonstrate that firm was not genuine, and its activities were doubtful nature, and that the impugned amount of Rs.25,76,208/- represented unexplained income. This fact was examined by the ld.CIT(A) and accepted the above contentions of the assessee, which remained uncontroverted by the ld.DR before us also. Therefore, we do not find illegality in the finding of the ld.CIT(A) in this issue, which we confirm. Accordingly, these two grounds of the Revenue are also rejected.

39. Ground Nos.16, 17 & 18 : Related to addition made under section 69C of the Act of Rs.21,07,224/-. These grounds read as under:

*“16. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.21,07,224/- by not giving any contrary findings from those mentioned in the assessment order by the Assessing Officer as well as those mentioned in the remand report on this issue.*

*17. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.21,07,224/- by ignoring the fact the documents filed under rule 46A do not support the argument of assessee that these transactions are related to Century 21 Town Planners*

*Pvt. Ltd. in absence of complete picture that the transactions to took place for business purpose of Century 21 Town Planners Pvt. Ltd.*

18. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.21,07,224/- by ignoring the fact that the most of the transactions recorded in LPS-1/1/1 do not appear even in the bank statement of Century 21 Town Planners Pvt. Ltd. filed as additional evidence under rule 46A.”*

40. Short facts in this regard are that during the search at 263, Orbit Mall Indore, a loose paper “page no.46 of LPS-1/1/1 was seized. It contained certain entries with regard to certain transactions pertained to some expenditure. The details of which were given in the assessment order. The AO required the assessee to explain the nature of these transactions and where these transactions were recorded in the books of accounts. The assessee also required to explain with supporting evidences. It was explained by the assessee that the entries were related to M/s.C-21 Town Planners P.Ltd., and since the assessee was not director and/or now not concerned with the said company, the assessee was not able to furnish the required details. In the absence of satisfactory reply, the ld.AO invoked provisions of section 292C and presumed that the documents seized belonged to the assessee only. He further noted that the impugned entries were of expenditure on purchase and construction of real estate. The total amount involved in the documents was to the tune of Rs.21,07,224/- the ld.AO added the same to the total income of the assessee under section 69C of the Act.

41. Against this addition, the assessee approached first appellate authority. Before the ld.CIT(A) assessee reiterated submissions made during the assessment proceedings. Assessee further submitted that M/s.C-21 Town Planners P.Ltd. is a real estate developer; that all the transactions are related to expenses incurred on construction work done in the above said company and the transactions were formed part of duly recorded transactions and most of the expenses were paid

through bank account of the said company. The assessee also furnished copy of bank statement of the above to demonstrate the above plea. The ld.CIT(A) considered the submissions of the assessee and found that all the impugned transactions were recorded in the books of the said M/s.C-21 Town Planners P.Ltd., and therefore, there was no reason to justify the impugned addition. He Accordingly deleted the same.

42. Aggrieved by the action of the ld.CIT(A), Revenue is now before the Tribunal.

43. The ld.DR contended that no satisfactory explanation was given by the assessee against the seized material found during the course of search, and therefore, the ld.AO justified in making the impugned addition.

44. On the other hand, ld.counsel for the assessee supported the order of the ld.CIT(A). He further submitted that entries found in the seized papers were of third party and they all were entered in the regular books and in the bank account, which can be verified from the books of the company. These evidences were not accepted by the AO, and merely on the ground that books of accounts of the company were not produced, the impugned addition was made. The ld.CIT(A) after verification of the record of the company found that no ground was made out for making the impugned addition in the hands of the assessee, which accordingly deleted. Therefore, the action of the ld.CIT(A) in deleting the impugned addition deserves to be upheld.

45. On due consideration of submissions of both the parties, and on perusal of the material available on record, we find that the ld.CIT(A) categorically recorded that transactions were duly recorded in the

books of C-21 Town Planners P.Ltd., and verifiable and therefore, no addition could be made. Obviously, apart from the loose paper found during the search, there is nothing with the Id.AO to demonstrate that on which basis the impugned addition could be fastened on the assessee. The Id.CIT(A) appreciated this fact, and view of the above, we do not find any error in the order of the Id.CIT(A) on this issue. Accordingly, these grounds raised by the Revenue carry no merits. They are accordingly rejected.

46. Ground No.19 to 21 : These grounds read as under:

*“19. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 20,60,000/- by not giving any contrary findings from those mentioned in the assessment order by the Assessing Officer.*

*20. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 2,00,00,000/- by not giving any contrary findings from those mentioned in the assessment order by the Assessing Officer.*

*21. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 2,00,00,000/- by ignoring the settled principle of law that primary onus to prove identity, creditworthiness of creditor and genuineness of transaction, is on assessee and not on assessing officer.*

47. Briefly stated facts leading to these additions are that on perusal of the personal balance sheet of the assessee as on 31.3.2008 the Id.AO noted outstanding liability of Rs.20,60,000/- towards Nandlal Aganani and Rs.2,00,00,000/- towards M/s.Naryan & Ambuja Infrastructure. In the absence of satisfactory explanation and failure of the assessee to produce any documentary evidence to prove these credit entries, the Id.AO treated the same as unexplained credit entries, and made addition accordingly. Aggrieved by this addition, the assessee carried the matter in appeal before the CIT(A).

48. Before the Id.CIT(A), the assessee explained that the amount of Rs.20,60,000/- represented cost of contract work done by Shri Nandlal Agnani and remained unpaid on that year. The same has been properly recorded in the books of accounts and was considered and accepted by the Department during the assessment years 2005-06 and 2006-07, and therefore, there was no justification for making addition by the AO as unexplained credit. As regards, addition of Rs.2.00 crores, appearing as credit entry in the name of M/s.Narayan & Ambuja Infrastructure, it was explained that the assessee has taken advance from the said party through banking channels. The same was also reflected in the books of accounts of both the parties. The assessee has furnished all the details including balances from 2007 to 2010. They were also assessed to tax, and therefore, there was no reason for the AO to make the impugned addition. The Id.CIT(A) after considering the submissions of the assessee and on verification of the records found contentions of the assessee to be correct. The Id.CIT(A) found that in the scrutiny assessment for the AY 2005-06 and 2006-07 these transactions have been verified and no adverse remarks were drawn by the AO. As regards addition of Rs.2.00 for the credit liability shown in the name of Narayan & Ambuja Infrastructure, the Id.CIT(A) also found the explanation of the assessee to be correct on the basis of the details furnished. Accordingly, the Id.CIT(A) deleted both the additions. Hence, the Revenue is before us.

49. Before us, the Id.DR relied on the order of the AO, while the Id.counsel for the assessee while supporting order of the Id.CIT(A) also submitted that as regards addition of Rs.20,60,000/- the same represented liability to Shri Nandlal Agnani who was the contractor of the assessee. This amount was the liability of earlier year which was considered and accepted by the Department, and therefore, there was no material with the department to doubt the entry. So far as

addition of Rs.2.00 crores paid to Narayan & Ambuja Infrastructure, this is an amount advanced by the said party to the assessee through the bank channel; that the same was considered and accepted by the AO for earlier assessment years; that accounts of both the parties were furnished before the AO, and therefore, there is no justification for the AO to doubt the impugned transaction and made the additions.

50. We have considered rival contentions and gone through the material placed before us and also perused orders of the Revenue authorities. Before us, the ld.DR was unable to controvert the finding of the ld.CIT(A) on this issue. There is no material with the Revenue to substantiate the impugned additions of Rs.20,60,000/- and Rs.2,00,00,000/- for entries shown in the name of Nandlal Agnani and Narayan & Ambuja Infrastructure respectively. Undisputedly, these transactions were considered and accepted by the Departments in the preceding assessment years. We find from the order of the ld.CIT(A) that the impugned transactions were routed through banking channels and all the relevant records were furnished before the lower authorities, and impugned creditors were assessed to tax, there is no reason for the AO to doubt the transactions so as to make the additions on account of unexplained credit entries. No incriminating materials were found by the Revenue during the search. Therefore, in the absence of any cogent material to establish otherwise, we are unable to find any error in the order of the ld.CIT(A) on these two issues, and thus we confirm the ld.CIT(A) deleting the impugned addition of Rs.20,60,000/- and Rs.2,00,00,000/-. These grounds of the appeal of the Revenue are rejected.

51. Now we shall deal with ground nos.22 to 27: They are as follow:

*22. Whether on the facts and in of the case, the Hon'ble CIT-(A) has erred in law by directing to accept the book results for the assessment year 2008-09*

*and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, holding that incriminating documents which formed the basis of rejection do not belong to A.Y.2008-09.*

*23. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2008-09 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring the findings other than those which were based on incriminating documents, of assessing officer in the assessment order of A.Y.2005-06 which formed the basis of rejection of books of accounts.*

*24. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2008-09 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, without giving any contrary findings against those of Assessing officer.*

*25. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2008-09 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring an important statement of Shri Shilu Mishra which substantiate the modus operandi of assessee as pointed out by the assessing officer.*

*26. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2008-09 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by not considering the fact that all findings and inquiries in the assessment order and all seized documents or statements which formed the basis of rejection of books by the Assessing officer are to be looked into totality.*

*27. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2008-09 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by wrongly distinguishing the case of Shri Om Prakash Dhanwani, as the books rejection were confirmed by Id. CIT(A) on the basis of many similar findings as in case of assessee.*

52. The issues involved in the above grounds are two folds viz. (i) rejection of books of accounts under section 145(3) of the Act, (ii) estimation of gross profit in the sale and purchase of gold and silver bars.

53. We would take facts in brief as emanating from the orders of the Revenue authorities. That the assessee is a whole trader in

gold/silver bullion under the name and style of M/s.M.P. Bullion. The gold and silver bars are stated to be purchased from banks and from big dealers, and the same are sold in cash as well as through cheques. When actual cash is received on account of the sale, no names are mentioned in the sale vouchers. The ld.AO sought the assessee to furnish details and information about such cash purchase and sales for determination of actual profit earned by the assessee. The explanation and details submitted by the assessee were not upto the satisfaction of the AO. He observed that in the absence of satisfactory information, the books of accounts of the assessee were not reflecting true and correct particulars of income of the assessee; that no cash sale bills/memo have been issued and no correct name has been mentioned in the actual, which established non-genuineness of books of accounts of assessee; that qualitative details of stock and on comparison of credit entries in bank accounts, the details maintained by the assessee were found to be defective and no proper records have been maintained by the assessee; that the documents seized from Jaipur, the assessee himself surrendered Rs.2 crores as additional income; that the assessee issued bills for cash sales of Rs. Lakhs to defeat the purpose of TCS as per section 206C(1) of the Act, which reflected *malafide* intention of the assessee to conceal the identity of the customers; that in the guise of bullion trading the assessee was channelizing hawala transaction by way of cash deposits and cash withdrawal; that disclosure of Rs.15 crores during the search in the various premises related to the assessee, the AO assumed that the disclosure would be out of income generated out of bullion business; that the cash been deposited at various places while sales have been booked in five cities. Random names are appearing on sale invoices and no details of PAN address and mobile numbers of the customers have been maintained by the assessee; that the assessee has

introduced cash of Rs.5,400 crores and out of bullion sales. In view of the above observations, the AO rejected the books of the accounts of the assessee under section 145(3) of the Act as defective with the observations that the required information or explanations by way of questionnaire were not furnished.

55. Thereafter, the ld.AO proceeded to estimate gross profit of the assessee on sale of Gold KG Bar at Rs.17,44,21,546/- towards low gross profit shown the books in the total income of the assessee. The ld.AO observed that the assessee could not furnish any documentary evidences for cash deposit of Rs.5600 crors in various bank accounts during the assessment years 2005-06 to 2011-12; that on examination of stock register, purchase and sale records, it was noticed that the sales have been booked at the convenience of the assessee and cash sales were suppressed to conceal actual profit; that credit in the bank accounts does not commensurate with that of sale receipt on that date; that credit sales entries were not made on the date of search, rather it effected in the books on receipt of sale realisation; that from the independent enquiries from the market indicated that an average of 100 gram gold KG bar was sold with a profit in the rate of Rs.2200/- to Rs.2,700/- and at the rate of Rs.2,700/- per BAR, he made the impugned addition on the sale of gold bar. Similarly, on the transaction of sale of silver bar, the ld.AO made similar observations and made estimation of gross profit at Rs.20,27,440/-and made addition accordingly.

56. Aggrieved by the above rejection of the books and estimation of gross profit in the sale of gold and silver bars, the assessee went in appeal before the ld.CIT(A). Before the ld.CIT(A), the assessee filed a detailed submissions, which the ld.CIT(A) has reproduced at page nos.87 to 106 of his order. The crux of the submissions of the

assessee before Id.CIT(A) on these issues was that during the assessment proceedings before the AO, the assessee had furnished all required details and information, such as, audited books of accounts of M.P. Bullion, quantitative details of purchases and sales, copy of the assessment order passed under section 143(3) where such transactions considered and accepted; copy of sales tax assessment orders; original purchase bills and complete bank statements, day-wise rates of bullion; details regarding the sales effected in each trading branch and respective collection of cash at various collection centres. The assessee had also explained nature of business and its operational aspects. The details and documents seized during the course of search were already in the record of the AO, which were filed by the assessee during the regular assessment. The Id.AO has rejected the books of accounts of the assessee on some assumption and on some flimsy grounds. The assessee further submitted that the sales over the seven years was more than Rs.6400/-, and it was very difficult to furnish all records of the customers throughout this period. It was submitted that all the details were available in the pen-drive seized during the course of search, and in fact the Id.AO verified the same during 143(3) assessment and found them all recorded in the regular books of accounts. Ignoring all the details and explanation so furnished, the Id.AO arbitrarily came to the conclusion that the books of accounts of the assessee were not true and correct, and did not reflect true state of affairs of the assessee. The assessee had complied with all other prevailing rules like Sales Tax Act, and this fact has not been disputed by the AO. The Id.AO despite pointing out that there were a number of discrepancies in the accounts of the assessee, but the AO could not pointed out a single instance of the alleged discrepancy in the accounts. The assessee submitted that all the relevant details were available with the AO during the assessment

proceedings under section 143(3), but did not point out any discrepancy at that time, and accordingly, the assessment order was passed allowing the claim of the assessee. The assessee further pointed out before the Id.CIT(A) that for cash sales it was not necessary to mention the name of purchasers by any statute and only from the assessment 2013-14 it made mandatory to keep records under the Income Tax Act, where cash sale to a customer is Rs.2 or more, and therefore, there was no bad motive of the assessee to conceal the identity of the customers. Further, there was no incriminating material with the AO to justify that there was "hawala transaction". The assessee had offered income under section 132(4) of the Act to cover unrecorded transactions/ loose papers/ investments found during the search. Further, the transactions relating to bullion business could not be doubted since the AO possessed no piece of evidence contrary to the records/ books of accounts of the assessee, and therefore, invocation of section 145(3) and consequent estimation of gross is bad in law. The assessee further submitted that if a customer wants to purchase bullion from the assessee in cash, the same cannot be denied, because no law prohibits purchases through cash. The assessee had made purchase through proper channels and has recorded the same in the books of accounts as well as sales were also recorded. The cash sales have been properly recorded even though the names were not mentioned, which fact did not lead to the conclusion that accounts are unreliable and actual profit cannot be deducted therefrom. It was for the department to show that transaction in cash was contrary to the law. The assessee further pointed out that on identical facts, the assessment of the assessee for the AY 2005-06, 2006-07 and 2007-08 have been completed under section 143(3) and books results have been accepted and that too order for assessment year 2007-08 was

passed by the AO. Therefore, when all the details and explanation were before the AO, there was no justification for the AO to reject the books of accounts of the assessee under section 145(3) of the Act. To support the case of the assessee, various case laws were relied on which were mentioned by the CIT(A) at pagno.99 to 101 of his order.

