

**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD  
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER  
AND  
SHRI. RAMIT KOCHAR, ACCOUNTANT MEMBER**

**ITA No.15/Alld/2018  
Assessment Year: 2013-14**

<b>Smt. Neeta Nath, L/H of Lt. Dr. Jitendra Nath B/401, Mayan Enclave, 49/13, Clive Road, Allahabad PAN-ABEPN1795Q</b>	vs.	<b>The Asstt. Commissioner of Income Tax, Central Circle, Civil Lines, Allahabad</b>
(Appellant)		(Respondent)

**ITA No.16/Alld/2018  
Assessment Year: 2013-14**

<b>Madhurendra Nath, B-502, Vinayak Le Grande, 16/12, Lal Bahadur Shastri Road, Allahabad-211001 PAN-AAIPN8161D</b>	vs.	<b>The Asstt. Commissioner of Income Tax, Central Circle, Civil Lines, Allahabad</b>
(Appellant)		(Respondent)

Appellant by:	Sh. Siddharth Pathak, Adv
Respondent by:	Sh. Rabin Chaudhari, CIT DR
Date of hearing:	18.01.2023
Date of pronouncement:	16.02.2023

**ORDER**

**SHRI VIJAY PAL RAO, J.M.:**

These two appeals by the two related assesseees are directed against two separate orders of the CIT(A), both dated 28.04.2016 for the assessment year 2013-14.

2. These appeals are arising from the assessment orders passed under section 153C in pursuant to the search and seizure action under section 132(1) of the Income Tax Act, dated 05.12.2013 in the case of Shri. Hemant Kumar Sindhi. Therefore, the facts and circumstances as well as the grounds of appeal

raised by the assesseees are common and identical in both the appeals. The grounds raised in the appeal in ITA No. 15/Alld/2018 are reproduced as under:

- “1. BECAUSE the Id. CIT(Appeals) has failed to appreciate that the assessment order dated 19th March, 2016 is wholly illegal and bad in law as the statutory notice under section 143(2) was issued beyond the limitation as prescribed in the Income Tax Act, 1961.*
- 2. BECAUSE the Id. CIT (Appeals) should have cancelled the assessment order dated 19th March, 2016 herself as the mandatory notice under section 143(2) was issued beyond the time limit prescribed in the Income Tax Act, 1961.*
- 3. BECAUSE no "Satisfaction" was recorded by the assessing officer to meet the requirement of law before invoking the provision of section 153C In the case of appellant thereby the assessment order dated 19th March, 2016 should have been quashed by the Id. CIT(Appeals).*
- 4. BECAUSE the Id. CIT (Appeals) should have quashed the assessment order dated 19th March 2016 on the preliminary legal issues which goes to the very root of a valid assessment and in pursuance to illegal assessment the order passed by the Id. CIT(Appeals) is also bad in law.*

**WITHOUT PREJUDICE TO AFORESAID**

- 5. BECAUSE the Id. CIT (Appeals) has erred in law and on facts in confirming the addition of Rs. 45,00,000/- as made in assessment order dated 19.03.2016 without properly appreciating the law as also the facts of the case which were explained before her during the appellate proceedings.*
- 6. BECAUSE the id. CIT (Appeals) has erred in law and on facts in holding that the loose paper L-5, page124 back side is relating to the appellant and confirming the addition of Rs. 45,00,000/- without appreciating the facts that the search was conducted on the premises of Dinesh Kumar Pahuja and the alleged papers were found from his premises.*
- 7. BECAUSE the appellant was only tenant and received Rs. 60,00,000/- only for vacating the property whereas the transaction of sale of property was happened between M/s H.K. Infraventures Pvt. Ltd. through its Director Shri Hemant Kumar Sindhi and with Dinesh Kumar Pahuja President of Sindhu Sahkari Avas Samiti and the contrary view taken by the Id. CIT(Appeals) to confirm the addition in the hands of appellant is wholly illegal and erroneous.*
- 8. BECAUSE there was no business dealings with Dinesh Kumar Pahuja with the appellant and the entries recorded in the loose paper found from the premises of Dinesh Kumar Pahuja cannot be treated as correct to make the astronomical addition of Rs. 45,00,000/- in the hands of the appellant.*

9. BECAUSE the appellant has made an agreement with M/s H.K. Infraventures Pvt. Ltd. through its Director Shri Hemant Kumar Sindhi not with Dinesh Kumar Pahuja President of Sindhu Sahkari Avas Samiti and forcefully confirming the addition in the hands of appellant without any basis is wholly illegal and unjustified.

10. BECAUSE the Id. CIT(Appeals) failed to appreciate the correct facts as emerged from the loose paper itself, paper L-5, page124 back side found from the premises of Dinesh Kumar Pahuja, President of Sindhu Sahkari Avas Samiti, thereby erred in confirming the addition of Rs. 45,00,000/- In the hands of appellant.

11. BECAUSE the appellant was no where connected with business dealings of Dinesh Kumar Pahuja, President of Sindhu Sahkari Avas Samiti or his Samiti and the addition confirmed by the Id. CIT(Appeals) is totally illegal and unjustified.

12. BECAUSE the Id. CIT(Appeals) has erred in law and on facts in treating the vague entry found in the books of Sindhu Sahkari Avas Samiti as found from the premises of Dinesh Kumar Pahuja without bringing any material on records to prove any business dealing with the appellant with Dinesh Kumar Pahuja.

13. BECAUSE the Id. CIT(Appeals) has erred in law and facts in holding that the fake entries appearing in the paper L-5, page124 back side belongs to the appellant despite the categorical finding given by the assessing officer that the disputed paper was found from the premises of Dinesh Kumar Pahuja, President of Sindhu Sahkari Avas Samiti.

14. BECAUSE the entries as found In the loose paper L-5, page124 back side are third party entry which cannot be added in the hands of appellant as the said entries are not admissible as evidence under section 34 of the Indian Evidence Act,.

15. BECAUSE the Id. CIT(Appeals) has erred in law by treating contention of the company M/s H.K. Infraventures Pvt. Ltd. as correct without appreciating the facts that the appellant is not the owner of the land but only a tenant.

16. BECAUSE the entries as recorded in the loose paper L-5, page124 back side are between the purchaser and seller i.e. M/s H.K. Infraventures Pvt. Ltd and Sindhu Sahkari Avas Samiti and the addition on the basis of their transaction in the hands of appellant is wholly illegal and unjustified.

17. BECAUSE the id. CIT(Appeals) has erred in law and of facts in holding that the paper L-5, page124 back side and the entries mentioned therein belongs to the appellant and confirming the arbitrary addition of Rs. 45,00,000/- on that basis.

18. BECAUSE the Id. CIT(Appeals) has erred in law and on facts in holding that the entries in the paper L-5, page124 back side is true statement of affairs without appreciating the facts that the land purchase deal were between M/s H.K. Infraventures Pvt. Ltd and Sindhu Sahkari Avas Samiti, not the appellant.

19. BECAUSE the Id. CIT(Appeals) has erred in law and on facts in treating the entries belongs to appellant whereas appellant is not liable to explain the entries of two different entities L.e. M/s H.K. Infraventures Pvt. Ltd and Sindhu Sahkari Awas Samiti as the appellant received only Rs.60,00,000/- for vacating the premises.