57. As regards submissions of the assessee in respect of estimation of gross profit in the sale of gold and silver bar, the same can be noticed from order of the ld.CIT(A) at pageno.104 and 105. For brevity the same are reproduced as under:

*“Ground No.5 relating to addition made on account of estimation of gross profit on Silver Bars trading:-*

*The learned Assessing Officer had rejected the accounts of the appellant u/s 145(3) and estimated gross profit on sale of Silver Bars and added an amount of Rs.20,27,440/- towards low gross profit shown in the books in the total income of the appellant. Estimation of rate of gross profit was adopted by the learned Assessing Officer accepting the sales in terms of quantity as shown in the books, on the following basis :-*

*i) The appellant could not furnish any documentary evidence for cash deposit of Rs. 5600 Crores in various bank accounts, during the assessment years 2005-06 to 2011-12.*

*ii) On examination of stock register, purchase and sale records, it was observed that the sales have been booked as per his convenience. The figure of cash sales are suppressed so that the actual profit could be suppressed.*

*iii) It is noted that in significant numbers, the credit in bank accounts does not commensurate with that of sale receipt on that date. It can be said that assessee makes credit sales which is not recorded in the books on that date and subsequently on receipt of the sale realization the amount is deposited in the bank.*

*iv) From the independent market enquiries conducted with respect to the Silver bullion trading business it was found that on an average 1 kgm Silver bar was sold with a profit in the range of Rs. 500/- to Rs 800/- during the reference year. In view of the above, gross profit earned on sale of per Silver bar is determined at Rs. 800/-*

*In this regard the reply given for Gross Profit estimation in case of Gold KG Bars is equally applicable.*

*As far as merit of the Silver Bars are concerned without prejudice to the above, the learned Assessing Officer in para 9 of the assessment order, has observed*

*that 'on the market enquires, 1 Kg. Silver Bar is sold with a profit between Rs.500/- to Rs.800/- and on the basis of that he has made the addition of Rs.20,27,440/-. The learned Assessing Officer has totally lost sight of the fact that the Silver Bar is of 30 Kg. Thus, the estimate has been made 30 times more on the basis of market information which is totally unrealistic, unjustified and bad in law. The appellant has sold 3972.263 Kgm of Silver Bars in different denominations ranging between 10 Kgs. to 30 Kgs. The conversion of Kgs into Bars would come to approx. 132 bars and the profit would come @Rs.800/- per Bar to approx. Rs.1,05,600/-. The assessee has shown the gross profit ofRs.11,50,370/-. Thus, the assessee has shown more profit than estimated by the learned Assessing Officer. Complete details of purchases and sales with quantity has been maintained by the assessee and all purchases and sales are fully vouched. No estimate of profits on the unauthenticated market inquiry /report can be made without bringing any material on record that the assessee has earned the profit as estimated by the learned Assessing Officer. The learned Assessing Officer has not confronted the appellant of any enquiry made by him and assessment on the basis of such enquiry is grossly violative of the principles of natural justice. On this ground alone, the addition made is unsustainable in law. Further, the fallacy of finding recorded on the basis of such enquiry as recorded in the assessment order is already demonstrated in earlier part of this para. Here it may be worth mentioning that the day today market rate can be ascertained from the MCX Portal and from the reports of the bullion association as already submitted in common reply. Since the additions have been made on wrong calculation and on assumptions and surmises, the same deserves to be deleted."*

58. The Id.CIT(A) considered submissions of the assessee and the observation of the Id.AO, firstly held that rejection of the books of accounts of the assessee was not sustainable, in view of the fact that no specific reason or specific seized documents relevant to the year under consideration have been cited by the AO in support of the contention that the books of accounts were not correct and complete so as to reject the same under section 145(3) of the Act. He accordingly reversed the action of the AO in rejecting the books of accounts of the assessee by holding that the AO was not correct in rejecting the books of accounts. Thereafter, the Id.CIT(A) deleted additions made on account of estimation of gross profit in the transactions of sale of gold and silver bar, mainly on the ground that estimation done by the AO on the basis of some independent market enquiries conducted to presume the profit on the impugned transaction, but the AO has not placed on record any such report nor

confronted to the assessee. Accordingly, the ld.CIT(A) relying on the order of CIT(A)-I, Indore in the case of Shri Omprakash Dhanwani that the inference of the AO on the basis of market enquiry was not factually correct, and hence method adopted by the AO was defective and faulty. In this view of the matter, the ld.CIT(A) rejected the estimation done by the AO and deleted the impugned additions in the transactions of sale of gold and silver bars.

59. Against this action of the ld.CIT(A), Revenue is now before the Tribunal.

60. Before us, the ld.DR supported order of the AO, while the ld.counsel for the assessee relied on the order of the CIT(A) and reiterated the submissions as were made before the lower authorities. He further submitted that books of accounts are rejected by the AO on some hypothetical ground that the sale of the assessee was made in cash and thus the books are manipulated. It is submitted that the gold is a precious item and the prices are fluctuated every day. The assessee purchased gold from the banks and big traders and sold the same on the same day or within a couple of days. Normally huge stocks are not maintained. The prices are verifiable from the international portal exchange data website, MCX data and sarafa reports. The sale price can be verified from the said data. The AO has not pointed out any instance that the assessee has sold the commodity at a lesser price than shown in the portal. Merely, on assumption that huge cash sales have been made and no names are mentioned in the bills, the AO concluded on surmises and conjectures that the sales are manipulated. He further submitted that the additions are made only on whims and conjectures without any specific reason or without pointing out a single instance that the assessee has sold the goods at lesser price. Since all the purchases

and sales are fully vouched and the assessee has maintained complete records with day-to-day stock registers, which were audited and were available for verification, no estimation can be made by rejecting the books of accounts. The ld.counsel for the assessee heavily relied on the judgment of Hon'ble High Court MP (Indore Bench) in the case of Pr.CIT Vs. Shri Omprakash Dhanwani, (2018) 33 ITJ 854 (MP) wherein the Hon'ble High Court dismissed the appeal of the Revenue on similar issues and the facts in the present case are also identical. He therefore prayed to confirm the order of the ld.CIT(A) on this issue.

61. We have gone through findings of the authorities below in the light of submissions of the parties made before us. The question before us is whether the ld.CIT(A) correct in reaching to the conclusion that the AO was not correct in rejecting the books of accounts and thereby estimating the gross profit on the sale of gold and silver bar. The basis for the AO for rejecting the book results was that in the case of the assessee for the assessment year 2005-06, wherein certain documents seized during the course of search were referred to. The ld.CIT(A) found that these seized documents including pen-drive, which the ld.AO relied on for rejection of book results, were not at all related to the year under consideration. The ld.CIT(A) further went on to record that even as per the AO himself these documents did not pertain to the bullion business of the assessee but to the telecom business of the assessee, and therefore, it could not be held that the books of the bullion could be rejected on the basis of the said documents. The other reasons attributed by the ld.CIT(A) is that there was no specific reasons or specific defects pointed out to the year under consideration. Even before us also, there was no strong and sufficient reasons to indicate that the accounts unreliable not to speak of any cogent evidence to indicate that accounts are unreliable. No doubt, as we find from the record, the assessee has furnished all the relevant

details and documents in the assessment framed under section 143(3), and the AO considered and accepted the same, and thereafter passed assessment order, and at no point of time the book results have been rejected earlier. We are of the view that the AO has formed his own view on the basis of conjectures and surmises without bringing any evidence on record, and therefore, we find that Id.CIT(A) has rightly found no merits on the action of the AO in rejecting the books of accounts of the assessee under section 145(3) of the Act.

62. So far as estimation of gross profit is concerned, we find that the Id.AO made this estimation on the basis that the accounts are not reliable and based on some independent market enquiry conducted by him. According to such enquiry, on an average 100 gram gold profit ranges anywhere between Rs.2200/- to Rs.2700/- and in the case of silver bar profit was between Rs.500/- to Rs.800/-He was therefore of the view that no prudent businessman in this line of business would risk his business at low profit margin of Rs.297.93 per 100 grams of gold and R.289.60 per kg of silver bar on sale. However, the Id.CIT(A) found that no such independent market enquiry report was placed on record, nor the same was confronted to the assessee. The relevant finding of the Id.CIT(A) recorded on page no.136 and 137 of his order on this issue is worth note, which we reproduce hereunder:

*“From the appraisal of the material on record, the observations of the AO in the case of the appellant for the A.Y. 2005-06 and the year under consideration and the findings of the CIT(A)-I in the appeal order in the case of Shri Omprakash Dhanwani, in whose case also additions on similar lines have been made, it is evident that the rejection of the books of accounts and the concomitant estimation of GP has been made by the AO in the case by holding that the books were not reliable in view of the independent market enquiry and the observation that in cash sales names of purchaser was not mentioned and the detailed information called by the AO in the prescribed format was not submitted as also the remark that credit sales were not entered the same day/ As regards the independent market enquiry the CIT(A)-I Indore in the case of shri Omprakash Dhanwani has already given a finding*

of fact that there is no detail of such enquiry on record and further the inference drawn was also factually incorrect. The facts in the case of the appellant are identical and hence following the observations in the case of Shri Omprakash Dhanwani the rejection of the books of accounts and estimation of profit on the basis of such enquiry cannot be sustained/a Further as regards the comparable case of Shri Dhanwani is concerned there is one vital factor which distinguishes the case of Shri Dhanwani from that of the present appellant. In the case of the appellant there is no specific reference to documents showing any suppression of sales for the year under consideration. All the documents to which reference has been made in the order for A.Y. 2005-06 do not pertain to this year as has already been pointed out above. Further another distinguishing factor is the volume of turnover. In the case of Shri Omprakash Dhanwani as per the order of CIT(A)-I Indore the turnover (Gold Bullion) for the year under consideration is Rs. 229626230/- as against the total turnover of Rs.6820838892/- shown by the appellant. The appellant has shown GP of 0.32% on the said turnover as against the GP of 1.39% shown in the case of Shri Dhanwani. It is thus not comparable simply on account of the volumes involved.

It is further to be noticed that in the case of Shri Dhanwani the GP% shows drastic variation from a high of 1.56% in A.Y. 2007-08 to 0.10% in A.Y.2011-12. On the contrary in the appellant's case there is no such steep variation for the year under consideration in the GP% as is evident from the chart below as far as gold bullion is concerned and as regards the silver bullion the GP % is more or less in tune with the volume of turnover for the under consideration, in fact it has gone up in the year under consideration.

GOLD		SHRI KESHAV KUMAR NACHANI	
2005-06	8239903655	42921311	0.52
2006-07	8189090872	20116214	0.25
2007-08	9487530171	35659116	0.38
2008-09	6820838892	21633405	0.32
2009-10	8871028180	17539275	0.20
2010-11	12945160672	28725838	0.22
2011-12	7753052561	35213982	0.45
SILVER		SHRI KESHAV KUMAR NACHANI	
2005-06	30865001	187361	0.61
2006-07	294025464	893064	0.30
2007-08	118834934	1353327	1.14
2008-09	69877047	1150370	1.65

2009-10	14847538659	4576593	0.31
2010-11	22571779	46912	0.21
2011-12	67563897	278200	0.41

*Considering the above facts of the case the rejection of books of accounts is not sustained and the additions of Rs.17,44,21,546/- and Rs.20,27,440/- being estimation of gross profit on sale of gold and silver bullion respectively by resorting to the provisions of section 145(3) are directed to be deleted. These grounds of the appellants are therefore allowed.”*

63. In view of the above finding and observation of the Id. CIT(A) and, we do not find any legal or factual infirmity in the order of the Ld. CIT (A) to interfere with, more so, when his conclusion was arrived at after considering the judgment of Hon'ble Madhya Pradesh High Court in the case Shri Omprakash Dhanwani (supra). Hence, we uphold his findings on this issue, and dismiss the above grounds of appeal of the Revenue.

64. In the result, the appeal of the Revenue for Asstt. Year 2008-09 is dismissed.

65. Now we take Revenue's appeal in the case of Shri Keshav Nachani in IT(SS)A.No. 170/Ind/2016 for Asstt. Year 2009-10.

66. In Ground no.1 and 2, the Revenue is aggrieved by the action of the Id. CIT(A) in restricting protective addition of Rs.22,64,81,571/- to Rs.7,01,42,108/- and deletions of addition of Rs.75,00,000/- and Rs.25,00,000/- on account of unexplained cash credit. These grounds read as under:

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by restricting the addition of Rs.22,64,81,571/- up to Rs.7,01,42,108/- and by deleting the addition of Rs.75,00,000 as well as Rs.25,00,000/- by wrongly taking the peak of all entries when there was no such proof to establish the link that all entries are out of same sum of money.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by accepting the mala fide attempt of assessee to relate all unaccounted income derived from seized material in group cases to its undisclosed income offered in search proceedings.”*

67. At the outset, we note that the facts and issues narrated in the orders of the Revenue authorities in the year i.e. A.Y. 2009-10 are similar to the facts in the previous Asstt.Year 2008-09 which we have considered and decided in the foregoing paragraphs. Even the ld.CIT(A) in the impugned order under consideration has noted that facts for the year under consideration are identical to the facts prevailing in the A.Y. 2008-09 in the case of the assessee. This proposition of facts has not been disputed by both the parties before us. Still, however, we would discuss hereinbelow short facts and the pleadings of both the parties, in the present year for the sake of convenience and for adjudicating the above grounds.

68. During the course of search, a pendrive was seized in the name of Kamal Kumar Nachani from the premises of M/s.C21 Malls P.Ltd. at 263 Orbit Mall wherein Shri Keshav Kumar was one of the directors. This pen-drive contained tally accounts in the names of “Bhopal Hosangabad” and “bm”. Besides, folders in the pen-drive contained tally data of C21 Mall P.Ltd., Globus Telecom Ltd. and softcopy of sale invoices issued by M/s.General Electronics Ltd. and Globus Telecom Ltd. were also found. According to the search team, this pen-drive also contained some DBF in the name of RJSNRS.DBF, which was daybook related to tally data in the name of “bm”. Other files scrutinized by the search team was 21b/RJNRS.DBF, which contained unaccounted and accounted data of C-21 Malls P.Ltd. In a statement under section 131, Shri Keshav Kumar Nachani had confirmed that the folder with the name “21b” was the account of C-21 Malls P.Ltd. The AO was of the view that the folder “21b” was the books of the accounts of M/s.C-21 Mall P.Ltd. and cash entries

therein contained unrecorded cash receipts including of Kamal Nachani (debit entries) The assessee was asked to explain the contents of two folders viz. "bm" and "21b" folders and also produce cash and bank books for the period mentioned in the data, and in case of failure of satisfactory explanation, contents of the entries would be presumed to be undisclosed income of the assessee. Shri Kamalkumar Nachani in his statement stated that the impugned pen-drive belonged to his father Keshav Kumar Nachani (assessee herein). Shri Keshav Kumar Nachani has in his statement dated 27.11.2012 admitted that the records relating to cash entries found in the subject pen-drive with the name "kamal" apart from other names also belonged to him. Accordingly, Shri Keshav Nachani in his submission dated 3/12/2010 has also surrendered Rs.15 crores as his undisclosed income towards discrepancies found during the course of search including the impugned pen-drive. On examination of the pen-drive in the name of "kamal" which contained day book in which there were unaccounted and accounted data of C-21 Malls P.Ltd. the ld.AO noted cash entries in the name of Kamal Nachani being Rs.50.00 lakhs and Rs.25.00 lakhs dated 3.6.2008 and 31.7.2008. These cash amounts, as explained by Shri Kamal Nachani to be of his father Keshavkumar Nachani, which the latter had admitted in his statement dated 27.11.2012. Therefore, the ld.AO made an addition of Rs.75,00,000/- on substantive basis in the hands of Shri Keshav Nachani (present assessee) and Rs.75,00,000/- as addition in the case of Kamal Nachani on protective basis.

69. So far as addition of Rs.25,00,000/- in the hands of the assessee are concerned, the ld.AO noted that peak working furnished by the assessee did not reflect certain *jama* entries mentioned in page no.56 of LPS 1/1/1 seized during the search, pertained to day book of '21b/RSJRN.dbf' folder containing unaccounted transaction of C-21

Malls P.Ltd. These entries were of dated 6.9.2009, 9.2.2009 and 11.2.2009 for R.10.00 lakhs, Rs.6.00 lakhs and Rs.9.00 lakhs respectively totaling Rs.25.00 lakhs. Since the assessee has accepted that these documents belonged to him and offered Rs.15 crores towards surrender income, therefore, the AO added an amount of Rs.25.00 lakhs in the hands of the assessee.

Regarding protective addition of Rs.22,64,81,571/- the same was made based on the finding of the ld.AO for the Asstt.Year 2008-09, which were discussed by us while dealing with the case of the Revenue for the Asstt.Year 2008-09. Therefore, there is no necessity for us to repeat the factual situation for making this protective addition by the AO.

70. Aggrieved by the action of the AO, the assessee went in appeal before the ld.CIT(A).

71. Before the ld.CIT(A) the line of arguments were similar to the arguments made for the Asstt.Year 2008-09. In sum and substances, the assessee's pleadings were that no incriminating documents were found and/or seized related to the assessment year under consideration; that addition of Rs.22,64,81,571/-, Rs.25,00,000/- and Rs.75,00,000/- were made under section 68 of the Act without any reference to incriminating materials as the assessment in question was concluded assessment (unabated assessment) as to substantiate the impugned additions and therefore beyond the purview of provisions of section 153A and 153C of the Act; that all the relevant details and information required by the AO during the 153A proceedings were already furnished and were also there in the record of the regular assessment; that the assessee was having substantial control of the business activities and all the activities and brief records

in the form accounting data were maintained in one computer system; that all the transactions related to any of the activities, either recorded or unrecorded and the information regarding fund rotation required for various business activities were all reflected in the same folder in the computer system; all the accounting transactions including funds requirements of the business were being managed and arranged by the assessee in various names as per the requirements of the business; that this being so, the assessee categorically owned up all such transactions either by way of credits or debits as of him and to buy peace and to avoid multiplicity of legal proceedings voluntarily offered Rs.15 crores under section 132(4) as undisclosed income; that addition of crores of rupees has been made in the hands of the assessee without there being found any concrete material evidences during the search action. The ld.AO has not pointed out any diversion of funds for making investments during the assessment proceedings; that all debit and credit entries in cash appear under various heads, and all these names were fictionalized names shown by assessee; that the credit entries represented the amount received by the assessee under those fictitious names; and the debit entries were in respect of cash deposited and various advances given in *Tijori* account; that the since the assessee owned up all the transactions contained in the pen-drive, he had prepared a daily book of debits and credits and worked out peak credit in these accounts, and offered the peak amount as income of the assessee. The assessee had submitted that considering overall of facts and circumstances of the case, he offered incomes in different assessment years, being peak credit of each year as under:

A.Y. 2008-09	:	Rs.3,50,00,000/-
A.Y.2009-10	:	Rs.5,50,00,000/-
A.Y. 2010-11	:	Rs.5,00,00,000/-
A.Y. 2011-12	:	Rs.1,00,00,000/-

It was further submitted that the assessee had explained all the unrecorded entries and owned up the same offered the same in his hands; the assessee further submitted that since the assessee could not explain each and every transaction of unrecorded entries, only way to determine the real income was by determination of peak entries, which the assessee had offered; that the AO had made multiple additions viz. (i) once on account of saleable consideration; (ii) on account of alleged money being booking deposits received, and (iii) on account of the money received and used by the assessee for his business. Ironically, the AO had also added the amount incurred for expenses which were recorded, were also considered as income out of funds received and treated income. Thus, the ld.AO on surmises and conjectures made multiple additions by adding all the transactions of debits and credits together and made addition of Rs.24,64,81,571/- without appreciating and considering the peak credit worked out by the assessee.

In so far as separate addition of Rs.75,00,000/- being the credit appearing in the name of "kamal", the ld.AO made this addition because the assessee had owned up this account. However, the ld.AO did not consider the fact that the said amount already included and/or formed part of the protective addition of Rs.24,64,81,571/-, thus the assessee submitted that the action of the AO tantamounted to double addition. Similarly, as regards addition of Rs.25,00,000/- being the amount of entry found recorded in LPS-1/1/1 Page No.52,54 & 56, wherein all such entries were related to data found recorded in the folder 21B, the assessee submitted that making a separate addition on this count resulted in double addition of the same amount, which was not allowable in law.

71. After considering elaborate submissions of the assessee and considering the order of the AO and his remand report, the Id.CIT(A) relying upon his observation and findings in the case of the assessee for A.Y.2008-09, restricted the addition on account of peak credit to the extent of Rs.7,01,42,108/-. Further, the Id.CIT(A) also deleted other two additions of Rs.75,00,000/- and Rs.25,00,000/-, because, he found that the same were already included in the working of the peak credit, and therefore, formed part of addition of Rs.7,01,42,108/-. Aggrieved, Revenue is now before the Tribunal.

72. At the time of hearing before us, the Ld. DR pointed out that the observations made by the AO in the assessment order have been ignored by the Ld. CIT(A) and based on the submissions of the assessee, he has given relief to the assessee which is not justifiable in the facts and circumstances of the case. He accordingly prayed to set aside order of the Id.CIT(A) and restore that the AO.

73. The Id.counsel for the assessee on the other hand, submitted that his contentions are more or less in line with the elaborate pleadings made before the lower authorities. Therefore, he reiterated the same and since the Revenue was unable to dislodge the finding of the Id.CIT(A) with some convincing material proof, he prayed that order of the Id.CIT(A) on this issue may be upheld, and the grounds of the Revenue be rejected.

74. We have perused the case records and heard the rival contentions. We find that the AO has made three additions viz. (i) protective addition of Rs.22,64,81,571/- being the total of all the entries found recorded in DSC/DBF files as per '21B' folder,(ii) substantive addition of Rs.75,00,000/- being the entries recorded in the name of "kamal" as per the ledger account found in '21B" folder;

and (iii) substantive addition of Rs.25,00,000/- being transactions found recorded on the seized paper being LPS-1/1/1 Page No.52, 54 and 56. This issue, we find, similar to the issue, which we discussed and dealt in the foregoing paragraphs of this order, while dealing with the case of the assessee in the Asst.Year 2008-09, where we rejected the grounds of the Revenue, and uphold the order of the Id.CIT(A). Further, we note that the Id.CIT(A) in the impugned, while dealing with this issue, has concluded by holding in para 9.2 (page no.51) that the facts for the year are identical to the facts prevailing in the A.Y.2008-09 in the case of the assessee, and accordingly decided the issue in favour of the assessee. The relevant finding contained in page no.50 and 51 of the Id.CIT(A) is as under:

*“9. Ground Nos.4(a, b & c): By these grounds the appellant has disputed the addition of Rs. 7500000/- being entries in the name of Kamal & protective addition of Rs.226481571/- being transactions recorded in the folder 21B/RSJNRS.DBF in the Rahul pen drive found and seized from 263 Orbit Mall Indore and inventorised as BS-1/1/L And the addition of Rs.2500000/- being entries in page 56 of LPS-1/1/1 which represented unaccounted transactions and were found to be not included in the peak working on the basis of which the appellant had surrendered the amount of Rs.15 crore.*

*9.1 The detailed facts of the case pertaining to the above disputed additions as per the assessment order are reproduced at Para No. 2 page 5 to 9 above and the detailed submissions of the appellant on the merits of the issues are reproduced at Para No. 3 page 20 to 29 above. The remand report of the AO and the comments of the appellant are reproduced at Para No. 4 above.*

*9.2 The facts for the year are identical to the facts prevailing in the A.Y. 2008-09 in the case of the appellant. The issue has been discussed in detail in the case of the appellant by the CIT(A)-I Indore in the order for the A.Y. 2008-09 while adjudicating ground nos. 4(e & f). In view of the detailed discussion on the issue in the A.Y.2008-09 for this year also it is held that the transactions relate to the appellant and not the company. These are therefore to be considered on substantive basis in the hands of the appellant and not in the hands of the company. The appellant has therefore to be considered as the beneficiary of the said transactions in the light of the circumstantial evidence on record and not only on his own admission alone. The entries in the pen drive clearly establish rotation of the funds and therefore appellant is eligible for benefit of such rotation in the form of working of the peak accordingly, the AO is directed to restrict the addition to the extent of peak amount worked out for each year. For the -year under consideration the peak has been worked out at Rs. 70142108/- and hence the addition of Rs. 22,64,81,571 /- is directed to be restricted to Rs. 70142108/- which is to be taken on*

*substantive basis in the hands of the appellant. As the appellant has already offered an amount of Rs.55000000/- on account of such peak the addition sustained for the year comes to Rs.15142108/- (Rs.70142108/- (-) Rs.55000000/-).The appellant gets relief of Rs.211339463/- on this count.*

*9.3 As regards the addition of Rs. 7500000/- which has been made on protective basis in the hands of Shri Kamal Nachani and on substantive basis in the hands of the appellant no separate addition is called for as the amount is included in the working of the peak and therefore forms part of the addition of Rs. 70142108/- confirmed on substantive basis in the hands of the appellant. The addition of Rs.7500000/- is therefore directed to be deleted.*

*9.4 Similarly as regards the addition of Rs. 2500000/- based on the entries in the LPS-1/ 1/ 1 Page 56 the said entries have been also incorporated in the working of the peak and hence in view of the addition" of Rs.70142108/- confirmed in appeal on the basis of the peak worked out no separate addition is called for as the amount of Rs.2500000/- is now forming part of the addition of Rs.70142108/-. The addition of Rs.2500000/- is therefore directed to be deleted.*

*9.5 These grounds of the appellant are therefore partly allowed.*

Even the ld.DR was not able to controvert this finding of the ld.CIT(A) so as to force us make re-look on the decision of the ld.CIT(A). The assessee has filed a detailed explanation during the appellate proceedings, the ld.CIT(A) has reproduced the same in his impugned from page nos.20 to 29, merit of which has not been repelled by the ld.DR before us, so as to make a different conclusion other than that of the ld.CIT(A). Therefore, basing our conclusion made in the Asstt.Year 2008-09 for the similar, we do not find any error in the order of the ld.CIT(A) on this issue, which we confirm, the ground of the appeal of the Revenue is accordingly dismissed.

75. Next ground nos.3 to 4 related to addition of R.72,50,400/- as unsecured loans on account that necessary proofs thereof were not furnished. These grounds read as under:

*"3. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.72,50,400/- by ignoring the settled principle of law that primary onus to prove identity, creditworthiness of creditor and genuineness of transaction is on assessee and not on assessing officer.*

*4. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs. 72,50,400/- by ignoring the fact that the assessee failed to furnish the required documents for proving the identity of lender.*

76. Brief facts of the case are that the assessee is a proprietor of M/s.M.P.Bullion. On verification of balance-sheet of Indore Bench of the said firm, it was revealed to the AO that the assessee has taken unsecured loan of Rs.72,50,400/- from Akshar Entertainment Pvt.Ltd. AO sought the assessee to establish identity and credit-worthiness of the creditors with proof. Since the assessee failed to furnish any documents in respect of the creditor, the AO treated the said amount as unexplained income under section 68 of the Act and added the same to the income of the assessee. In appeal, assessee had submitted that the impugned loan was taken from the said party through banking channel; that bank statements were found during the search to that effect; that in response to the notice under section 133(6) the creditor had furnished copy of ledger account of the assessee as appearing in their books of accounts, copy of income-tax returns, copy of bank statement; and vide letter dated 17.10.2012, the said creditor company has categorically accepted the impugned loan transactions; and that copies of all the above documents were also available with the AO during the assessment proceedings, and therefore, the addition made without any incriminating documents was bad in law. The Id.CIT(A) considering the contentions of the assessee, and perusal of copies of documents relied upon by the assessee found that since the impugned transaction was entered through banking channel, copies of the bank statement was available and the creditor was assessed to tax, and since no adverse inference was brought on record, the impugned transactions could not be doubted, and accordingly he deleted the addition. Not satisfied with

direction of the ld.CIT(A) doubt the impugned transaction, the Revenue is in appeal before the ld.CIT(A).

77. Before us, the ld.DR supported the order of the AO, while the ld.counsel for the assessee supported the order of the ld.CIT(A). The ld.counsel for the assessee further submitted that the assessee had filed confirmation of the creditor along with balance sheet to establish his case that the loan was genuine. It is further submitted that this is a non-abated assessment and no incriminating material has been found in respect of the impugned loan. Therefore, the ld.CIT(A) was right in deleting the addition made by the AO. He therefore requested to maintain the impugned order.

78. Having heard both the parties, perused the orders of the Revenue in the light of the material available on record, we find that no error can be attributed to the order of the ld.CIT(A) on this issue, because he found that all the relevant documents viz. bank statements, copy of confirmation, etc. were furnished, and the fact that impugned loan transaction was channelized through bank, and the creditor was assessed to tax. Before us, the ld.DR has not disputed this factual finding of the ld.CIT(A) with some material proof, and therefore, we are not inclined to deviate from the finding of the ld.CIT(A) on this issue, which is accordingly confirmed, and this ground of appeal of the Revenue is dismissed.

79. Now in the remaining grounds of appeal, i.e. Ground Nos.5 to 10, the Revenue is aggrieved by the action of the ld.CIT(A) against rejection of books of accounts by the AO, and consequent deletion of addition on account of GP estimation on the sale of gold and silver bars. These grounds read as under:

*“5. Whether on the facts and in of the case, the Hon'ble CIT-(A) has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, holding that incriminating documents which formed the basis of rejection do not belong to A.Y.2009-10.*

*6. Whether on the facts and in of the case, the Hon'ble IT AT has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring the findings other than those which were based on incriminating documents, of assessing officer in the assessment order of A.Y.2005-06, which formed the basis of rejection of books of accounts.*

*7. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, without giving any contrary findings against those of Assessing officer.*

*8. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring an important statement of Shri Shilu Mishra which substantiate the modus operandi of assessee as pointed out by the assessing officer.*

*9. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts , by not considering the fact that all findings and inquiries in the assessment order and all seized documents or statements which formed the basis of rejection of books by the Assessing officer are to be looked into totality.*

*10. Whether on the facts and in of the case, the Hon'ble ITAT has erred in law by directing to accept the book results for the assessment year 2009-10 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by wrongly distinguishing the case of Shri Om Prakash Dhanwani, as the books rejection were confirmed by ld. CIT(A) in that cases on the basis of many similar findings as in case of assessee.”*

80. At the outset, the ld.counsel for the assessee submitted that the ld.AO rejected the books of accounts and determined profit at Rs.4,000/- per 100 grams of gold bar and Rs.1000/- per kg of silver bar, based on some independent inquiry, details of any report thereof was never confronted to the assessee during the assessment proceedings. Further, the assessee has maintained complete books of accounts with quantitative details and the day-to-day stock register. No defect has been found in these books of accounts except the observation that the names of the parties on the sale bill were not mentioned. Further, complete purchases and sales were fully vouched and all the entries are verifiable and the rate of sale are also verifiable on the international portal and reports of *sarafa* market. The ld.CIT(A) deleted the impugned additions on the same reasons as given in the appellate order for the Asstt.Year 2008-09 with the observation that rejection of books of accounts and estimation of profit on the basis of independent market inquiry could not be sustained. The ld.CIT(A) further observed that for the year under consideration also there were no documents showing any suppression of sales and all the alleged documents reference to which made in the order in A.Y. 2005-06 did not pertain to the present year, and therefore, resorting to invocation of provision of section 145(3) and consequent estimation of gross in respect of gold and silver sale was without any base and substance and such action did not sustain in the eyes, and hence stood deleted.