20. BECAUSE the Id. CIT(Appeals) has erred in law and on facts in holding that land purchase deal were between the appellant and M/s H.K. Infraventures Pvt. Ltd. totally defying the document and evidences placed before her thereby confirming the illegal addition made under section 69 of the Income Tax Act, 1961.

21. BECAUSE the assessment order dated 19th March 2016 and the order passed by Id. CIT(Appeals) dated 13.11.2017 is wholly illegal and unjustified on legal grounds as also on facts of the case.

22. BECAUSE the appellant denies the liability of interest under various section Independent of quantum of assessment.”

3. The assessee is an individual and was Dental Surgeon by profession. Before filing the present appeal the assessee expired and therefore, the appeal in ITA No. 15/Alld/2018 was filed through legal heir Smt. Neeta Nath. Originally, the assessee filed his return of income on 30.07.2013 declaring total income of Rs. 1,87,730/-. Thereafter, there was a search and seizure action under section 132 of the Income Tax Act in case of Hemant Kumar Sindhi, Dinesh Kumar Pahuja group. During the course of search and seizure, the document annexure L-5/page 124 back side was found and seized. The said seized document was a ledger account of land purchase in the books of M/s H.K. Infraventures Pvt. Ltd. from 01.04.2011 to 31.03.2014, which shows that Rs. 2.10 Crore (Rs. 1.05 Crore each) has been paid to the assessee and his brother Shri Madhurendra Nath. Consequently, the AO initiated the proceedings under section 153C by issuing notice under section 153C dated 5.9.2014. In response to the said notice, the assessee filed reply dated 22.9.2014 and stated that the return filed under section 139 on 30.07.2013 may be treated as return filed in compliance to notice issued under section 153C. Since, the assessee and his brother declared a sum of Rs. 60 Lac each as receipt towards compensation for vacating the premises i.e. House No. 11/13/17 Stanely Road, Allahabad which was occupied by the assessee and his brother as a tenant of M/s Sindhu Sahkari Awas Samiti sold to M/s H.K.

Infraventures Pvt. Ltd, therefore, the AO issued show cause notice as to why the balance amount of Rs. 45 Lac each should not be added to their total income as unexplained income under section 69 of the Income Tax Act. In reply dated 22.02.2016, the assessee denied the allegations of receiving any amount over and above of Rs. 60 Lac, in lieu of vacating the premises. The assessee also explained that the compensation was received from Shri Hemant Kumar Sindhi for vacating the premises in question and the assessee had no dealing with M/s Sindhu Sahkari Awass Samiti whatsoever. The assessee also denied his acquaintance with Shri. Dinesh Kumar Pahuja. The AO did not accept the reply of the assessee and found the same unsatisfactory and by considering the fact that during the assessment proceedings of M/s H.K. Infraventures Pvt. Ltd., Shri. Hemant Kumar Sindhi has accepted the transaction of Rs. 51,49,500/- mentioned on the seized document therefore, the other transactions, recorded in the seized document cannot be denied. The AO accordingly made an addition of Rs. 45 Lac and treated the same as an unexplained income under section 69 of the Income Tax Act and separately taxed the same as per the provisions of section 115BBE of the Income Tax Act. The assessee challenged the action of the AO before the CIT(A) but could not succeed.

4. Ground Nos. 1 and 2 are regarding the validity of assessment framed by the AO under section 153C without issuing notice under section 143(2). The learned AR of the assessee has submitted that the AO completed the assessment without issuing a notice under section 143(2). The assessee challenged the validity of the assessment on the ground that there is no mention about the issuance of notice under section 143(2) in the order-sheet entries recorded by the AO. Thus, the learned AR has submitted that the assessment completed by the AO without issuing notice under section 143(2) which is a mandatory condition is not sustainable in law and liable to be quashed. He has referred to the order-sheet entries recorded by the AO placed at page no. 44 to 46 of the paper book and submitted that the first entry is regarding notice issued under section 153C dated 5.9.2014. Thereafter, the second entry is regarding reply filed by the assessee and third entry is regarding notice issued under section 142(1) with queries. There is no mention of notice under section 143(2) as

per the order-sheet entries. The learned AR has thus contended that the AO has not issued any notice under section 143(2) to the assessee therefore, the assessment framed by the AO is *void ab initio* and liable to be quashed. In support of his contention, he has relied upon the judgment of Hon'ble jurisdictional High Court at Lucknow Bench dated 28.7.2017 in the case of ***CIT vs. Shri. Moin Iqbal*** in Income Tax Appeal Nos. 168 and 169 of 2009. The learned AR has submitted that the Hon'ble High Court has held that section 143(2) of the Act is mandatory in nature and it shall be obligatory for the AO to apply mind to the contents of the return filed in response to notice and thereafter issue notice under section 143(2) of the Act before proceeding to decide controversy. The non-compliance of mandatory provision vitiates the assessment. He has also relied upon the judgment of Hon'ble Supreme Court in the case of ***Assistant Commissioner of Income Tax vs. Hotel Blue Moon 321 ITR 362 (SC)***.

5. On the other hand, learned DR has submitted that the AO has duly recorded at page no. 2 of the assessment order that notice under section 143(2) was duly issued to the assessee on 16.11.2015 alongwith the notice issued under section 142(1) and in response to which the counsel of the assessee attended the proceedings before Assessing Officer and filed reply. The assessee never objected during the assessment proceedings to the notice issued under section 143(2) by the AO. He has further submitted that even otherwise the notice under section 143(2) is not required while framing the assessment under section 153A/153C of the Income Tax Act. He has relied upon the judgment of Hon'ble jurisdictional High Court in the case of ***CIT vs. Anurag Aggarwal 299 taxman 532*** as well as in the case of ***CIT vs. Surendra Chand Bansal 42 taxman.com 201***. The learned DR has further submitted that this issue is also covered by the Third Member decision in the case of ***Sunshine Infraestate Private Limited vs. ACIT***, wherein the majority view has held that notice under section 143(2) is not required for assuming the jurisdiction by the AO for framing the assessment under section 153A / 153C of the Income Tax Act.

6. We have considered the rival submissions as well as relevant material on record. The assessee has challenged the validity of assessment for want of notice

under section 143(2) of the Income Tax Act. The challenge of the assessee is entirely based on the order-sheet entries wherein the AO has not mentioned about the issuance of the notice under section 143(2) whereas the Assessing Officer has recorded in the assessment order itself that a notice under section 143(2) was issued on 16.11.2015. The relevant part of the assessment order in para 3 is as under:-

*“The assessee has filed reply on 22.09 2014 stated that return filed u/s 139 on 30.07.2013 at total income of Rs. 1,87,730/- may be treated an return filed in compliance to notice u/s 153C whereas the assessee was required to file return electronically in compliance to notice u/s 153C. Notice u/s 143(2) was issued on 16.11.2015. Notice under section 142(1) with detailed questionnaire was issued on 05.11.2015. In response Advocate, Shri Madhurendra Nath, attended and has filed reply 23.11.2015 and the case has been discussed with him.”*

7. Thus, it is clear from the assessment order that the AO recorded the fact of issuing the notice under section 143(2) on 16.11.2015 and thereafter the assessee appeared and filed reply on 23.11.2015. It is also undisputed fact that the assessee did not challenge the notice issued under section 143(2) either during the assessment proceedings or even before the CIT(A). Only before the Tribunal, the assessee has first time raised this issue in ground no. 1 and 2. The grounds raised before the CIT(A) do not question the validity of assessment for want of notice under section 143(2). For ready reference, the grounds raised by assessee before the CIT(A) are reproduced as under:-

*“1. Because the Learned Assessing Officer erred on facts and law in treating that the appellant had received Rs. 1,05,00,000/- as compensation from M/s H.K. Infraventures Ltd. for vacating premises No. 13, (New No. 17), Stanley Road, Allahabad.  
2. Because the Id. Assessing Officer has relied on the entries in the books of a third person (Mr. Dinesh Kumar Pahuja) and has failed to appreciate the replies and statement of the appellant thereby treating Rs. 1,05,00,000/- as compensation received by the appellant.  
3. Because the addition of Rs. 45,00,000/- as unexplained made by Ld. Assessing Officer is based on conjectures and surmises only.  
4. Because in any view, the entire addition of Rs. 45,00,000/- is against the facts of the case and is liable to be deleted.”*

8. Therefore, at the outset, we find that when the AO has clearly mentioned in the assessment order that the notice under section 143(2) was issued on 16.11.2015 and the assessee did not raise any objection either before the AO or before the CIT(A) then merely because this fact was not recorded in the order-sheet by the AO would not lead to the conclusion that the fact recorded in the assessment order is false / incorrect. The assessee is not disputing the fact as recorded by the AO in the assessment order as well as service of notice but the challenge is based merely on the ground that the said fact of issuing the notice under section 143(2) does not find place in the order-sheet entry. Therefore, merely because the AO has not mentioned in the order-sheet entries about the issuance of notice under section 143(2) would not change the fact that the notice was issued under section 143(2) of the Income Tax Act. Hence, once the notice was issued by the AO under section 143(2) then the validity of assessment for want of the notice cannot be questioned.

9. Even otherwise the notice under section 143(2) of the Income Tax Act is not a mandatory requirement for framing the assessment under section 153A or section 153C of the Income Tax Act. Though the judgments relied upon by the learned CIT DR are in relation to the assessment framed under section 153A but even when the assessment is framed under section 153C the procedure is provided only under section 153A of the Income Tax. Therefore, when no notice under section 143(2) is required for framing the assessment under section 153A then on the similar analogy, the same is not required even for framing the assessment under section 153C of the Income Tax Act as both are in pursuant to search and seizure action under section 132 of the Income Tax Act. The Hon'ble jurisdictional High Court in the case of **Commissioner of Income Tax vs. Shri. Moin Iqbal** (supra) as relied upon by the learned AR has specifically taken note of the fact that the assessment was framed under section

143(3) but it was erroneously mentioned under section 153A. The Hon'ble High Court has recorded this fact in para 19 of the said judgment as under:-

*“19. Learned counsel for Revenue did not dispute seriously that mention of Section 153A was an error and that will not vitiate the assessment order but since assessment was claimed to have been completed under Section 143(3) and if that be so, notice under Section 143(2) was mandatory and non-compliance thereof vitiates assessment, therefore, we answer Question-I in favour of Assessee and against Revenue holding that Tribunal was justified in dismissing appeal of Revenue not for quoting wrong provision but, in substance, for non-compliance of a mandatory provision which was not treated to be a mere procedural irregularity in various authorities as discussed above.”*

10. Hence, the said decision would not apply in the assessments framed under section 153A / 153C of the Income Tax Act. On the contrary, an identical issue has been decided by a majority view in the case of **ACIT vs. Sunshine Infraestate Private Limited** (supra) and the Third Member vide order dated 12.04.2022 has considered and decided this issue in para 6.2 to 6.6 as under:-

*“6.2. Section 153A of the Act, at the relevant time, opens with a non-obstante clause, inter-alia, qua section 147 and provides that when a person is searched after the specified date, the AO shall: “(a) issue notice to such person requiring him to furnish within such period, as may be specified in the notice, the return of income in respect of each assessment year falling within six assessment years referred to in clause (b) ..... and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139”. Section 153A(1)(b) states that the AO shall: “assess or reassess the total income of six assessment years immediately preceding the assessment year relevant to the previous year in which such search is conducted or requisition is made”. The first proviso to section 153A(1) also says that “the Assessing Officer shall assess or reassess the total income in respect of each assessment year falling within such six assessment years”. On going through the mandate of section 153A, it gets clear that once a notice is issued to the assessee requiring him to furnish his return in respect of each assessment year falling within six assessment years referred to in clause (b), the assessment has to mandatorily take place. The position can be compared with a regular assessment u/s 143(3) etc., which takes place in both the circumstances of the assessee having furnished or not furnished its return of income. If a return is already filed, the assessment*

can be espoused straight away and completed. On the other hand, if no return has been filed, then firstly, a return has to be called for by issuing notice u/s 142(2)(i). It is only when the return is either suo motu filed or in response to notice u/s 142(1)(i) that the case becomes ripe for undergoing assessment. Thereafter, a notice u/s 143(2) is required to be issued if the AO 'considers it necessary or expedient to ensure that the assessee has not understated the income' in the return. The point to be noted is that making assessment of all the returns filed is not necessary. It is only in some of the returns where the AO considers it necessary or expedient to ensure that the assessee has not understated the income, that he takes up the assessment after first, acquiring jurisdiction by issuing notice u/s 143(2). It, therefore, follows that whereas the filing of return by the assessee having income chargeable to tax etc. is essential, but making the assessment of such returns is not essential under law. Only in such cases where the AO considers it necessary to ensure that the assessee has not understated his income etc. that he takes up assessment, which is done by firstly acquiring jurisdiction on issuing notice u/s 143(2) of the Act. If the AO does not consider necessary or expedient etc., he need not make an assessment, in which case no notice u/s 143(2) would be required. Thus, it follows that notice u/s 143(2) gives jurisdiction to the AO to take up assessment. On the other hand, section 153A gets triggered for making assessment in case of search or requisition. Such assessments have to be mandatorily made by the AO whether or not he considers necessary to expedient to ensure that the assessee has not understated the income. There is no choice with the AO except to make the assessments of the prescribed six assessment years. Once the assessments are to be mandatorily made in search cases, unlike the regular cases giving choice to the AO to make assessment only on considering it necessary or expedient, there is no requirement of acquiring any jurisdiction to do so by firstly issuing notice u/s 143(2). The very factum of search confers jurisdiction on the AO to make assessment under section 153A of the Act.

6.3. It is no doubt true that section 147 also requires issuance of a notice u/s 143(2) as a pre-condition for making assessment or reassessment. However, in view of the fact that section 153A contains non-obstante clause qua section 147, the consequential requirement of issuing notice u/s 143(2) before making assessment u/s 147, also gets obliterated in an assessment u/s 153A. Moreover, section 153A directly empowers the AO to take up the assessment without acquiring any separate jurisdiction.

6.4. The Id. AR heavily relied on the judgment of the Hon'ble Supreme Court in ACIT & Anr. vs. Hotel Blue Moon (2010) 321 ITR 362 (SC) to contend that issuance of notice u/s 143(2) in search cases for making block assessment u/s 158BC has been held by the Hon'ble Apex Court to be mandatory and the same ratio would apply to the assessments made in search cases under section 153A as well.