81. On due consideration of the facts and circumstances, and also perusal of orders of the Revenue authorities passed in the earlier year, we find that issues and facts revolve around similar facts. Further, similar issue for the Asstt.Year 2008-09 was dealt with by us in the foregoing paragraphs of this order, wherein both rejection of book of

accounts and estimation of gross profit by the AO were unjustified and hence, we confirmed the order of the ld.CIT(A). Therefore, when on the similar facts and circumstances prevailing in present assessment year vis-à-vis the facts and circumstances of the earlier assessment years, then the decision taken in the earlier years should match with decision of the present assessment year. In other words, decision in the present year also should be on the similar line which was taken by us in the earlier assessment year, more so, when the ld.DR was unable to pin out any distinguishing factors in these two assessment years. Therefore, we have no option, but to confirm the impugned order of the ld.CIT(A) on this issue. Thus, the above grounds of appeal stand rejected.

82. In the result, appeal of the Revenue in IT(SS)A.No.170/Ind/2016 is dismissed.

83. Now we shall deal with the assessee's cross objections bearing CO Nos.46 and 47/Ind/2016 for the Asstt.Years 2008-09 & 2009-10 filed in the above two appeals of the Revenue.

84. As the assessee supported the order passed by the ld.CIT(A) in Revenue's appeal and no further submission is made in regard to the cross-objections filed by the assessee, the same are accordingly dismissed.

85. Now, we shall take up the Revenue's in ITA No.24/Ind/2017 in the case Keshavkumar Nanchani for the Asstt.Year 2010-11.

86. By way of Ground no.1 to 3, the Revenue challenges the action of the ld.CIT(A) in restricting the additions of Rs.1,71,75,000/-; Rs.6,00,00,000/-; Rs.15,83,14,800/-; Rs.15,66,11,135/- and

Rs.25,04,01,313/- to Rs.13,36,284/-. These three grounds read as under:

1. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by restricting the addition of Rs.1,71,75,000/-, Rs.6,00,00,000/-, Rs.15,83,14,800/- Rs.15,66,11,135/- & Rs.25,04,01,313/- up to 13,36,284/-.*
2. *Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by restricting the addition of Rs.1,71,75,000/-, Rs.6,00,00,000/-, Rs.15,83,14,800/-,Rs.15,66,11,135/- & Rs.25,04,01,313/- up to 13,36,284/- by taking the peak of ail entries when there was no such proof to establish the link that all entries are out of same sum of money.*
3. *Whether in the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by accepting the malafide attempt of assessee to relate all unaccounted income derived from seized material in group cases to its undisclosed income offered in search proceedings.”*

87. Briefly stated facts are that the above additions are made by the AO based on data contained in the pendrive seized during the search action on 25.11.2010. In the search proceeding, the assessee has surrendered Rs.15 crores as undisclosed income, and out of which Rs.5,00,00,000/- was disclosed as income under section 132(4) in response to the 153A assessment for A.Y.2010-11. The assessee, Shri Keshavkumar Nanchani had confirmed that the folder name “21b” was the account of C-21 Malls P.Ltd. The tally accounts in the names of “Bhopal Hosangabad” and “bm” contained certain debit and credit entries in the name of “kamal” for the period 1.4.2008 to 31.3.2011 and 1.4.2011 to 31.3.2012. The data extracted from such tally accounts was noted by the AO in his order, which was also reproduced by the Ld.CIT(A) in his impugned order at page nos.8 to 9. When the AO sought the assessee explanation for cash entries in the “kamal”, it was explained that cash credit entries totaling to Rs.2,95,00,000/- appearing in the books of Bhopal Hosangabad were mere journal entries, and mere books, and there was no actual receipt or payment of funds, and even that no project in the name of Bhopal Hosangabad was commenced till the date of search. Further, Shri Kamal Nanchani explained whatever funds being found credited in his name, the same were belonged to his father Keshavkumar Nanchani, and he had admitted the same in his statement dated 27.11.2012 and he

surrendered a sum of Rs.15 crores being undisclosed income. Similarly explanation was made by the assessee with regard to the unrecorded cash entries Rs.6,00,00,000/- in the data of C-21 Malls P.Ltd. in the name of "kamal". Dissatisfied with the explanation of the assessee, the ld.AO made substantive additions of Rs.1,71,75,000/- and Rs.6,00,00,000/- in the hands of Shri Keshavkumar Nanchani and equal additions on the hands of Kamal Nanchani on protective basis. Detailed submissions of the assessee and the decision of the ld.AO are reproduced by the ld.CIT(A) at page nos.6 to 9 of the impugned order.

88. As regards addition of Rs.15,83,14,800/-, the same was made on the basis of pendrive seized during the course of search at 263,Orbit Mall, Indore. This pendrive contained certain documents pertained to the assessee, Shri Keshankumar Nanchani, director of Globus Mega Project P. Ltd. The AO noticed frequent circulation of funds from banks among the accounts individuals who were closely related to the assessee. In the proceeding, the assessee has admitted that the 'bm' account was the account of M/s.Globus Megha Projects P.Ltd. ("GMPPL") The AO further noted that the assessee in his statement dated 21.1.2011 (search after PO revocation) had surrendered Rs.13.5 crores as his income from undisclosed sources and Rs.1.5 crores on account of Globus Megha Project P. Ltd. on account of incriminating material found in pen drive though subsequently the assessee rendered Rs.15 crores in his own hands. During the survey operation on 25.11.2010 at 176, M.P. Nagar Bhopal in the case of Globus Homes P,ltd., Globus Housing, C21 Malls P.Ltd. some documents related to Globus Megha Projects were impounded. It was also found that some of the bills/invoices, cheque payments related to Globus Megha Projects have been entered in 'bm' tally accounts. Further, during the course of assessment proceedings on

examination of the bank statement, it was found that the "GMPPL" also maintained bank account with IndusInd Bank, which was also confirmed from 'bm' account. On further examination of the audited accounts, it was revealed to the AO that the "GMPPL" accounted only cheque transactions and no cash received was recorded. All these details were noted by the AO in the order, and reproduced by the CIT(A) in his impugned order in page nos.18 to 19. The AO accordingly required the assessee to produce cash book and bank book alongwith detailed explanation of each entry. Further, on the basis of cash book available from 'bm' tally account that there was negative cash balance of (-) Rs.5,55,44,500/- for the period 31.5.2009 to 22.8.2009, however, there was no opening balance or cash deposits. Therefore, the AO construed that the assessee has made various cash payments to various parties, but the same was not recorded in the books of the "GMPPL". Therefore, the AO show caused the assessee as to why this amount should not be added to the total income of the "GMPPL". On examination further, the AO found during the period 1.4.2009 to 31.3.2010 total amount of Rs.10,27,70,200/- have been deposited by various persons and customers of the company and first cash was deposited on 23.8.2009, and therefore, the AO construed that the amount of Rs.5,55,44,500/- has not been spent out of Rs.10,27,70,200/- fund so deposited. Since this amount of Rs.10,27,70,200/- was also not found recorded in the regular books of accounts, the AO show caused for adding the same to the total income of the "GMPPL". The "GMPPL" was also received another cash of Rs.7,04,64,097/- and the "GMPPL" was accordingly show caused for the inclusion of the same in the total income. The assessee-company denied that the pendrive accounts or data seized from the premises of Shri Keshav Nanchani was that of the "GMPPL"; that the statement of Rahul Neema, who was stated to be employees,

was incorrect and was never employee of the “GMPPL”; that Shri Keshavkumar Nachani was also not director of “GMPPL” and has no business to maintain books of accounts of the company; the “GMPPL” also denied contents of the data in the pendrive as that of the “GMPPL”; that Shri Keshav Nanchani himself admitted and accepted that the contents of the pendrive were all belonged to him, and therefore, surrendered a sum of Rs.15 crores as his undisclosed income; that those alleged documents and pendrive were not traced or seized from the premises of the “GMPPL” or its registered office, and therefore, any papers or documents seized outside the premises of unknown persons, could not directly be imputed to that the “GMPPL”; that the accounts of the “GMPPL” were audited; that there was no material with the Department to demonstrate that the data contained in the pen-drive was that of the “GMPPL”, therefore, no addition in the hands of “GMPPL” is justified. So far as negative cash balance and the alleged subsequent deposits of cash are concerned, the “GMPPL” totally denied that the same because there was no corroborative evidence with the Department to prove the same. It was further explained by the assessee that any alleged documents, entries or books belonged to the “GMPPL” as claimed by the Department, is without any base or substance, and therefore, no addition should be made.

89. After considering the explanation and submissions of the “GMPPL”, the Id.AO found the same to be unacceptable various documents seized during the search action were directly related to the “GMPPL”; that even Shri Keshavkumar Nanchani has in his statement admitted that the ‘bm’ account was related to “GMPPL”; that the employee of the “GMPPL” has admitted that he has entered the data of Globus Green Acre project of the “GMPPL”; that Shri Kamal Kumar Nachani the director of the company has also categorically

admitted that Keshav Nanchani was also used to maintain the accounts of the “GMPPL”; that the customers of the project of the “GMPPL” also admitted the payment made in cash. The AO has noted explanation of some of the customers in his assessment order, which was also reproduced by the Id.CIT(A) in his impugned order at page nos.25 to 30. The Id.AO accordingly made an addition of Rs.15,83,14,800/- (Rs.10,27,70,200/- plus Rs.5,55,44,600/-)

90. As regards protective addition of Rs.15,66,11,135/-, the same was based on the data available in the file folder 21b/RSJNRS.DBF contained in the seized pen-drive, from where the AO extracted data and recorded in Annexure-B containing 34 pages. From where, the separate unrecorded and recorded transaction as found in the folder file21b/RSJNRS.DBF, and based on that he prepared a table showing unrecorded cash receipts as under:

Sr.No.	A.Y.	Total of unaccounted receipts as separated from the bank transaction found in folder 21b/RSJNRS.DBF
1.	2008-09	20,66,81,265
2.	2009-10	22,64,81,571/-
3	2010-11	15,66,11,135/-
4	2011-12	5,87,60,300/-

The AO on the basis of reasoning given in the assessment order for A.Y.2008-09 in the case of the assessee and also in the case M/s.C-21 Mall P.Ltd. added amount of Rs.15,66,11,135/- as protective addition in the hands of the assessee.

91. Another addition made by the AO is on account of unrecorded cash received of Rs.25,04,01,313/-. This addition is based on day book contained in the ‘bm’ tally book found in the pen-drive seized. He noticed that mismatch in the cash entries mentioned in the tally

cash book and day book. The ld.AO segregated the cash entries appearing in 'bm' tally cash book for F.Y.2009-10 and the cash entries appearing day book. As a result, out of total cash deposit of Rs.33,37,98,513 received during FY 2009-10, amount of Rs.8,33,97,200/- found recorded in tally cash book, and the remaining amount Rs.25,04,01,313/- remained unrecorded, which the AO construed that these unrecorded cash deposits amount related to "GMPPL" and other projects also. According to the AO, since the assessee has not submitted specific explanation with respect of these cash entries, he made an addition of Rs.25,04,01,313/-.

92. All these additions made by the AO were challenged before the first appellate authorities. After examining detailed submissions of the assessee, and considering the order of the AO, the ld.CIT(A) found the above additions were made on the basis of identical facts and interpretations of the data found in the Rahul Pen drive, which was discussed in detail in the order of the ld.CIT(A)-1, Indore in the case of the assessee for Asst.Year2008-09. The observation made therein, was substantially reproduced by the CIT(A) in his impugned order in the present case, which can be noticed from para 9.1 to 9.2 (Page No.79 to 85). He further observed that since the facts in the present year are also identical, and based on the appellate decision for the Asst.Year 2008-09, he restricted the total addition to Rs.5,13,36,284/-. As the assessee has offered Rs.5,00,00,000/- towards peak for this year, total addition was accordingly, the total additions accordingly restricted to Rs.13,36,284/-. Aggrieved, Revenue is before us.

93. The ld.DR supported the order of the AO, while the ld.counsel for the assessee relied on the order of the CIT(A). The ld.counsel for the assessee further submitted that the AO has based this addition

on the basis of the conclusion as arrived at by him in the earlier year with the remarks that the theory of peak credit cannot be accepted. As was done in the earlier year, the AO took entries of '21b' and 'bm' separately and added the total debits and credits as undisclosed income. Since the assessee has worked out the peak, the working of which has not been challenged by the AO, and hence, the Id.CIT(A) rightly deleted the impugned additions.

94. We have heard contentions of both the parties; perused the orders of the Revenue authorities. The basis for the AO to make the impugned additions, which are under challenge before is entries recorded in the folder 21b/RSJNRS.DBF in the pendrive seized from 263 Orbit Mall premises during the search. This data contained both accounted and unaccounted data. The assessee had owned up cash transactions in the names of different persons appearing in the pendrive as affairs of the company were being managed by him. The additions were made on the basis of finding of the AO in the earlier years with the remark that theory of peak edit could not be accepted. The AO thereafter went to ahead to separate calculate peak credit and totaled up all the debits and credits and made the addition as undisclosed income. We find that the Id.CIT(A) has accepted the peak credit computed by the assessee, and relying on his decision for earlier years, restricted all the impugned additions to Rs.13,36,284/- after considering the undisclosed income offered to tax of Rs.5,00,00,000/-. As we discussed in the foregoing paragraphs of this orders, while considering similar issue for the Asstt.Year 2008-09, we have upheld the order of the Id.CIT(A) on the issue. Since the impugned additions also made on the basis of identical facts and interpretations of the data contained in the pendrive, finding no disparity of in the facts and circumstances of the case on hand, and

no justifiable challenge from the ld.DR, we confirm the finding of the ld.CIT(A) and reject these two grounds of appeal.

95. Now we take ground no.4 and 5 of the Revenue's appeal. They read as under:

*"4. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition of Rs.97,45,52,533/- made by the AO on substantial basis in the hands of Shri Keshav Nachani, ignoring the statement of Shri Manjeet Singh Rajpal and materials seized which were directly related to Shri Keshav Nachani.*

*5. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deciding the appeal in case of Shri Keshav Nachani first in A.Y. 2008-09, on the basis of which additions had been deleted in A.Y. 2010-11 also, without deciding the appeal in case of Shri Manjeet Singh Rajpal for A.Y. 2008-09 in whose hand he has directed to retain substantial addition till the decision of appeal comes in that case."*

96. After hearing both the parties, and perusal of both the orders of the Revenue authorities, we find that the ld.AO made the impugned addition on the basis of the finding for the A.Y. 2008-09 in respect of the papers found during the course of search at the premises of Manjit Singh Rajpal. The assessee had submitted that he has no connection with Shri Manjit Singh Rajpal, and during the course of last statement, Shri Rajpal owned up all the entries mentioned in the seized documents and offered to tax on protective basis. Without considering these facts, the AO has made the impugned addition. The ld.CIT(A) deleted the impugned addition on the basis of his earlier decision for A.Y. 2008-09. His conclusion was that since the papers have been found at the place of a third party and the assessee has consistently stated that these seized papers were not related to him. In the impugned order, the ld.CIT(A) has reproduced his earlier order for A.Y.2008-09 from pageno.86 to 88 wherein he observed that on identical grounds addition was deleted. He further observed that since the addition was made on the basis of

same set of documents, and on set of reasoning, the addition in the present case for A.Y.2010-11 was also directed to be deleted. While deal with the appeal of the Revenue for A.Y.2008-09, we have confirmed the order of the Id.CIT(A) for discussed hereinabove. Since the impugned addition was also related to same set of facts, documents, and same set of reasoning, and the Id.DR being unable to distinguish the factual matrix of both the years, we are unable to disturb his finding on this issue, and accordingly, we confirm the same.