6.5. *The Hon'ble Apex Court in that case, while dealing with block assessment u/s 158BC, has held that the AO must necessarily issue notice u/s 143(2) within prescribed time for making assessment u/s 158BC and any omission on the part of AO to issue such notice would render the order void. However, it is apt to note that the provision under consideration of the Hon'ble Apex Court was section 158BC. Clause (b) of section 158BC expressly provides that "the Assessing Officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158BB and the provisions of section 142, sub-sections (2) and (3) of section 143, section 144 and section 145 shall, so far as may be, apply". It is ostensible from the language of section 158BC(b) that section 143(2) has expressly been made applicable to block assessment u/s 158BC. However, no parallel reference to section 143(2) has been made in section 153A. A contention similar to the one raised before the Tribunal was also made before the Hon'ble Delhi High Court in Ashok Chaddha vs. ITO (2011) 337 ITR 399 (Del). Repelling such a contention, the Hon'ble Delhi High Court has categorically laid down that the issuance of notice u/s 143(2) is not a requirement for completing the assessment u/s 153A. While holding so, the Hon'ble Delhi High Court also considered the judgment of Hon'ble Supreme Court in the case of Hotel Blue Moon (supra). Similar proposition has been laid down by the Hon'ble Punjab & Haryana High Court in the case of Tarsem Singla v. DCIT (2016) 385 ITR 138 (P&H) holding that no specific notice is required u/s 143(2) when notice u/s 153A(1)(a) was already given. The Hon'ble Punjab & Haryana High Court also considered the judgment in the case of Hotel Blue Moon (supra). Following the judgments in Ashok Chaddha (supra) and Tarsem Singla (supra), the Hon'ble Kerala High Court in CIT vs. Promy Kuriakose (2016) 386 ITR 597 (Ker) reiterated the proposition by holding that there is no requirement of notice u/s 143(2) for completing the assessment u/s 153C. The above referred three judgments have been considered by the Hon'ble Madras High Court in B. Kubendran v. DCIT (2021) 434 161 (Mad) and thereafter, it has been laid down that there is no specific provision in the Act requiring the assessment u/s 153A to be made after issuing notice u/s 143(2). No contrary decision of any other Hon'ble High Court, mandating the requirement of notice u/s 143(2) in making assessment u/s 153A, has been placed by the ld. AR before me.*

6.6. *At this stage, it would be significant to note that a difference of opinion arose between two Members of the Mumbai Bench on this very issue as to whether requirement of issuing notice u/s 143(2) is there before making assessment u/s 153A? The learned Third Member in Smt. Sumanlata Bansal vs. ACIT (TM), vide his order dated 20.05.2015 (ITA Nos.525 to 530/Mum/2008), has decided the issue in favour of the Revenue by holding that the issuance of notice u/s 143(2) is not warranted while framing assessment u/s 153A. In view of the foregoing discussion, the overwhelming legal position is clear by which the four*

*Hon'ble High Courts of the country have decided this issue against the assessee apart from the learned Third Member also approving similar view. I, therefore, answering the question in negative, hold that issuance of notice u/s 143(2) is not a mandatory jurisdictional requirement for making assessment u/s 153A so as to render the assessment order null and void in its absence. Hence, I concur with the view taken by the ld. AM on this score."*

11. Accordingly, in view of the facts and circumstances as discussed above as well as the decisions of Hon'ble High Court and this Tribunal in the case of **Sunshine Infraestate Private Limited** (supra) on this point, we do not find any merit or substance in ground no. 1 and 2 of the assessee's appeal, the same are dismissed.

12. Ground no. 3 and 4 are regarding the validity of assessment order for want of satisfaction recorded by the AO. The learned AR of the assessee has submitted that the AO has framed the assessment without recording the satisfaction before invoking the provisions of section 153C of the Income Tax Act. He has submitted that in the order-sheet entries, the AO has not mentioned about the satisfaction recorded before issuing the notice under section 153C of the Act. Therefore, the assessment framed by the AO is not valid and liable to be quashed.

13. On the other hand, the learned DR has submitted that the AO has duly stated in para 3 of the assessment order that after recording satisfaction in writing a notice under section 153C of the Income Tax Act dated 5.9.2014 was issued requiring the assessee to furnish the return of income. Thus, the learned DR has submitted that once this fact is recorded in the assessment order and the assessee has not raised any objection about the satisfaction recorded by the AO either during the assessment proceedings or before the CIT(A), the same cannot be questioned at this stage.

14. We have considered the rival submissions as well as relevant material on record. The Assessing Officer in para 3 of the assessment order, which has been reproduced in the foregoing part of this order has clearly stated that after recording satisfaction in writing, a notice under section 153C of the Act dated 5.9.2014 was issued and duly served to the assessee. The assessee has challenged the recording of satisfaction only on the ground that the same is not mentioned in the order-sheet entries. It is pertinent to note that once the AO has specifically mentioned in the assessment order about the recording of satisfaction before the notice issued under section 153C of the Act and the assessee did not raise any objection either during the assessment proceedings or before the CIT(A) then merely because this was not mentioned in the order-sheet would not change the fact duly recorded by the AO in the absence of any contrary fact or material brought before us. Hence, the mere verbal contention of the assessee disputing the recording of the satisfaction, which find place in the assessment order itself, would not negate the fact of recording the satisfaction. Accordingly, we do not find any merit or substance in ground no. 3 and 4 of the assessment order and the same are dismissed.

15. Ground no. 5 to 20 are regarding the addition of Rs. 45 lac made by the AO on account of unexplained income allegedly received by the assessee for vacating the premises. The AO noted that during the search in the case of Dinesh Kumar Pahuja at Lotus Apartment on 5.12.2013, a document marked as Annexure L-5/ page 124 back side was seized which is a ledger account of land purchase in the books of M/s H.K. Infraventure Private Limited showing that Rs. 2.10 Crore has been paid to assessee and his brother Sh. Madhurendra Nath. The AO accordingly, asked the assessee vide questionnaire dated 5.11.2015 to explain the whole transaction and also explained whether you have disclosed the aforesaid amount and shown capital gain for the relevant period. The assessee filed its reply dated 23.11.2015 and submitted that he had received

Rs. 60 lac through three cheques from M/s H.K. Infraventure Private Limited as per agreement dated 30.05.2012 for vacating the premises no. 13/15/17 Stanely Road, Allahabad which were under the tenancy of the assessee and his brother who also got Rs. 60 lac as per the said agreement. The AO did not accept this reply / contention of the assessee and observed that out of Rs. 2.10 lac, Rs. 1.20 lac has been paid through cheques and the balance of Rs. 45 lac each total Rs. 90 lac was paid to the assessee and his brother in cash. Relying on the entries in the ledger account for payment of Rs. 1.05 crore each to the assessee and his brother and further in the assessment proceedings of M/s H.K. Infraventure Private Limited, a transaction of Rs. 51,49,500/- recorded in the same seized material was accepted the AO opined that the transaction of the seized document cannot be partly true and partly incorrect. The AO consequently made the addition of Rs. 45 lac treating the same as unexplained income under section 69 of the Act. The assessee challenged the action of the AO before the CIT(A) and contended that the assessee and his brother have received Rs. 60 lac each only as per the MOU dated 30.5.2012 for vacating the portion of the property in which they were residing as a tenants. The assessee further contended that the document seized from the premises of Dinesh Kumar Pahuja (a Third party) is rough and dump document which is liable to be ignored. The CIT(A) was not impressed with the contentions and explanations of the assessee and confirmed the addition made by the AO.

16. Before the Tribunal, the learned AR of the assessee has submitted that the AO has made the addition on the basis of the alleged seized document which is a ledger account in the books of M/s H.K. Infraventure Private Limited showing the payment of Rs. 1.05 Crores each to the assessee and his brother. He has submitted that the AO has ignored the fact as well as undisputed document being the memorandum of understanding dated 30.5.2012 giving the details of the payment made by the purchaser of the property in question to the

assessee and his brother. The details of the payment are given in the schedule of payment of the said memorandum of understanding which is signed by the assessee and his brother on the one hand and Shri. Dinesh kumar Pahuja on behalf of Sindhu Sehkari Avas Samiti as well as Sh. Hemant Kumar Sindhi, the Director of M/s H.K. Infraventure Private Limited. The said document is also attested by the witnesses. Therefore, a compensation was received by the assessee under the memorandum of understanding which is signed by all the parties has been duly declared by the assessee in the return of income and there is no evidence of receiving any compensation over and above which is mentioned in the memorandum of understanding and paid through cheques. The allegation of the AO regarding Rs. 45 lac received by the assessee and his brother in cash is neither accepted by M/s H.K. Infraventure Private Limited nor mentioned in the memorandum of understanding. The seized document was found from the possession of Shri. Dinesh Kumar Pahuja (Third Party) therefore, he was bound to explain the same. The learned AR has submitted that the assessee has made specific request to AO during the assessment proceedings to summon Shri. Dinesh Kumar Pahuja to verify the correctness of the fact but the AO failed in it for the reasons best known to him. The addition made by the AO on the basis of a dump document which is neither signed nor accepted by any of the parties is unjustified. In support of his contention, he has relied upon the judgment of Hon'ble Supreme Court in the case of **Central Bureau of Investigation vs. V.C. Shukla & Ors** dated 02.03.1998. The learned AR has thus contended that the agreement / memorandum of understanding was executed on 30.05.2012 and the seized paper was found in the course of search on 5.12.2013 therefore, the memorandum of understanding would prevail and not the rough and dump document to which too much weightage was given by the Assessing Officer. The said document was neither signed nor certified by any of the party. He has also referred to the provisions of section

292C of the Income Tax Act and submitted that a document found from the possession of Shri. Dinesh Kumar Pahuja, a third party is required to be explained by the said person and not by the assessee. The learned AR has further submitted that the loose sheet of paper is wholly irrelevant as evidence being not admissible under section 34 of the Evidence Act, 1872 so as to constitute the evidence with respect to the transactions mentioned therein being of not evidentiary value as held by Hon'ble Supreme Court in the case of ***Common Cause & Ors vs. Union of India*** 394 ITR 220. Since a seized document was not part of the books of accounts maintained in regular course of business therefore, the same cannot be used against the assessee when the person from the possession of whom it is found has not accepted the transactions. The learned AR has further contended that during the course of assessment proceedings, the AO recorded the statement of the assessee on 26.11.2015 wherein the assessee has explained and stated that he has received the compensation of Rs. 60 lac only from M/s H.K. Infraventure Private Limited through cheques. The details of which are given in memorandum of understanding dated 30.5.2012. The assessee also requested the AO, vide letter dated 23.12.2012 to provide the copy of the statement of the assessee recorded by him however, the same has not been provided. Thus, the learned AR has submitted that when the assessee has produced the evidence in the shape of memorandum of understanding duly signed by the parties and attested by the witnesses as well as notary public and also explained in his statement recorded by the AO that the assessee has received only Rs. 60 lac as compensation for vacating the premises in question then in the absence of any tangible material to show the payment of the alleged sum of Rs. 45 lac as compensation to the assessee the addition made by the AO is not justified.

16. On the other hand, the learned DR has submitted that M/s H.K. Infraventure Private Limited has accepted the part transactions recorded in the

seized document and therefore, the seized document cannot be accepted in part but the whole of the document has to be accepted and the transactions recorded in the document are to be deemed as correct. The memorandum of understanding dated 30.5.2012 is showing only the payment through cheques and the cash payment, component of compensation is not mentioned in the said memorandum as it is a normal practice when the money is taken in cash. He has relied upon the impugned order of the CIT(A) and submitted that the CIT(A) has examined the facts and the relevant material including the seized document marked as Annexure L-5/ page 124 and held that the document found during the course of search should be treated as genuine with respect to all entries recorded therein.

17. We have considered the rival submissions as well as relevant material on record. The AO, vide notice dated 16.02.2016 asked the assessee to explain as to why a sum of Rs. 1.05 crore received by the assessee for vacating the premises from M/s H.K. Infraventure Private Limited during the year should not be treated as undisclosed receipt or undisclosed income. The AO has reproduced the said notice at page no. 3 and 4 of the assessment order as under:-

*“Therefore, the assessee was again asked vide notice dt 16.02.2016 the relevant part of notice is as under:-*

*As per seized document Annexure L-5/page 124 back side, the copy of which was provided earlier, is ledger account of land purchased (where you reside at 17 Stanley Road) account of Sindhu Sahkari Avas Samiti (Sri Dinesh Kumar Pahuja is related to that samiti) in the books of HK Infraventures Pvt Ltd which shows that Rs 2.10 Crore paid to you and your brother Sri Madhurendra Nath which is stated as under:-*

*“31.12.2012 To (as per details)  
2,10,00,000*

*Journal Vch No. 208*

*Tenant-Jitendra Nath 10500000 Cr*

*Tenant- Mahurendra Nath 10500000 Cr*

*There are other transaction also shown in the above seized documents. You were directed to explain the transaction and to state whether the aforesaid amount has been disclosed by you.*

*You have stated in your reply filed on 23.11.2015 that you did not receive any amount other than mentioned above from M/s H K Infraventures Pvt Ltd. You have further reiterated the same in your statement recorded on oath.*

*Since the transaction is also related to M/s H K Infraventure Pvt Ltd and he was also asked to explain the aforesaid transaction as per Seized document Annexure L-5/page 124 back.*

*M/s HK Infraventures Pvt Ltd in its reply filed on 05.02.2016( reply no 27) during the assessment proceeding in his case for A.Y. 2013-14 has accepted of a cash transaction of Rs 51,49,500/- dt.04.11.2011 being Registry made and stamp duty paid Rs 5139500 and other fees paid no 185622 voucher no. 13. The transaction is also found on the same page 124 back side of Annexure L-5. It is stated that during the search, if a part of document is found true, then the whole document will be treated as correct.*

*Thus it can be said that the transaction of Rs 2.10 payment made to you and your brother Madhurendra Nath can also be treated as true. Therefore Please state why it will not be treated that you have received Rs 1,05,00,000/- for vacating the premises from M/s H K Infraventures during the year and why the remaining amount not disclosed by you may not be treated your undisclosed receipt/undisclosed income.*

*You are hereby given an opportunity of being heard. Therefore, you are directed to file your reply on 22.02.2016 at 11 AM. In the absence of any reply, it would be presumed that you have nothing to say in the matter and proceeding will be decided on merits."*

18. The assessee filed the reply dated 22.02.2016 which is also reproduced by the AO at page no. 4 as under:-

*"The assessee has filed reply on 22.02.2016 and relevant part of reply is - reproduced as under:-*

*"Re: Compensation received from Mr. Hemant Sindhi for vacating premises No stanley Road, Allahabad under our tenancy, I have had no dealing with M/s Sindhu Sahkari Avas Samiti whatsoever. I have made it clear that I do not know Dinesh Kumar Pahuja. I do not think that I have ever met him. What he has en in his books I have got nothing to do with it.*