97. Ground No.6 & 7 - they read as under:

*“6. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- as revenue is in appeal before Hon'ble High Court of MP in the case of Shri Om Prakash Dhanwani for A.Y. 2010-11 against the deletion of substantive addition.*

*7. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.2,00,00,000/- by not considering all findings and inquiries in the assessment order and he has not given' any contrary findings to those of AO in the assessment order.”*

98. A brief facts as can be noticed from the order of the Id.CIT(A) are as under: (from Page no.88 to 91)

11.1 The addition has been made on protective basis in the hands of the appellant and the substantive addition was made in the hands of Shri. Omprakash Dhanwani. The appeal in the case of Shri Omprakash Dhanwani has been decided by the ITAT Indore vide order dated 17/05/2016 in Appeal No.IT(SS)A Nos.241 to 243/Ind//2015 & IT(SS)A Nos. 254 to 256/Ind/2015 and the findings of the ITAT are reproduced below:

"In ground no.5 in IT(SS A NO. 242/Ind./2015 and ground nos.6 and 7 in IT(SS)A No. 255/Ind/2015 relate to arbitration award.

*The facts of the case are that during the course of search at the premises of Shri Keshav Nachani, one loose paper page 53 LPS-1/7 was found*

*and seized. It was an arbitration award. As per this award, the assessee has entered into an agreement for sale of property owned by him at Khajrana Village and received Rs.25000000/-. For some reason there was a dispute between both the parties. Three arbitrators were appointed. In this award it has been stated that because of non-performance of agreement and non-registration of documents, the assessee would pay a sum of Rs.5 crores as under:-*

- (i) 11/08/2009 Rs.10000000/-*
- (ii) 31/01/2010 Rs.10000000/-*
- (iii) 30/04/2010 Rs.15000000/-*
- (iv) 31/08/2010 Rs.15000000/-*

*The assessing officer in his order for the assessment year 2010-11 observed that the assessee has paid Rs.2 Crores which was from his undisclosed income. He accordingly made the addition.*

*Being aggrieved by the addition so made by the Assessing Officer, the assessee preferred appeal before the learned CIT(A). The learned CIT(A) after considering the facts of the case and arguments of the learned counsel for the assessee, confirmed the addition made by the Assessing Officer. Now the assessee is in appeal before the Tribunal. Before us, the learned counsel for the assessee contended that Khajrana land belongs to the assessee and his maternal uncle, Shri Keshav Nachani, who was looking after this land. This land was notified for acquisition by Indore Development Authority. He submitted that as such the said land could not be transferred to anybody. The agreement was entered into and the payment of Rs.51 lacs was received which was duly entered in the books of accounts. Since the agreement could not be acted upon because of the scheme announced by the IDA, the matter was referred for arbitration by the buyer by appointing three arbitrators. Thereafter the award was made which was signed by two arbitrators only and the third arbitrator Shri Tejender Singh Suchasingh did not sign the same. The learned counsel for the assessee, therefore submitted that in the absence of signatures of all the arbitrators on the award, it cannot be said to be an award in the eyes of law. He further submitted that this agreement also provided that in case the assessee enters into an agreement with third party for sale of the land, he will have to make full payment to the purchaser. It was also pleaded that this establishes that the assessee has neither made any payment for non-performance of the agreement nor received any amount except Rs.51 lacs. It was also claimed that when the Assessing Officer asked to produce the arbitrators, the assessee arranged their appearance on the appointed date but the Assessing Officer was not present on the appointed date. Therefore, the Assessing Officer's observation that the assessee failed to produce the arbitrators is*

*factually incorrect. It was also pointed out that all the three arbitrators filed affidavits on 08/08/2014, duly notarized which were submitted before lower authorities, copies of which were submitted at page nos. 17 to 28 of, paper book-II. Shri Kamal Kishore Nachani, one of the arbitrators, appeared before the Assessing Officer in response to summons u/s 131 of the Act. His statement was recorded by the Assessing Officer which was never confronted to the assessee. It was also pleaded that this addition has been made by referring to section 292-C of the Act but these documents were not found from the premises of the assessee. Thus the basic presumption as provided in section 292-C of The Act is missing. The learned counsel for the assessee submitted, that this agreement, if at all relied upon, should be read as a whole. There is no document or evidence that the assessee has made any payment in compliance with this award. Complete details were filed before the learned CIT(A) which include affidavits of all the arbitrators. The learned counsel for the assessee submitted that the buyer under the agreement, M/s Lal Sai Estate Private Limited issued a cheque of Rs. 1.99 crores but it was not encashed as the scheme was pronounced by Indore Development Authority, hence cheque was returned back and cancelled. The assessment order of M/s Lal Sai Estate Private Limited was also filed before the authorities below. He submitted that these facts also find mention in the assessment order of M/s Lal Sai Estate Private Limited, the party with whom said agreement was executed. It was claimed that possession of the land was not given and the land was shown infixed assets in the balance sheet in all these years. He submitted that the said land could not be transferred even today because of the scheme of IDA, He also submitted that this document only mentions that the assessee would make payment but the assessee has not done so. It is also claimed that the assessee has neither received any payment of Rs. 2,50,00,000/ as mentioned in the arbitration award nor has executed any registry till date.*

*On the other hand, the learned DR relied upon the orders of the authorities below and submitted that the assessee has no case.*

*We have heard both the sides. We find that the so called award was not complete as one of the arbitrators did not sign arbitration award. We further find that the addition has been made only on the basis of presumption that the assessee might have received the amount as per the award but no positive evidence has been brought on record to suggest that such amount was received by the assessee in terms of the agreement/award. It is also a fact that the assessee received Rs.51 lacs as advance through banking channel which was returned back to the intending buyer. The assessee continued to show this plot of land in the fixed assets in this balance sheet. It is also a fact that Indore development Authority declared scheme no. 131 on this land.*

*Therefore, the above agreement could not be materialized and as such the land is even today under the scheme and not transferable. All the three arbitrators filed affidavits which contain the entire details with the assertion that no damages were paid by the assessee because of non-performance of the agreement due to force-majeure. In view of these facts and circumstances, we set aside the orders of the authorities below and hold that the addition Rs.2 Crores made by the Assessing Officer for A.Y. 2010-11 is not sustainable. We, therefore direct to delete the same."*

*In view of the fact that the substantive addition made in the hands of Shri Omprakash Dhanwani has been found to be not sustainable on facts therefore the protective addition made in the hands of the appellants on same set of facts also cannot be sustained. The addition is therefore directed to be deleted. This ground is therefore allowed."*

99. Aggrieved by the order of the ld.CIT(A) Revenue is before the Tribunal.

100. Before us, the ld.DR supported the order of the AO, while the ld.AO relied on the order of the ld.CIT(A). The ld.counsel for the assessee further submitted that the impugned addition was made on protective basis in the hands of the assessee on the basis of a draft agreement found in a land dealing in the case of Omprakash Dhanwani where the assessee's name was appearing. It was submitted before the AO that the impugned transaction of sale of agriculture land was between Omprakash Dhanwani and Lal Sahi Estate P.Ltd., which in fact could not materialize. Arbitrators were appointed for amicable solution. According to the AO, Shri Omprakash Dhanwani has paid Rs.2.00 crores from his undisclosed income as a compensation to the assessee for not acting upon. Therefore, the AO has made substantive addition of Rs.2.00 crores in the hands of Shri Omprakash Dhanwani and protective addition in the hands of the assessee. The ld.counsel for the assessee submitted that against the substantive addition, Shri Omprakash Dhanwani went in appeal upto the Tribunal. The Tribunal in IT(SS)A.No.241 to

243/Ind/2015 & IT(SS)A.Nos.254 to 256/Ind/2015 deleted the substantive addition in the hands of Omprakash Dhanwani. The finding of the Tribunal has been recorded in the order of the ld.CIT(A) from pageno.88 to 91 of his order. He further submitted that the Tribunal deleted this addition on the ground that payment of Rs.2 crores was never made in the land in question, which was not even transferred till date. He submitted that since the impugned addition was being deleted by the Tribunal, the protective addition made in the hands also to be deleted. He further pointed out that appeal against the order of the Tribunal by the Department before the Hon'ble High Court was also dismissed vide ITANos.140, 141 and 142 of 2016 vide judgment dated 14-9-2018. He placed on record copy of the judgment. Therefore, impugned addition does not survive, and the order of the CIT(A) requires to be confirmed.

101. We have heard rival submissions; gone through the orders of both the authorities, and the material available on record. We find that the ld.CIT(A) after scrutinizing the facts, has given a finding in favour of the assessee. This finding is based on the decision of the ITAT, Indore Bench in the case of Omprakash Dhanwani (supra) where substantial addition made in his hand was deleted by the Tribunal. This decision of the ITAT has been extracted by the CIT(A) in his impugned order extracted above. It was also pointed out by the ld.counsel for the assessee that the appeal of the Department against the order of the ITAT was dismissed by the Hon'ble High Court in the case cited (supra) and order of the ITAT has become final in the case of Omprakash Dhanwani. Therefore, since substantial addition stood deleted, the protective addition in the hands of the present assessee is also not sustainable. This fact has been appreciated by the ld.CIT(A) and accordingly protective addition in hands of the assessee was deleted. Before us, the ld.DR has not controverted this factual

aspect. This being so, the grounds raised by the Revenue are devoid of any merits for consideration, which are accordingly rejected.

102. Next is ground no.8, which reads as under:

*“8. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.12,50,000/- and Rs.14,00,000/- made u/s 68 of the Act by not considering all findings and inquiries in the assessment order and he has not given any contrary findings to those of AO in the assessment order.”*

103. Brief facts in this regard emanates from the orders of the Revenue authorities are the assessee is proprietor of M/s.M.P. Bullion. The AO on verification of the Balance sheet of the said firm noticed that the assessee has taken unsecured loans of Rs.12,50,000/- from M/s.E-Metals P.Ltd. and Rs.14,00,000/- from one Shri Manmohanji Mantri. According to the AO, since the assessee has failed to establish identity and credit-worthiness of the lenders, both the unsecured loans were added to the income of the assessee under section 68 of the Act. Before the ld.CIT(A) assessee explained that in response to the notice under section 133(6) of the Act, the said creditors company had furnished copy of ledger account of the assessee, their income tax returns, relevant bank statements, and the said creditors have categorically accepted the impugned transactions. The ld.AO, despite having all these documents with regard to the impugned unsecured loans, did not consider the same, and based on pure assumption and surmise, he simply made the impugned addition without any material on record to support the AO's action. The ld.CIT(A) after considering the submissions of the assessee and material placed on record, found the claim of the assessee to be duly supported by the documents submitted by the assessee. He further found that in the case of E-Metals India Ltd. the amount of Rs.12,50,000/- was seen to be the opening balance and hence could

not be considered to be income of the year under consideration. Accordingly, the ld.CIT(A) deleted by the additions.

104. Aggrieved by the deletion of additions, the Revenue is in appeal before the Tribunal.

105. The ld.DR supported order of the ld.AO, while the ld.counsel for the assessee, besides, supporting the order of the ld.CIT(A) further submitted that the creditors have confirmed the loan amounts and relevant bank statements have been filed. The ld.CIT(A) has, after going through the documents, found the claim of the assessee to be genuine, and rightly deleted the same. Therefore, the order of the ld.CIT(A) on this issue is liable to be confirmed.

106. We have considered submissions of both the parties, and gone through the orders of the Revenue authorities. We find that the factual finding recorded by the ld.CIT(A) could not be controverted by the Revenue before us. The ld.CIT(A) has recorded that relevant documents, such as confirmation from the parties, ledger account of the assessee in the books of the creditors, relevant copies of bank statements etc. to support the case of the assessee were on record. In view of this finding and observation of the ld.CIT(A), we do not find any error in this order of the ld.CIT(A), which we confirm and this ground of the appeal of the Revenue is rejected.

107. Ground No.9 to 14 raise a single as to determination of GP rate by the AO and consequent additions on account of estimate of gross profit of Rs.37,10,41,556/- for sale of gold and Rs.18,47,184/- in the account silver bar. These grounds are descriptive in nature, and they read as under:

“9. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results for the assessment year 2010-11 and deleting the additions made by the AO on account of estimation of gross profit on sale of gold and silver bar to the tune of Rs. 37,10,41,556/- and Rs. 18,47,184/- respectively.

10. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by, directing to accept the book results for the assessment year 2010-11 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection i of books of accounts, by ignoring the findings of assessing officer in the assessment order.

11. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results for the assessment year 2010-11 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, without giving any contrary findings against those of Assessing officer.

12. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results for the assessment year 2010-11 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring an important statement of Shri Shilu Mishra which substantiate the modus operand! of assessee as pointed out by the assessing officer.

13. Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law by directing to accept the book results for the assessment year 2010-11 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by not considering the fact that all findings and inquiries in the assessment order and all seized documents or statements which formed the basis of rejection I of books by the Assessing officer are to be looked into totality.

14. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results for the assessment year 2010-11 and deleting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by wrongly relying on the case of Shri Om Prakash Dhanwani.”

108. We find that the facts and the issues involved in the case are similar to the issue raised in the Astt.Year 2008-09 in the case of the assessee, wherein we have upheld the order of the ld.CIT(A) in favour of the assessee. To be precise, the issue was rejection of the books of accounts under section 145(3) of the Act and consequent estimation of gross profit in the transactions of sale and purchase of gold and

silver bars. The basis of the AO's action was that the assessee could not furnish information in a desired format for cash and credit sales and purchase supported by sales bills/memo. Therefore, the ld.AO presumed that the books of the accounts of the assessee were not reflecting the true and correct particulars of income of the assessee, and therefore, not reliable. This issue has been dealt with by us in the foregoing paragraphs of this order, while dealing with the similar issue in the case of the assessee for the said assessment year, wherein the assessee had given point-wise reply to the order of the AO. Since the issue being identical to the facts of the assessment year 2008-09, the ld.CIT(A) held that rejection of the books of accounts and estimation of profit on the basis of independent market enquiry could not be sustained.

In view of the above, and the detailed submissions made by the assessee before the lower authorities, which submissions were also noted by the ld.CIT(A) in the impugned order, we do not find any illegality in taking identical decision in this assessment year as well, more so when the ld.CIT(A) himself observed that all the documents in which reference has been made in the order for A.Y.2005-06 and the year under consideration did not pertain to this year. The ld.DR also unable to pin-point any error in the finding of the ld.CIT(A) in this year as well, and therefore, we are inclined to uphold his finding in favour of the assessee on the issue. Thus, these grounds also stand rejected.

**ITA No.25/Ind/2017 : Asstt.Year 2011-12 (Revenue's Appeal)**

109. The Revenue has raised as many as twenty grounds in this appeal. First we take ground no.1 to 3, which read as under:

“1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.2,95,00,000/-, Rs.2,95,00,000/-, Rs.7,04,64,097/-, Rs.48,05,202/-, Rs. 58,76,0300/-, Rs. 46,87,870/-, Rs. 14,71,13,410/- & Rs.1,23,03,770/-.

2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deleting the addition of Rs.2,95,00,000/-, Rs.2,95,00,000/-, Rs.7,04,64,097/-, Rs.48,05,202/-, Rs. 58,76,0300/-, Rs. 46,87,870/-, Rs. 14,71,13,410/- & Rs.1,23,03,770/- by taking the peak of all entries when there was no such proof to establish the link that all entries are out of same sum of money.

3. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by accepting the mala fide attempt of assessee to relate all unaccounted income derived from seized material in group cases to its undisclosed income offered in search proceedings.”

110. The details of the additions made by the AO and deleted by the ld.CIT(A) are as under:

- i) Substantive addition of Rs.2,95,00,000/- in the case of the assessee on basis of entries found in the pendrive in the name of Kamal Kumar Nachani in the “Bhopal Hosangabad” account, which the assessee owned up by stating that the credit entry belonged to him;
- ii) Substantive addition of Rs.2,95,00,000/- in the hands of the assessee on the basis of day book containing unaccounted and accounted data in “21B” account of M/s.C-21 Mall P.Ltd. The assessee admitted that the cash entries belonged to him and the assessee has surrendered Rs.15 crores as his undisclosed income for any discrepancies found during the course of search.
- iii) Protective addition of Rs.7,04,64,097/- representing unrecorded cash receipt by M/s.Globus Mega Projects P.Ltd. which was not recorded in the regular books of accounts of the company. The assessee has accepted and owned up the cash transactions maintained in ‘bm’ folder.