*That my dealing was with Mr. Hemant Sindhi of M/s HK Infraventures only and with **no other person**. I have no idea how the name of Mr. Kumar Pahuja has come in between."*

19. The AO did not accept the reply of the assessee and made the addition of Rs. 45 lac as unexplained income which reads as under:-

*"The assessee's reply as stated above, with regard to seized document Annexure age 124 and its back, is not acceptable and is not found satisfactorily. esh Kumar Pahuja is the son of Late Narayan Das Pahuja, who was the Secretary of Sindhu Sehkari Awas Samiti and this Samiti has the ownership of property at 17, Stainley Road, Allahabad. Presently, as well as on the date of Sri Dilip Pahuja brother of Dinesh Kumar Pahuja is the Secretary of Sehkari Awas Samiti. In the aforesaid seized documents, certain other tions related to Sindhu Sehkari Awas Samiti and M/s H.K. Infraventure Ltd are recorded. As per seized documents, the amount paid to you of Rs. 1.05 crore (and Rs. 1.05 crore paid to your brother Madhurendra Nath) is also found recorded. Out of which Rs. 60 lakhs was disclosed by H.K. Infraventure and by you and the remaining amount of Rs. 45 lakhs was not disclosed either by you or by M/s H.K. Infraventure. Moreover, M/s H.K. Infraventure (P) Ltd has accepted a transaction (Rs. 51,49,500) mentioned on this page during the assessment proceedings in its case. Therefore, the transaction of a seized document cannot be partly true and partly incorrect. Thus, the amount received by you of Rs. 1.05 crore recorded in the said seized document is also correct. Therefore, contention made by you is not accepted. Out of Rs. 1,05,00,000/-, you have disclosed Rs. 60,00,000/- and the remaining amount of Rs. 45,00,000/- is treated as your unexplained under section 69 of the Income Tax Act, 1961 and added to your income which is separately tax as per provisions of section 115 BBE of Income Tax Act."*

20. Thus, it is clear that as per the seized document, there are entries of payment of Rs. 1.05 crore each to the assessee and his brother. There is no narration or details of the mode of payment in the said seized document. The assessee challenged the action of the AO before the CIT(A) and filed the written submissions which were reproduced by the CIT(A) in para no. 2 at page 5 to 11 of the impugned order as under:-

*"...That for the year under consideration a return u/s 139(1) of the IT Act was filed on 30/07/2013 declaring an income of Rs. 1,87,730/- alongwith all necessary paper and documents copy of which are enclosed at page no.....of the paper book alongwith computation chart. From the computation sheet itself it will appear that apart from professional and interest income the appellant voluntarily disclosed Rs. 60 Lakhs in his return which was received from M/s H.K. Infraventure Pvt. Ltd. to vacate the property No. 13, Stanley Road, Allahabad which is a rented property and for vacating the property the appellant received consideration of Rs. 60 Lakhs only. Thus it is a voluntary disclosure in the return which proves the conduct and intention of the appellant. That after filing of the return notice u/s 153C of the IT Act dated 05/09/2014 was served on the appellant on 09/09/2014 requiring thereby to furnish the returns for six years starting from A. Ys. 2007-08 to 2012-13. In compliance to the said notice returns for these six years were filed on 22/09/2014. In compliance to the notices u/s 143(2) of the IT Act necessary explanations, informations and details were also furnished as per requirement of the Assessing Officer.*

*That the cause/reason for issue of the notice u/s 153C of the IT Act was that a search and seizure operation u/s 132 of the IT Act was conducted on 05/12/2013 in the business and residential premises of Shri Dinesh Kumar Pahuja and Sri Hemant Kumar Sindhi. The Assessing Officer has admitted in para 4 of the assessment order that during the search operation in the case of Dinesh Kumar Pahuja R/o Lotus Apartment, Allahabad on 05/12/2013 many incriminating documents were found and seized in the course of search. Out of the said documents an annexure L-5 page 124 was also found and seized which is a ledger account of land purchase in the books of M/s H.K. Infraventure Pvt. Ltd. for the period from 01/04/2011 to 31.03.2014 copies of which are enclosed in the paper book at page no.....From such document a wrong inference was drawn by the assessing officer which is reproduced here under -:*

*"As per seized document Annexure L-5/page 124 back side (copy enclosed), which is ledger account of land purchase in the books of H K Infraventures Pvt. Ltd for 01/04/2011 - 31/03/2014 which shows that Rs. 2.10 Crore has been paid to you and your brother Madhurendra Nath out of which Rs. 1.20 Crore has paid through cheques. Please explain the whole transaction and also explain whether you have disclosed the aforesaid amount and whether you have shown capital gain for the relevant period. Please also correlate/verify the aforesaid transaction with your books of accounts"*

*That from the above inference it will appear that a sum of Rs. 1.20 Cr. was paid by the company through cheques. Meaning thereby that Rs. 60 Lacs each was paid to the appellant and his brother Sri Madhurendra Nath each through cheques.*

*That the cause of such payment made through cheque after signing of the memorandum of understanding was to finally close the deal of vacating the said rented property once and for all. The alleged incriminating document i.e. Annexure L-5 Page-124 was found from the possession of Sri Dinesh Kumar Pahuja (Third Party) in whose premises aforesaid mentioned search was conducted. Based on the said paper the assessing officer presumed that a sum of Rs. 10500000/- + Rs. 10500000/- was paid to the appellant & his brother when in reality the appellant and his brother each received Rs. 60/- Lacs only and that is also in terms of the agreement/Memorandum of understanding dated 30.05.2012 Copy of which is enclosed in the paper book at page no.....*

*That the reason for such payment was only because the appellant and his brother both were residing in the property situated at 13 Stanley Road, Allahabad as tenant from the year 1947 and paying rent of Rs 2500/- per month. The property in question belonged to M/s Sindhu Sahkari Awas Samiti in which the said Sri Dinesh Kumar Pahuja was the main person/Landlord. The said property was sold to M/s H.K. Infraventure P Ltd in which Sri Hemant Kumar Sindhi is a director. In this regard there is no dispute of any kind between said M/s Sindhu Sahkari Awas Samity & M/s H.K. Infraventure P Ltd.*

*That after purchase of the said property by M/s H.K. Infraventure Pvt Ltd. one of the directors of the Company named Sri Hemant Kumar Sindhi entered into an agreement with the appellant and his brother on 30.05.2012 much before the date of search and the said disputed single unsigned loose paper was founded seized in the course of search from said third party Dinesh Kumar Pahuja from his residence According to the agreement the appellant and his brother both were paid Rs. 60 Lakh + Rs. 60 Lakh only by M/s H.K. Infraventure Pvt. Ltd. for vacating the portion of the property in which they were residing as a tenant. The details of deal & transaction mode etc. are clearly mentioned in the agreement copy of the agreement is enclosed in the paper book at page no..... The said agreement was signed by four person namely the appellant and his brother and by Sri Dinesh Kumar Pahuja (Previous Land owner of M/s Sindhu Sahkari Samiti Ltd & Sri Hemant Kumar Sindhi, Director of M/s H.K. Infraventure Pvt. Ltd. in presence of two witnesses named Sri Ashok Dubey and Mrs Neeta Nath whose address are also appearing in the agreement. Thus the document clearly establishes that the transaction took place between the appellant & his brother and M/s H. K. Infraventure Pvt. Ltd. only (Purchaser) by before the date of search.*

*That the agreement was executed on 30/05/2012 and the seized paper was found in the course of search on 05/12/2013. Therefore, the memorandum of understanding will prevail and not the rough and dump document to which too much weightage was given by the assessing*

*officer. In this background the rough unsigned paper is liable to be ignored in all fairness of justice.*

*That in this regard your kind attention is invited to the provision of section 292 C of the IT Act which is reproduced as under-*

*Where any books of account, other documents money, bullion, jewellery or other valuable article or thing are or is found in the possession of control of any person in the course of a search under section 132 (for survey under section 133A) it may, in any proceeding under this Act, be presumed-*

*i) That such books of account other documents money, bullion, jewellery of other valuable article or thing belong or belongs to such person.*

*That from the aforesaid provision since the said annexure was found from said Sri Dinesh Kumar Pahuja (third party) therefore he was bound to explain the same and even he had made a specific request also to the Assessing Officer during the assessment proceeding to summon Sri Dinesh Kumar Pahuja to verify the correctness of the facts but the Assessing Officer failed in it for the reasons best known to him only and spared/freed to him and penalized the appellant uncalled for by making the unjustified addition without appreciating the correct facts which can not be called a judicious approach. In this regard the appellant rely upon decisions of various High Courts and ITAT Benches as mentioned in the list of citation enclosed in the paper book at page no.....*

*The said notarized agreement and mode/amount of payment as mentioned therein have been accepted by the Assessing Officer and on this count there is no adverse remark anywhere in the assessment order. It means the assessing officer gave full cognizance to the said notarized agreement. The fact of payment of Rs 60 lakhs each has been duly confirmed by Dinesh Kumar Pahuja and Hemant Kumar Sindhi as per the agreement.*

*That the addition of Rs. 45 Lacs was made by the assessing officer by giving too much weightage to the referred connected L-5/page 124 only which is a rough, dump & duff documents only found from the premises of third party named Sri Dinesh Kumar Pahuja and the same does not bear anybody's signature also. Hence the Assessing Officer proceeded on presumptions only and according to his own likings added made a wrong addition in the hands of the appellant knowingly by sparing the said third party namely Dinesh Kumar Pahuja from whose possession the said document was found. In the assessment of Dinesh Kumar Pahuja no adverse view was taken by the Assessing Officer on the basis of said referred annexure*

*when the same was found from his residence and also because he signed the agreement.*

*That during the hearing proceedings before your goodself on 09.08.2017 had filed my Written Submissions Paper Book. The following additional submissions are in continuance of and without prejudice to my earlier submissions.*

*That the addition of Rs 45,00,000.00 to the income of the appellant has been made by the Assessing Officer as unexplained under Section 69 of the Income Tax Act, 1961-refer line 10 of Page 5 of the Assessment Order.*

*That during the assessment proceedings all material facts were submitted before the Assessing Officer. Details of all the investments during the relevant period along with their source were duly submitted before the Assessing Officer and have been accepted. The appellant had categorically denied receiving any amount over and above Rs 60,00,000.00 from M/s HK Infraventure P Ltd. This fact has been mentioned in the assessment order- refer line 25 of Page 3 of the assessment order. At no point of time during the assessment proceedings did the Assessing Officer confront the appellant of any investment which had not been disclosed in the appellant's return of income. What investment he had made the source of which could not be explained is nowhere mentioned in the assessment order. Also, the Assessing Officer did not make any query during the assessment proceedings - there is no reference in the order sheet entries certified copies of which have been submitted as Annexure 12 (Pages 42-45) of the Written Submissions Paper Book submitted before your goodself on 09.08.2017. It is most humbly requested that the same may kindly be perused.*

*Your attention is drawn towards Section 69 of the Income Tax Act 1961, which reads as under:*

*"69. Unexplained Investment*

*Where in the financial year immediately preceding the assessment year the assessee has made investments which are not recorded in the books of account, if maintained by him for any source of income, and the assessee offers no explanation about the nature and source of the investments or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the value of the investments may be deemed to be income of the assessee of such financial year."*

21. The assessee has given the details of the memorandum of understanding dated 30.5.2012 between the parties which was executed and signed by the

tenants, the landlord as well as the purchaser. The property was owned by Sindhu Sehkari Avas Samiti which was purchased by M/s H.K. Infraventures Pvt. Ltd,. The assessee and his brother were occupants of one portion of the properties as tenants. The said memorandum of understanding contains all the details regarding the status of the parties, the monthly rent of the portion of the property occupied by the assessee and his brother and the schedule of the payments of compensation for vacating the property by assessee and his brother as the same was purchased by M/s H.K. Infraventures Pvt. Ltd., from M/s Sindhu Sehkari Avas Samiti. The details of the payment have been given as under:-

<i>i</i>	<i>Rs. 34,00,000.00</i>	<i>Vide Cheque No. 566707 dated 18.05.2012 drawn on Vijaya Bank, Allahabad</i>
<i>ii</i>	<i>Rs. 34,00,000.00</i>	<i>Vide Cheque No. 566705 dated 18.05.2012 drawn on Vijaya Bank, Allahabad</i>
<i>iii</i>	<i>Rs. 16,00,000.00</i>	<i>Vide Cheque No. 525457 dated 17.05.2012 drawn on ING Vysya Bank Ltd., Allahabad</i>
<i>iv</i>	<i>Rs. 16,00,000.00</i>	<i>Vide Cheque No. 525458 dated 17.05.2012 drawn on ING Vysya Bank Ltd., Allahabad</i>
<i>v</i>	<i>Rs. 10,00,000.00</i>	<i>Vide Cheque No. 823068 dated 23.04.2012 drawn on ING Vysya Bank Ltd., Allahabad</i>
<i>vi</i>	<i>Rs. 10,00,000.00</i>	<i>Vide Cheque No. 823069 dated 23.04.2012 drawn on ING Vysya Bank Ltd., Allahabad</i>
<i>Total Rs. 1,20,00,000.00</i>		<i>(Rupees One Crore Twenty Lacs only)</i>

22. These payments are not in dispute as the assessee as well as his brother disclosed the same in the return of income. On the one hand, the assessee produced the evidence in support of his claim that he has received only Rs. 60 lac through the cheques, the details of which are given in the memorandum of understanding dated 30.5.2012 reproduced in the foregoing part of this order and further the assessee was also examined by the AO by recording his statement on 26.11.2015 wherein the assessee has reiterated its stand that he has received only Rs. 60 lac towards the compensation for vacating the premises and on the other hand the seized document shows the payment of Rs.