This folder contained tally account of Globus Mega Projects P.Ltd.

- iv) Protective addition of Rs.48,05,202/- . In 'bm' account under the head fixed assesees, the GlobusMega Projects P.Ltd. has credited old site with an amount of Rs.48,05,202/- and debited new site with equal amount. During the period 28.7.2010 to 25.9.2010 an amount of Rs.48,05,202/- in cash was paid for expenditure/ purchases on behalf of new site. However, there was no entry has not found in cash book of 'bm' tally account. The assessee, Shri Keshavkumar Nanchani has owned up the cash transactions maintained in the 'bm' account, the impugned protective addition has been made.
- v) Protective addition of Rs.5,87,60,300/- on account of unexplained cash credit as per the data contained in '21b/RSJNRS.DBF' account folder of M/s.C-21 Mall P.Ltd. This account contained both recorded and unrecorded data of C-21 Mall P.Ltd. representing receipt of deposits for various shops/residential projects. According to the assessee the transactions reflected in three accounts viz. 'bm' account, 21B account and Bhopal Hoshangabhad account various transactions carried out by the assessee in different business activities. Accordingly, the assessee by integrating all three accounts offered total credits and debits and the excess of credit for all the impugned transactions offered as his income. This was rejected by the AO. The AO on the basis of the data available in the seized accounts, worked out total of unaccounted receipts Rs.5,87,60,300/- as separated from the bank transaction

found in the folder 21b/RSJNRS.DF. The impugned addition was accordingly made.

- vi) Addition of Rs.46,87,870/- on account of unaccounted unsecured loan. On examination of cash account in the account of Bhopal Hoshangabad account it was notice by the AO that total unsecured loan stood at Rs.96,87,870/- out of which Rs.50,00,000/- introduced by the assessee was accounted and remaining amount found to be unaccounted, and accordingly addition of Rs.46,87,870/- was made.
- vii) Addition of Rs.14,71,13,410/- in the account of Bhopal Hoshangabad an amount of Rs.13,73,75,000/- introduced as capital has been debited to Manu Account and the said account shown the amount alongwith account of Rishi Construction of Rs.97,38,410/- and Dayal Construction of Rs.5,00,000/-. In the books of Globus Housing P.Ltd. reflected entry of Dayal Construction. Thus, the total of Rs.14,71,13,410/- remained unaccounted and unexplained. The same was accordingly added to the income of the assessee.
- viii) Addition of Rs.1,23,03,770/-. This addition has been made by the AO on comparison of two sales account of Bhopal Hoshangabad and Coral Wood Account, where it was noticed by the AO that cash receipts from the customers were not recorded in the regular books of accounts of Global Housing Projects Ltd. In the absence of material to prove the same, the AO made the impugned addition.

111. Against all these additions, the assessee went in appeal before the ld.CIT(A), who following the appellate decision in the case of the assessee for the Asstt.Year 2008-09 deleted all the additions. Hence, Revenue now is in appeal before the Tribunal.

112. Before us, the ld.DR relied on the order of the AO, while ld.counsel supporting the decision of the ld.CIT(A) and the contentions before the lower authorities. The ld.counsel for the assessee further submitted that the AO made the above addition on the ground that the entries found in the pen drive seized during the course of search; that the AO conclusion solely on the basis of his decision for earlier year, whereby he rejected the peak credit computed by the assessee. He took entries of '21b'and 'bn' accounts separately and added the total debit and credits as undisclosed income. Therefore, the ld.CIT(A) is right in deleting the impugned additions.

113. Heard both the parties in the light of orders of the authorities below; perused material available on record. We find that the similar issue has already been agitated by the Revenue in earlier years, and the CIT(A) finding the issues on hand being identical nature as that of earlier Asstt.Year 2008-09 observed that the facts for the year are identical and the data contained in the pen drive on the basis of which the additions have been made are already taken into account while working out the peak, and which working for all the years were annexed to order for AY 2008-09. He has substantially reproduced his order for AY 2008-09 at page no.100 to 107 of the impugned order. All these additions were made by the AO on the basis of entries in "Bhopal Hoshangabad", "bm" and 21B/RSJNRS.DBF (M/s.C-21 Malls P.Ltd.) folder in seized "Rahul Pendrive". This order of ld.CIT(A) was also challenged before us, and in the foregoing paragraphs of this

order, we have affirmed finding of the Id.CIT(A). Here also, the Id.DR is unable to upset the reasoning given by the Id.CIT(A) on the issue of deletion of impugned additions with some material, other than what was stated in the order of the AO. Therefore, we are not inclined to interfere with the findings of the Id.CIT(A) on these issues. Ground No.1 to 3 are dismissed.

114. Ground No.4 and 5: These grounds read as under:

*“4. Whether in the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by deleting the addition of Rs. 26,10,28,780/- made by the AO on substantial basis in the hands of Shri Keshav Nachani, ignoring the statement of Shri Manjeet Singh Rajpal and materials seized which were directly related to Shri Keshav Nachani.*

*5. Whether in the facts and in the circumstances of the case, the Ld. CIT (A) has erred in law by deciding the appeal in case of Shri Keshav Nachani first in A.Y. 2008-09, on the basis of which additions had been deleted in A.Y. 2011-12 also, without deciding the appeal in case of Shri Manjeet Singh Rajpal for A.Y. 2008-09 in whose hand he has directed to retain substantial addition till the decision of appeal comes in that case.”*

115. This addition is based on the documents seized from the business and residential premises of Shri Manjeet Singh Rajpal, employee of the assessee. In the seized documents certain transactions were mentioned, which the said Shri Manjeet Singh Rajpal was unable to explain as to where such transactions were recorded in the books of accounts. The details of the impugned transactions were noticed by the AO in his assessment order and also by the Id.CIT(A) in his impugned at page No.14 and 15. Shri Manjit Singh Rajpal in his statement owned these entries on protective basis and offered the income in the return of income filed by him. The AO on the assumption that Shri Manjeet Singh Rajpal was employee of the assessee, the documents seized from his premises belonged to the assessee, and accordingly, he made the above impugned addition on substantive basis in the hands of the assessee on the basis of the

documents alleged found during the course of search, though the assessee has taken a consistent stand that the alleged documents were not related to him. When the matter went in appeal, the Id.CIT(A) after considering the reply of the assessee and the remand report from the AO, found that the addition on identical ground was made in the case of the assessee for A.Y.2008-09 also wherein the appeal has been decided in favour of the assessee. The Id.CIT(A) reproduced the observation and finding in the case of the assessee for the AY 2008-09 in his impugned order at page no.107 to 109. In his concluding para-10.2 he held that the impugned addition has been made on the same set of documents on identical reasoning hence in view of the findings recorded in the appeal order for AY 2008-09, the addition for AY 2011-12 was also deleted. We find that the order of the Id.CIT(A) for A.Y.2008-09 was also challenged before us, which we have already dealt with hereinabove, and confirmed the finding of the Id.CIT(A) on this count. Other than the assessment order, there is nothing before us to take a different stand on the matter, nor the Id.DR could able to do so. Therefore, in view of concurrent finding of the Id.CIT(A) and by us in the case of the assessee for the Asstt.Year 2008-09, we are unable to disturb the finding of the Id.CIT(A) on this in the present year also. Thus, these grounds of the Revenue are rejected.

116. Now we take ground No.6 & 7 - They are reproduced as under:

*6. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,00,00,000/- as revenue is in appeal before Hon'ble High Court of MP in the case of Shri Om Prakash Dhanwani for A.Y. 2011-12 against the deletion of substantive addition.*

*7. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,00,00,000/- by not considering all findings and inquiries in the assessment order and he has not given any contrary findings to those of AO in the assessment order.*

117. Having heard both the parties in the light of orders of the Revenue authorities, and also gone through the material available on record, we find that the impugned protective addition of Rs.3,00,00,000/- was made in the hands of the assessee on the basis of agreement for sale of agriculture land dated 11.8.2009 was found from the premises of one Shri Omprakah Dhanwani in which name of the assessee also mentioned. According to the AO this agreement was signed by Shri Keshavkumar Nanchani maternal uncle of Shri Omprakash Dhanwani on his behalf. Shri Omprakash Dhanwani further stated that the said agriculture land was belonged to him, but the same was looked after by his uncle Shri Keshavkumar Nanchani It was submitted to the AO that the impugned transaction was between Shri Omprakash Dhanwai and another party from Delhi, M/s.Lal Sahi Estate P.Ltd. for sale of agriculture land and Shri Omprakash Dhanwani has received Rs.2.50 crores. Because of some legal encumbrance, the transaction could not take place. Accordingly, the assessee along with two others were appointed as arbitrators for settlement of dispute arisen due to non-performance of the agreement. It was accordingly decided that the said Shri Omprakash Dhanwani would pay back Rs.2.50 crores plus penalty of Rs.2.50 crores to the second party on different asunder:

i)	11.08.2009	Rs.1,00,00,000
ii)	31.01.2010	Rs.1,00,00,000
iii)	30.04.2010	Rs.1,50,00,000
iv)	31.08.2010	Rs.1,50,00,000

Accordingly, the ld.AO presumed that Shri Omprakash Dhanwani has paid Rs.5.00 crores before 31.8.2010 to the second party as per the dates mentioned in the resolution agreement. The AO issued show cause notice to Shri Omprakash as to why Rs.2.00

crores and Rs.3.00 should not added to his income for the Asstt.Year 2010-11 and 2011-12. The said Omprakash has denied signing of the agreement and payment of Rs.5.00 crores, and even otherwise, the impugned sale transaction could not take place due to legal difficulties, and the allegation of payment of Rs.5.00 was bald without support of any documentary evidence. The AO, however, did not satisfy with the explanation of the assessee. He made substantial addition of Rs.2.00 crores and Rs.3.00 crores for the Asstt.Year 2010-11 and 2011-12 respectively in the hands of Shri Omprakash Dhanwani and protectively in the hands of Shri Keshavkumar Nanchani i.e. present assessee. Against the protective addition of Rs.3.00 crores for A.Y.2011-12, the assessee went in appeal. Before the ld.CIT(A) it was submitted that substantive addition made in the hands of Omprakash Dhanwani was deleted by the Tribunal in the appeal filed by himin IT(SS)A.Nos.240 to 243/Ind/2015 & IT(SS)A.No.254 to 256/Ind/2015, and therefore, protective addition in the hands of the present assessee i.e.Keshavkumar Dhanwani was not sustainable. In the light of this order of the Tribunal, the CIT(A) deleted the impugned addition. The ld.CIT(A) reproduced the said order of the Tribunal in his impugned order from page no.110 to 112. Not satisfied with the order of the ld.CIT(A) Revenue is now before us.

118. Before us, the ld.counsel for the prayed for setting aside the order of the ld.CIT(A)and restoring that the AO, while ld.counsel for the assessee prayed for upholding of the order of the ld.CIT(A). He further submitted that the ld.CIT(A) deleted the impugned addition on the basis of order of the ITAT in the case of Shri Omprakash Dhanwani where the addition made on substantive basis was directed to be deleted. The Tribunal was pleased to delete the said addition on the ground that the payment of Rs.3 crores was never made and the land

in question has not been transferred till the date. It was further submitted that against order of the ITAT in the case of Omprakash Dhanwani, the Revenue went in further appeal before the Hon'ble Gujarat High Court, which was also dismissed by the Hon'ble High Court by finding that no point of law has arisen. In view of the fact and circumstances, the Id.CIT(A) has rightly deleted the impugned protective addition in the hands of the present assessee. The Id.counsel for the assessee has also filed a copy of judgment of the Hon'ble High Court dated 14.9.2018.

119. On due consideration of submissions of both the parties and in light of judgment of the Hon'ble Gujarat High Court in the case of Omprakash Dhanwani, wherein, the Hon'ble Court dismissed the appeal of the Revenue, we have no other option but to reiterate the finding of the Id.CIT(A) deleting the addition made in the hands of present assessee i.e. Keshavkumar Dhanwani of Rs.3.00 crores. We order accordingly, and dismiss the ground no.6 & 7 of the Revenue.

120. Ground No.8 : This ground reads as under:

*8. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,02,12,295/- by not considering all findings and inquiries in the assessment order and he has not given any contrary findings to those of AO in the assessment order.*

121. Heard both the parties and gone through orders of the Revenue authorities. The Id.AO has made the addition of Rs.2,02,12,295/- by disallowing the claim of the assessee for trading loss of MCX on the ground that the assessee failed to furnish evidences to establish that the trading done on these IDs was the own trading which ultimately resultant in loss. Before the Id.CIT(A) assessee submitted that requirement of informing the exchange was not being strictly enforced and hence the practice adopted by the other members of the exchange

it was not being informed to the exchange and it was not being insisted upon; that the loss was the result of accepted trading norms and was duly supported by bills/ documents and books of accounts; that the transactions were duly verifiable from the books of the assessee. Finding that there was no material with the AO to reject claim of the assessee, and only on the basis some assumption rejected the claim of the assessee. Therefore, the ld.CIT(A) deleted the impugned additions. Against this deletion the Revenue came in appeal before the Tribunal. While the ld.DR supported the order of the AO, the ld.counsel for the assessee relying on the order of the ld.CIT(A) also submitted that the impugned transactions were verifiable from the books of the assessee and also from the MCX portals; that all transactions were through banking channel, and therefore genuineness of the transaction could not be doubted. Even there was no material with the AO to doubt the impugned transactions as out of book transaction.

122. On due consideration of the facts and circumstances, and in the light of submissions made by the ld.counsel for the assessee, we find that there was no reason for the doubting the nature of the transaction carried out by the assessee through MCX, more so, in the absence of any material being available with the AO. We find that the ld.CIT(A) has appreciated this fact as nothing contradictory to the finding of the ld.CIT(A) was pointed to us at the time of hearing by ld.DR. Therefore, we are bound to concur with the finding of the ld.CIT(A) and thus confirm the same. This ground of the Revenue is dismissed.

123. Ground No.9 : This ground of the Revenue reads as under:

9. *Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,00,00,000/-, Rs. 18,80,000/-, Rs.*

*81,75,000/-, Rs. 1,73,80,899/- & Rs. 31,05,600/- made on the basis of transactions recorded in various seized loose papers.*

124. By this ground, the Revenue challenges deletion of five additions with respect to unrecorded transactions, the details of which are as under:

- i) Substantive addition of Rs.2,00,00,000/- . This addition is based on the impounded documents being Annexure-A, Page no.1 to 25 from the premises of M/s.M.P.Buillion. These documents contained both recorded and unrecorded transactions. The assessee explained that these transactions represented some petty expenses, loans etc. However, the assessee failed to explain the same with reference to books of accounts. The assessee has admitted that these documents belonged to M.P. Bullion and G Next Telecom P.Ltd. but he was unable to explain the transactions mentioned therein. He accordingly owned up all the transactions and surrendered an amount of Rs.2.00 crores as additional income.
- ii) Addition of Rs.18,80,000/- :Based on the entries mentioned in the documents viz. LPS 1/5 seized from 614, Usha Nagar, Indore on 10.1.2011, where the assessee was asked to explain where these entries are reflected into the books of accounts. The assessee explained that most of transactions related to petty cash transactions made in cash to various parties. The assessee admitted that the impugned transactions were not recorded in the regular books of accounts, and accordingly the assessee owned up all these transactions and stated that these transactions covered by surrender made by the assessee under section 132(4) of the Act. Thereafter, on verification of these

documents, he found that the total opening balance and receipts from 1.11.2010 to 25.11.2020 was at Rs.18,80,000/-, and since the same remained unexplained, the AO added the same to the total income of the assessee.

iii) Addition of Rs.81,75,000/- : This addition is based on credit and debit entries mentioned in the documents viz. page no.52, 54 & 56 of LP-1/1/1 impounded during the search at 263, Orbit Mall, Indore. The assessee was asked to explain the transactions and show where these transactions were recorded in the books of accounts of the assessee. The assessee explained that these data compiled from the RAHUL PENDRIVE found during the search, which contained both recorded and unrecorded transactions, and formed part of his undisclosed income surrendered under section 132(4) of the Act. The AO however observed that these transactions were not in the compilation submitted by the assessee. The AO noted that total unaccounted amount of Rs.81,75,000/- from the persons named therein, and this cash of Rs.81,75,000/- was deposited in the assessee's bank account with AXIS bank, and thereafter the same was transferred to the bank account of Globus Mega Projects P.Ltd. The AO therefore construed that this nothing but unaccounted income introduced by the assessee and his relative, and thereafter transferred to Globus Mega Projects P.Ltd. In this view of the matter, he made addition of Rs.81,75,000/- to the income of the assessee.

iv) Addition of Rs.1,73,80,899/-: Documents inventorised as BFS-80 were found and seized from 614, Usha Nagar,

Indore on 26.11.2020, which contained 19 pages. The assessee was asked to explain entries found in the documents and to explain where the entries were recorded in the regular books of accounts. The assessee was also asked to explain the meaning of abbreviation used in the impugned entries. The assessee has made out accounted and unaccounted entries. The assessee could explain accounted entries, but he was unable explain unaccounted entries, which he ultimately owned up, and contended that these unaccounted entries formed part of his disclosure to the tune of Rs.1,73,80,899/- made in the statement recorded under section 132(4) of the Act. Accordingly, this addition of Rs.1,73,80,899/- as undisclosed income declared by the assessee.

- v) Addition of Rs.31,05,600/- as per the seized documents viz. BS-1 (containing page no.1 to 22) dated 25.11.2010 from the office of M.P. Bullion Golden Plaza, Bada Sarafa, Indore. These pages contained various entries for inflow and outflow of money; details of stock, transactions with GNext and MCX, deposits in the bank; other cash transactions of receipts and payments from various parties. To the query, the assessee admitted that these transactions were not recorded in the regular books of accounts, and he owned up all the transactions which formed part of his undisclosed income, and which he stated covered by the surrender made by him under section 132(4) of the Act. Accordingly, the ld.AO aggregated the amount involved in the transactions found in the seized documents at Rs.31,05,600/- and added the same to the total income of the assessee.

125. In appeal before the Id.CIT(A), the assessee further contended that though the impugned transactions could not be fully explained, and the unexplained transactions were being admitted and owned up by the assessee in his statement recorded during the search, that did not mean that entire alleged transactions represented undisclosed income of the assessee. Only the income embedded in such transactions could be taken into account, for which the assessee has surrendered an amount of Rs.15 crores in all the years, and therefore, no separate addition should be made. Considering the submissions of the assessee in the light of the finding of the AO, the Id.CIT(A) found that the assessee has not accepted that the amounts reflected in the seized papers reflected the income of the assessee, rather, such transactions viz. sales, expenses, loans, receipts etc. could not be matched with records maintained by the assessee; that the assessee while making surrender of additional income, has also taken into account impugned transaction entries, and the same were accordingly covered; that since they were representing unaccounted receipts/expenses, the assessee integrated all the transactions to peak to determine income. The Id.CIT(A) also observed that the additions confirmed on the basis of peak determined by the assessee for the earlier years were upheld, therefore, impugned additions on the basis of the peak would be sufficient, because the assessee has taken all the entries noted in the papers were taken into account while computing the peak amount. The assessee has offered peak amount of Rs.1,00,00,000/- in the return of income. The Id.CIT(A) accordingly deleted the above additions. Aggrieved by the action of the Id.CIT(A), the Revenue is in appeal before the Tribunal.

126. Before us, both the parties reiterated their submissions as were made before lower authorities. The ld.DR supported the order of the AO, while the ld.counsel for the assessee supported that of the CIT(A).

127. Heard both the parties and gone through the orders of the Revenue authorities. We find that the impugned additions made by the AO on the basis of same set of documents impounded during the course of search, which were already considered by the ld.CIT(A) and by us while considering the appeals of the Revenue for the earlier assessment years, wherein it was found that the peak worked out by the assessee was proper because all the transactions mentioned in the seized papers were taken into consideration while computing the peak by the assessee. It was rightly contended by the assessee, and considered by the ld.CIT(A) that all the transactions in the nature of sales, purchases, deposits, loans and other petty transactions could not be considered as income of the assessee, and only income embedded in such transactions and/or entries could only be taken into consideration, for which the assessee has surrendered a disclosure of Rs.15.00 crores for all the years, and further worked out peak of all these transactions. ld. DR did not place any material whatsoever so as to enable us to take a different view in the matter, we are not inclined to interfere with the findings of the ld. CIT(A). Therefore, ground no.9 in the appeal of the Revenue is dismissed.

128. Ground No.10 : This ground reads as under:

*10. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 43,67,48,002/- by not considering all findings and inquiries in the assessment order and he has not given any contrary findings to those of AO in the assessment order.*

129. We have heard both the parties and perused the orders of both the Revenue authorities on the impugned issue. We find that the AO

made this addition on the basis of loose-papers no.20 and 21 of LP-1/3 found and seized during the course of search. These documents contained both debit and credit amounts. The total of credit entry was Rs.28,87,30,570/- and the debit entry was of Rs.43,67,48,002/-, which the assessee explained of the transactions details with the friends and relatives. In the absence of any documentary evidence, and since the entries remained unexplained, an amount of Rs.43,67,48,002/- was added to the income of the assessee. Before the Id.CIT(A) the assessee submitted that figures shown in the seized pages were mainly memorandum entries relating to various business activities of the assessee. Since the assessee was undertaking various business activities, including that of the real estate activities, there were substantial rotation of fund particularly in cash. All these papers related to real estate activities, particularly contained in the pendrive wherein undisclosed transactions so found have been owned by the assessee himself and peak credit of all such transactions have been determined. He further submitted that the AO has already considered all the same transactions in earlier assessment years in question, and made multiple additions of the same transactions, and therefore, the addition of Rs.43,67,48,002/- was nothing but a repetition which liable to be dismissed. The Id.CIT(A) in para 14.2 gave a complete summary of loose papers showing that Rs.4,42,07,341/- are the cash sales, Rs.65,76,67,290 are the entries in respect of another company was separately assessed and Rs.1,65,60,098/- are entries relating to sale of Jalgoan and the value of dead, Rs.1,00,000/- entries in bank account, Rs.18,49,000/- entries in diary and Rs.1,72,55,137/- entries of advances stated to be out of cash in hand available, as reflected in the peak work. With the above analysis, the Id.CIT(A) also bifurcated credit entries and on the basis of the order of the ITAT in the case of Omprakash Dhanwani

cited (supra), he estimated the profit of 1.25% holding it to be unaccounted sales of Rs.25.37 crores and upheld the addition of Rs.31,71,752/-. Aggrieved by this action of the Id.CIT(A) the Revenue is in appeal before the Tribunal.

130. Heard both the parties, and perused the orders of the Revenue authorities. We find that the Id.CIT(A) has after thorough analysis of the impugned transactions contained in the loose papers, found that entries contained the seized papers were mostly unrecorded sales and expenses. He summarized and bifurcated both the debit and credit entries found in the seized papers and noted in para 14.2 and 14.3 of the impugned. By excluding sales made to Gnext of Rs.18,31,29,673/- from the total debit entries of Rs.43,67,48,002/- he considered an amount of Rs.25,37,40,191/- as unrecorded sales of the assessee, and the expenses and advances were out of such sales. Accordingly on the basis of the decision of the ITAT in the case of Omprakash Dhawani (supra) profit at the rate of 1.25% was worked out at Rs.31,71,752/- as against Rs.43,67,48,002/-. Thus, the Id.CIT(A) has allowed part relief to the assessee. Before us, the Id.DR could not counter against finding of the Id.CIT(A) nor could able to pin-point any irregularity in his order on the issue. The Id.CIT(A) we find has thoroughly examined the issue on the basis of material available with him, and therefore, we are not inclined to disturb his finding on the issue, which we confirm, and this ground of the appeal of the Revenue is rejected.

131. Ground No.11 : This ground reads as under:

*11. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 2,93,617/-, Rs. 8,05,000/- and Rs. 2,93,617/- and allowing the set-off with surrendered amount of Rs. 1,00,00,000/- by the assessee in his return of income.*

132. The details of the additions made by the AO and deleted by the ld.CIT(A) are as under:

- i) During the course of search at the residential premises of the assessee various foreign currencies worth Rs.2,93,617 was found. The assessee was asked to explain the source of foreign currencies and where these are reflected in the books of accounts. Since the assessee was unable to explain the same, the ld.AO made this addition to the income of the assessee.
- ii) Addition of Rs.8,05,000/- was on the basis of search action carried out at Mumbai Office of M.P. Bullion. The assessee was asked to explain the same. It was explained that the said cash formed part of the cash found at Indore Office at Rs.33,32,134/-, though the actual found at Indore was only Rs.4,04,000/-and the balance amount represented the cash found at other branch premises of the group. The AO was not satisfied with the explanation of the assessee. He held that the assessee has not maintained any branch account, and as per the statement of one of the employees, the assessee was indulging in hawala transactions. Therefore, he made the addition of Rs.8,05,000/- to the income of the assessee.
- iii) As regards addition of Rs.2,93,617/- being the unexplained money found from the premises of the assessee. The same was explained by the assessee was being reflected in the books of M.P. Bullion. However, the AO found no such entry in the said M.P.Bullion. Therefore, he made the impugned addition of Rs.2,93,617/- under section 69A of the Act.

133. The matter went in appeal before the ld.CIT(A). It was submitted by the assessee that the assessee was having sufficient cash balance on hand, which as per the books Rs.33.32 lakhs was available at Indore Branch and Rs.3.88 lakhs in the personal account. So far as foreign currencies found are concerned, the same represented unspent amount of out of withdrawals for foreign tours in connection with M/s.M.P. Trading FZ and G-Next Telecom P.Ltd. Assessee further submitted event sufficient cash balance was available even as per the peak working given by the assessee. Though the submissions of the assessee was not satisfactory and not finding relevant entries in the books of accounts of the assessee, the ld.CIT(A) since the assessee has offered Rs.1 crores in the return of income for the year under consideration, over and above peak amount surrendered, no separate addition for the cash found was required. Accordingly, the ld.CIT(A) deleted all three above additions. Aggrieved, Revenue is now in appeal before the Tribunal.

131. Before us, the ld.DR sought for upholding of the order of the AO, while the ld.counsel for the assessee supported the order of the ld.CIT(A) submitting that the ld.CIT(A) has justified in deleting the impugned additions.

134. After hearing both the parties, and considering material available on record, we find, though ld.CIT(A) also found that no entries representing these three amounts were found recorded in the books of the assessee, but accepted the fact that for the year under consideration the assessee has offered Rs.1.00 crores in the return of income, and also surrendered peak amount worked out, and no separate addition was required to be made in the hands of the assessee in this behalf. This finding of the fact has not been contradicted by the Revenue before us, and therefore, we find any

reason to reverse the finding of the Id.CIT(A) for deleting the impugned additions. Thus, we this ground of the Revenue.

135. Ground No.12: This ground is reproduced as under:

*12. Whether on the facts and circumstances of the case, Ld. CIT(A) has justified in including the amount of Rs. 36,30,658/- in surrendered amount of Rs. 1,00,00,000/- by the assessee.*

136. Submissions reiterated by both the parties were considered in the light of the orders of the Revenue. We find the above additions represented gold jewellery found during the course of search at the residential premises of the assessee at Rs.3,67,623/-, jewellery found in the locker of the assessee worth Rs.36,09,825/- and silver coins worth Rs.20,833/-. The assessee submitted before the AO that the same represented the jewellery received on different occasions and invested from the withdrawal made earlier years; that even otherwise also, the same could also be covered by the additional income offered at Rs.15 crores. The AO has not satisfied with the explanation, he made addition of Rs.39,98,281/-, which was challenged before the Id.CIT(A). Before the Id.CIT(A) has filed detailed submissions along with summary of jewellery holding family member-wise. He further submitted even as per the CBDT Circular No.1916 the assessee hold upto 900 grams of jewellery and looking to the family status and the business of the assessee in the field of jewellery, holding this much quantity of jewellery was quite reasonable and justifiable. Besides that, even surrender of Rs.15 crores during the course of search proceedings, would take care of this investment in jewellery, and therefore, no addition is required. However, Id.CIT(A) found that the assessee during the search operation admitted that jewellery and silver coins found in the locker etc. were acquired out of unaccounted

income, and therefore, the addition of Rs.36,30,658/- found to be justified. However, since the assessee has included Rs.1.00 crores in his return of income on the basis of peak worked out by the assessee, he held that no separate addition was required. Hence, ld.CIT(A) deleted the impugned addition. The same however, is now challenged by the Revenue before the Tribunal.

137. Before the ld.DR has not contradicted to the ultimate finding of the ld.CIT(A) that since the assessee has surrendered an amount of Rs.15 crores during the search action, and thereafter offered another amount of Rs.1.00 crores as peak amount worked out by the assessee while filing the return of income, the impugned addition of Rs.36,30,658/- could be covered by the same, and therefore, no separate addition was required. Therefore, in the absence of any material to rebut the finding of the ld.CIT(A) being filed before us, we are unable to reverse his finding, and thus, we holding his order, and reject this ground of appeal.

138. Ground No.13 : The Revenue has raised this ground on account of unexplained cash credit allegedly received from E-Metals India Ltd. This ground reads as under:

*13. Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 50,00,000/- made u/s 68 of the IT Act by not considering all findings and inquiries in the assessment order and he has not given any contrary findings to those of AO in the assessment order.*

139. On this ground, submissions of the both the parties, which are in line with the submissions made before the ld.CIT(A) were considered alongwith orders of the Revenue authorities. We find that the AO made the impugned addition on finding a credit entry in the name of E-Metals India Ltd. in the balance sheet of the assessee. Since no satisfaction explanation with some documentary was given

by the assessee in this behalf, the AO treated the same as unexplained cash credit and made addition accordingly. However, ld.CIT(A) found that in response to the notice under section 133(6) of the Act, confirmation, copy of accounts, bank statements were filed by the said creditor viz. E-Metals India Ltd., confirming the credit. In view of the same, the ld.CIT(A) held that since no adverse material was there on the record, the impugned addition made by the assessee was not justified, and he accordingly, deleted the same. Since there is a categorical finding by the ld.CIT(A) that the creditor has confirmed the impugned credit, filed copy of bank statement showing the impugned transactions, copy of assessee's ledger account in the books of E-Metals India Ltd. our interference in this finding of the ld.CIT(A) does not call for, and accordingly, the same is confirmed, and the ground of the appeal of the Revenue stands rejected.

140. Now we take up ground nos.14 to 20 together for adjudication. They are presented in the grounds in the following manner:

*14. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by directing to accept the book results for the assessment year 2011-12 and restricting the additions made by the AO on account of estimation of gross profit on sale of gold and silver bars to the tune of Rs. 48,45,657/- and Rs. Nil instead of Rs. 22,93,73,529/- and Rs. 46,40,335/- respectively.*

*15. Whether on the facts and circumstances of the case, Ld. CIT(A) was justified in deleting the addition on silver bars account and set-off the same in surrendered amount of Rs. 1,00,00,000/-by the assessee.*

*16. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricting the additions to the tune of Rs. 48,45,657/- on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring the findings of assessing officer in the assessment order.*

*17. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, without giving any contrary findings against those of Assessing officer.*

18. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by ignoring an important statement of Shri Shilu Mishra which substantiate the modus operandi of assessee as pointed out by the assessing officer.*

19. *Whether on the facts and in the circumstances of the case, the CIT(A) has erred in law by restricting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by not considering the fact that all findings and inquiries in the assessment order and all seized documents or statements which formed the basis of rejection of books by the Assessing officer are to be looked into totality.*

20. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law by restricting the additions on account of estimate of gross profit on sale of gold and silver bar due to rejection of books of accounts, by wrongly relying on the case of Shri Om Prakash Dhanwani.*

141. After hearing both the sides alongwith respective orders of the Revenue authorities, we find that these additions were made by the AO by rejecting books of accounts under section 145(3) and thereafter estimation of gross profit on account of sale of gold and silver bar. The books of accounts of the assessee were rejected by the AO on basis of his order for Asstt.Year 2005-06 by pointing out certain discrepancies in the books of accounts. A detailed submissions on the merit of the case was submitted by the assessee before the ld.CIT(A), who reproduced the same from page nos.80to96 of the impugned order of the ld.CIT(A). The ld.AO after rejecting the books of accounts of the assessee estimated GP on sale of per 100 grams gold bar atRs.6000/- and determining the GP on sale of per kg.silver bar at Rs.2500/- on the basis of independent market report. On going through the facts of the issue, we find that the issue on hand is similar to the issue raised in the Asstt.Year 2008-09 in ground nos.22 to 27, wherein we have confirmed the finding of the ld.CIT(A) for the reasons and finding recorded herein above in the Revenue's for Asst.Year 2008-09. In the present year also, the reason for rejection, estimation and impugned additions are made on basis of the same set of documents seized during the search from the premises of the

assessee, which the Id.CIT(A) and the Tribunal already dealt with and considered. The Id.DR could not point out any disparity on the facts and circumstances between these two assessment years. There is no other material with the Revenue to justify us to take a different view in this year. Therefore, in view of our decision taken in the Asst.Year 2008-09, which was in line with the decision of the Id.CIT(A)'s under similar facts and circumstances, we confirm the decision of the Id.CIT(A) on this issue, and reject these grounds of appeal.

**142. In the result, the appeal of the Revenue for the Asstt.Year 2011-12 is dismissed.**

143. Now we take up the Revenue's appeal for the assessment years 2012-13, 2013-14 and 2014-15. Since common issue is involved in these appeals, we take up all these together for adjudication.

144. The grounds raised by the Revenue in these appeals are more or less similar words except variation in the figures of quantum. The common issues are with regard to rejection of book of accounts and estimation of GP rate on account of sale of gold and silver bars. These grounds can be depicted in the following manner:

*The Id.CIT(A) has erred in law by directing to accept the books results and deleting the following additions:*

<i>Asstt.Year</i>	<i>Additions on account of GP estimation</i>	
	<i>Gold Bar</i>	<i>Silver Bar</i>
<i>2012-13</i>	<i>Rs.13,55,09,654/-</i>	<i>76,20,207</i>
<i>2013-14</i>	<i>Rs.13,51,06,197</i>	<i>93,74,150</i>
<i>2014-15</i>	<i>Rs.13,76,07,372</i>	<i>24,85,332</i>

145. We briefly take facts stated in the records of the case for the Asstt.Year 2012-13. The assessee is a proprietor of M/s.M.P. Bullion and director of M/s.G-Next Telecom P.Ltd. and engaged in the business of trading in gold and silver. Besides showing income from

bullion trading business, the assessee also shown profit from real estate business from M/s.Radhika Enterprises, proprietorship concern of the assessee. The assessee's income was assessed under section 153A r.w.s. 143(3) since last six assessment years. In these years, the books of accounts of the assessee were rejected under section 145(3) of the Act. In these years, the ld.AO noticed that the assessee had introduced cash in the books of the assessee, which the assessee claimed to be from sale of bullion. The ld.AO doubted that all the cash introduced by the assessee could not only be from the sale of bullions, but could be from other sources also, as the cash has been deposited at many places and while the sale had been taken place in some other different places, where the assessee was not having any permanent places. The assessee could not produce any documentary evidence to legitimate the claims. On examination of stock register purchase and sale record for the search period and the comparison of the same with the seized material, it was noticed by the AO that the assessee was booking the sales at its convenient, and that credit appearing in cash and bank book did not commensurate with the sale receipt of that date. The AO also doubted that in the guise of cash sales, certain unaccounted income was also channalised which were not recorded in the books. It was also noted by the AO that the assessee had not maintained records with respect to cash sales, and therefore, it was not possible to verify the claim of cash sales. On further verification of the books of accounts, the AO noticed that as per earlier years also, there were number cash deposits in the present year, and the sources of which stated to be from cash sales. These are mainly because stock of jewellery was physically delivered at various places and cash was collected at different other places mainly at Indore as per the requirement of the customers. This *modus operandi* of delivery bullion at different places and collecting the

payment in cash at Indore was also doubted by the AO, and accordingly, the ld.AO presumed that in the absence of any books of accounts being maintained, the sale consideration in cash might have received through *hawala* only, by indulging in unaccounted sales. Since similar practice of unaccounted transactions in the bullion having been done in the earlier years, the assessee was show caused to explain why the books of accounts of the assessee should not be rejected. It was explained by the assessee that sales have been properly been recorded in the books of accounts; cash received has been deposited in the bank account; the observation of the AO of unaccounted sales and *hawala* transactions were nothing but guess work without any substance; selling of jewellery in cash was normal practice in this line business; since the assessee was also engaged in the whole business, the delivery of the jewellery was as per the requirement of the customers; and payments were collected at the collection centre; that since there was heavy transactions, it was not possible to keep track of purchases on day-to-day basis; since quantitative details are available, the impugned transactions were verifiable. However, the AO was not satisfied with the explanation of the assessee. He held that in the absence of names and address of the customers supported by the genuine bills, and in the absence of proper records it was not possible to compute correct profit rate from such transactions. Therefore, based on the similar findings in the assessment order for Asst.Year 2011-12 under section 143(3) r.w.s. 153A, and looking to the various discrepancies pointed out by the AO, books of accounts of the assessee for the present assessment year also rejected. Thereafter, the AO proceeded to determine the GP based on decision taken by in Asst.Year 2011-12. In Asst.Year 2011-12, the rate of GP on sale of 100 gram gold bar was determined at Rs.6,000/-. During the year, the assessee has shown GP at

Rs.1,389/- on sale of per 100 gram kg gold bar. However, based on the finding for Asst.Year 2011-12 where GP at Rs.6000/- per 100 gram sold was applied, the AO the same GP rate of Rs.6000/- in the present year also as against Rs.1,389/- shown by the assessee. Thus, he worked out gross profit in sale of gold bar and the difference of Rs.13,55,09,654/- and added the same to the total income of the assessee for Asst.Year 2012-13.

Similarly, in the case of sale of silver bar, the assessee had shown GP at Rs.341.26 on sale of per kilogram silver bar during the year. However, in the preceding year, the AO has applied GP rate of Rs.2500/- per kilogram of silver bar, and the same GP ratio was made in the present year as well, and the differential amount of GP of Rs.76,20,207/- was added to the income of the assessee.

146. Against this action of the AO, the assessee went in appeal before the Id.CIT(A) wherein the assessee filed a detailed point wise submissions which was reproduced by the CIT(A) at page No.6 to 22 of his impugned. While considering the submissions of the assessee and the order of the AO, the Id.CIT(A) noticed that the basis of the rejection of the books of accounts by the AO was his order for Asst.Year 2011-12 wherein the AO after noticing certain discrepancies and defects, rejected the books of accounts and thereafter estimated gross profit on sale of gold and silver bar. He further noted that additions were made entirely on the basis of the order for Asst.Year 2011-12, and in fact on this issue additions have been made in the case of the assessee for all the years from Asst.Year 2005-06 TO 2011-12. The additions for Asst.Year 2008-09 and 2011-12 were deleted by the Id.CIT(A)-1 Indore. The Id.CIT(A) has reproduced in his impugned at page no.24 to 27, the earlier appellate order passed in the matter rejecting the action of the AO in invoking provisions of

section 145(3) and estimation of gross profit. Following the same, to maintain consistency in the absence of any distinctive features in present year, the ld.CIT(A) allowed the claim of the assessee, and deleted the impugned additions. Aggrieved, Revenue is now before us.

147. We have heard both the sides on this issue. The issue before us is validity of rejection of books of accounts and estimation of profit by the AO. We find similar issue has been agitated by the Revenue before us in the Asstt.Year 2008-09, wherein we have upheld the finding of the ld.CIT(A) and confirmed his order. We also find that in the present year also similar and exactly the same situation remains in regard to the impugned issues. the ld.DR has not drawn any distinction of facts so as to enable us have a re-look on the validity of the decision by the ld.CIT(A) in cancelling rejection of books result & estimation of profit on sale of gold and silver bar and consequent deletion of the additions. In the present year also, the ld.CIT(A) proceeded on similar footing in the light of identical set of facts and documents, and also keeping in mind decision of the Tribunal on similar issue in the case of Omprakash Dhanwani (supra). Therefore, in the absence of any persuasive arguments or material being placed before us by the Revenue vis-à-vis the finding of the ld.CIT(A), we decline to interfere in the order of the ld.CIT(A) on this issue, and therefore reject this ground of appeal of the Revenue. Consequently, all the identical grounds raised in the Asstt.Year 2013-14 and 2014-15 also stand rejected.

148. Now only one ground remained in the appeal of the Revenue for A.Y.2012-13 is against restricting the addition of Rs.2,01,41,348/- on account of disallowance of interest upto Rs.16,00,730/- by ignoring the finding of the AO in the assessment order.

149. We have perused the impugned orders and gone through the connected records. We have also heard both the parties.

150. It appears from the order of the AO that large interest expenses to the tune of Rs.2,01,41,348/- debited in the account of MP Bullion were related to the loan taken by the assessee in his personal capacity. These loans taken by the assessee in turn were advanced as interest free to various concerns of the assessee. The assessee was show caused as to why interest expense in proportion to the interest free advances should not be disallowed. Assessee submitted that the loans were taken from the bank for the promotion of his associated concerns, which was for the purpose of business and business expediency. However, the AO was not satisfied with the explanation of the assessee as to why interest expenses should be borne by the MP Bullion for the loan taken by the assessee in his personal capacity. According to the AO, the interest expenses was shown in the concern to reduce to the profitability and accordingly he made the impugned addition, which was challenged before the Id.CIT(A). After a detailed discussion, the Id.CIT(A) restricted the addition to Rs.16,00,730/- and deleted disallowance of Rs.1,85,40,618/-. The discussion and the finding of the Id.CIT(A) in the impugned order are relevant to note, which we reproduce hereunder:

*“6. Ground No.4: By this ground the appellant has disputed the addition of Rs.20141348/- being interest disallowed. The detailed facts of the case as per the assessment order are reproduced at Para No. 2 above and the detailed submissions of the appellant on the issue are reproduced at Para No. 3 above.*

*6.1 From the assessment order, it is seen that the AO has disallowed the entire interest on the ground that interest bearing funds have been utilized for non business interest free advances. Perusal of the material available on record shows that out of Rs.20141348/- which have been disallowed Rs.16884712/- pertains to interest paid to banks and financial institutions and Rs.3256633/- is interest paid on unsecured loans. Out of Rs.16884712/-, Rs.13727969/- is interest paid to Indusind Bank Account No.054. During the course of appellate proceedings, it has been explained by the appellant*

that the account number 054 is the Over Draft Account. From this account the amounts are transferred to Indusind Bank account number 050 which is a current account and from the current account number 050 payments have been made/funds have been transferred for business purposes. The appellant was asked to draw up a summary for the year of the amounts withdrawn from current account 050 which is as under:-

SUMMARY OF PAYEMNT OF INDUSIND 050 BANK

SR.No.	.Particulars	Amount (in Rs.)
1	Indusind Bank 05	1517450000/-
2	Capital	465555000/-
2	MCX	647964450/-
4	NCDEX	140813625/-
5	Axis Bank Gold Account	316200000/-
6	Delhi Branch	69973 1700/-
7	Ahmedabad Branch	2468710075/-
8	Indusind Bank 060	12780000/-
9	Bank charges etc.	51108/-
10	Bombay Branch	12150000/-
11	Parties (Business Purchase)	43944850/-
12	G-Next Telecom	30440/-
13	TDS	119867/-

It has thus been argued that the entire amount on which interest has been disallowed has been utilized for business purposes. From the above chart, it is seen that entries at Sr. Nos. 1, 3 to 7, 9 to 11 are definitely for the business of M. P. Bullion and the NCDEX, MCX business carried out by the appellant. The appellant during the course of appellate proceedings has filed a detailed list of loans and advances taken and loans and advances given without interest for the A.Ys. 2010-11 & 2011-12 and has pointed out that in the year under consideration the loans and advances taken without interest have gone up by Rs.98923820/- while loans and advance given without interest have increased by Rs. 128498130/-. The net increase in interest free advances was therefore only Rs.29574310/-. It was pointed out that during the year the turnover was Rs.770 Crores and thus interest free funds were available for interest free advances. It was also pointed out by the appellant that out of interest of Rs. 16884712/- the interest of Rs.3144112/- was paid to India

*Bulls Financial Services which was for the purpose of depositing margin with MCX/NCDEX and produced relevant documents in support of the same.*

*6.2 As regards, the interest paid to others the appellant was asked to file a summary of the loans taken and interest paid and high light the new loans taken during the year. On perusal of the details filed it is seen that only new loans taken during the year were at Rs.7800000/- on which total interest of Rs.453050/- was paid. The balance loans were taken in earlier years and only interest was paid in this year. It was therefore argued by the appellant that such loans which were taken in earlier years on which only interest has been paid during the year and no adverse inference as to their utilization for non business purpose has been drawn in the earlier years, such view that these were utilized for non business purpose in this year is not justified. The appellant relied for this proposition on the decision of the Hon'ble Supreme Court in the case of S. A. Builders.*

*6.3 It was also pointed out by the appellant that no such disallowance has been made during preceding and succeeding years. Appellant has also contended that the adverse view drawn by the AO on the negative capital balance was also not justified in view of the fact that the amount was withdrawn from proprietary business for investment in Century21 Malls Pvt. Ltd., as for sanction of loans from financial institution it was stipulated that the directors/promoters bring in their contribution as unsecured loans. The total contribution in century 21 Malls of the appellant as on 31.3.2011 stands at 223609630/-and during the year the total credits were at Rs.203953570/- while debits were at Rs. 108996570/-. It was argued by the appellant that such advances to Century 21 Malls were also business transactions and hence no interest was disallowable.*

*6.4 Taking into consideration the facts and circumstances as discussed above and the submissions of the appellant it is considered that the appellant has failed to establish that the negative capital balance is attributable to utilization of interest bearing funds for business purposes and further the appellant has also not been able to establish direct nexus between the new interest bearing loans taken and their utilization for the purposes of business. In view of the above interest of Rs.453050/-(pertaining to new interest bearing loans of 7800000/- taken during the year) and interest at the rate of 12% on the negative capital balance of Rs.956400/- which works to Rs.1147680/- totaling to Rs.1600730/- is disallowed on account of utilization of interest bearing funds for non-business purposes. The addition of Rs.20141348/- is therefore restricted to Rs.1600730/-. The appellant gets relief of Rs.18540618/-. This ground of the appellant is therefore partly allowed.”*

151. A perusal of the order of the ld.CIT(A), we find that the ld.CIT(A) after examining all the details with regard to loans taken from the lenders and advanced by the assessee to its sister concerns, restricted the impugned addition as mentioned in the impugned order. Hence, we do not find any infirmity in the order of the ld.CIT(A) to be

interfered with, and hence we confirm the order of the Id.CIT(A) and dismiss the ground of appeal of the Revenue.

152. In the result, all the appeals of the Revenue are dismissed. The cross-objections filed by the assessee also stand dismissed.

**Order pronounced in the Court on 25<sup>th</sup> January, 2023 at Ahmedabad.**

Sd/-  
**(BHAGIRATH MAL BIYANI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(MADHUMITA ROY)**  
**JUDICIAL 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 प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad

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