1.05 Crore each to assessee and his brother. The CIT(A) has considered and decided this issue in para 3 to 9 as under:-

*"I have examined the facts and circumstances of the case. I have considered the finding of the AO in the assessment order, the submissions of the appellant and the case laws relied upon by the appellant. It is to be noted that during the course of search in the case of Dinesh Kumar Pahuja on 05-12-2013, Annexure L-5/page 124 back side was seized which is a ledger account of land purchase in the books of H.K. Infraventures Pvt.Ltd. from 01-04-2011 to 31-04-2014 which shows that Rs. 2.10 cr. has been paid to the appellant and his brother Madhurendra Nath, out of which Rs. 1.20 Cr. has been paid through cheque. The relevant ledger account is produced herein below:*

Particulars	Vch Type	Vch No	Debit
Cash Being Registry made and Stamp duty paid Rs. 5139500/- and other Fees paid Receipt	Payment	13	51,49,500.00
No. 185622 Cash Being cash paid to Nagar Nigam Allahabad For Name entry Fees in Landlord Register	Payment	22	2500.00
			51,52,000.00
51,52,000.00			51,52,000.00
Closing Balance			
Opening Balance			51,52,000.00
(as per details)	Journal	208	2,10,00,000.00
Tenant-Jitendra Nath	1,05,00,000.00 Cr		
Tenant-Madhurendra Nath Transferred	1,05,00,000.00 Cr		

4. The assessee had stated before the AO during the assessment proceeding that he had received Rs. 60 lacs through 3 cheques from H.K. Infraventure (P)(Ltd.) as per the agreement dated 30-05-2012 for vacating the premise No. 13, Stanley Road, Allahabad which was under the tenancy of the appellant and his brother Madhurendra Nath who also got Rs. 60 lacs as per the agreement. The AO has noted that M/s H.K. Infraventures Pvt. in its reply filed on 05-02-2016 during the assessment proceeding for A.Y. 2013-14 has accepted the cash transaction of Rs. 51,49,500/- dated 04-11-2011, being registry made and stamp duty paid

of Rs. 51,39,500/- and other fees paid vide receipt no. 185622 voucher no. 13. The transaction related to the appellant and his brother Shri Madhurendra Nath of payment of Rs. 2.10Cr. is found on the same page 124 back side of Annexure L-5 which shows payment of Rs. 1.05 Cr. and Rs. 1.05 cr. paid to appellant's brother Madhurendra Nath) to the appellant. Out of total amount of Rs. 1.05 Cr., Rs. 60 lacs has been disclosed by H.K. Infraventure and the appellant also but the remaining amount has not been disclosed by the appellant or by M/s H.K. Infraventure. The AO has held that the transaction of Rs. 45,00,000/- as per the seized document is the unrecorded transaction of the appellant and treated it as unexplained u/s 69 of the I.T. Act.

5. The appellant has contended in the written submission that he and his brother have received Rs. 60 lacs each only as per the Memorandum of Understanding dated 30-05-2012 for vacating the portion of the property in which they were residing as a tenant. The appellant has contended that the document seized from the premises of Dinesh Kumar Pahuja (third party) is a rough and dump document which is liable to be ignored.

6. On examination, find that Annexure L-5/page 124 has been seized during the course of search u/s 132 of the I. T. Act, at the premises of Shri Dinesh Pahuja, The aforesaid annexure clearly shows that the alleged payment of Rs. 1,05,00,00/- each, has been made by the H.K. Infraventure Pvt. Ltd. to the appellant and his brother Shri Madhurendra Nath vide voucher No. 208. Out of the total payment, Rs. 60 lacs each has been paid by cheques as per the agreement dated 30-05-2012 and has been disclosed by the appellant and H.K. Infraventure Pvt.Ltd. also. The balance payment of Rs. 45 lacs not been disclosed by both the parties i.e. the appellant and M/s H.K. Infraventure Pvt. Ltd.. What is relevant to be examined in the aforesaid annexure L-5/page 124 is that the other transactions of Rs. 51,49,500/- being payment for registry and stamp duty and Rs. 2500/- being fees paid to Nagar Nigam has been accepted by M/s H.K. Infraventure. It is pertinent to note that the property belonged to M/s Sindhu Sahkari Awas Samiti in which Shri Dinesh Kumar Pahuja is the main person/Landlord and the appellant is the tenant of the property situated at 13-Stanley Road, Allahabad. Therefore, the Annexure L-5 page 124 found from the possession of Shri Dinesh Kumar Pahuja, the landlord, gains significance.

7. The transaction of a seized document has to be taken as a whole and cannot be treated as partly true and partly false. The settled legal principles is that documents found during the course of search should be treated as genuine with respect to all the entries recorded therein. The appellant is not justified in taking a view that only part of the entries are correct. Entire documents should be read as whole and contents of documents should be treated as correct or rejected as a whole.

*8. Therefore, appellant's contention that Annexure L-5/page 124 seizure from the premises of Shri Dinesh Kumar Pahuja is a rough and dump document is not found acceptable.*

*9. Considering the facts and circumstances of the case, I find that the seized documents annexure L-5/ page 124 and the records are not the rough documents rather they are true statement of the actual state of affairs for the land purchase deal between H.K. Infraventure and the appellant. The seized document clearly establishes the fact that the appellant has received Rs. 45,00,000/- over and above the agreement for vacating the tenancy rights of the premises 13, Stanley Road, Allahabad. In view thereof addition of Rs. 45,00,000/- made by the AO by treating it as unexplained u/s 69 of the I. T. Act and adding it to the income of the appellant is hereby upheld."*

23. The said seized document contained some other entries regarding payment of Rs. 51,52,000/- towards Stamp Duty and entry fee to Nagar Nigam, Allahabad. M/s H.K. Infraventures Pvt. Ltd., accepted those transactions being matter of record as payment was made to the authorities and also mentioned in the sale deed. The said seized document was found from the possession of Sh. Dinesh Kumar Pahuja. The AO as well as CIT(A) has relied upon the said document which contains the entries of payment of Rs. 1.05 crore each to the assessee and his brother. However, there is no mention in the said document about the mode of the said payment. Further the date mentioned in the seized document as 31.12.2012 does not match with undisputed payment of Rs. 60 lac each to assessee and his brother through cheques. The Assessing Officer has neither made any reference to the statement, if any, recorded of Shri. Dinesh Kumar Pahuja or M/s H.K Infraventures Pvt. Ltd., whereas the assessee has made the statement during the assessment proceedings as examined by the AO as well as produced the memorandum of understanding dated 30.5.2012 to show that he has received only Rs. 60 lac towards the compensation for vacating the premises. When two documentary evidence are giving different version of a transaction then the document which is signed by the parties and not disputed by its signatories cannot be ignored while considering the issue of

addition based on the entries recorded in the seized document which is neither signed by any party nor accepted by the parties and particularly by the assessee. The AO has made no efforts to examine the person from whose possession the said document was found or to whom the document belongs being the ledger account of M/s H.K. Infraventures Pvt. Ltd.,. The assessee has made the request to the AO that Sh. Dinesh Kumar Pahuja is the person who can explain the seized document but the AO has not taken any step to examine those persons. Therefore, in the facts and circumstances of the case, when the assessee has denied the receipt of any payment other than Rs. 60 lac through cheques towards the compensation for vacating the tenanted premises and the said claim of the assessee is also supported by the memorandum of understanding between the parties which is executed and signed by all the three parties and also attested by the witnesses as well as notary then before making any addition of the alleged receipt of compensation in cash on the basis of the seized document, the AO ought to have examined the person from whose possession the said document was found and also the party whom the document belongs to. Therefore, Shri. Dinesh Kumar Pahuja as Secretary, Sindhu Sehkari Avas Samiti and Shri. Hemant Kumar Singh, Director, M/s H.K. Infraventures Pvt. Ltd., were required to be examined by the AO and the assessee would have been given an opportunity to cross examine before making the addition. Accordingly, we set aside the impugned order and remand the matter to the record of the Assessing Officer for fresh adjudication after examination of Shri. D.K. Pahuja and Shri. Hemant Kumar Sindhi *qua* the seized document and opportunity to cross examination be afforded to the assessee.

24. Since the issue, facts and circumstances in both the appeals are identical therefore, in view of our finding in ITA No. 15/Alld/2018, the appeal in ITA No. 16/Alld/2018 stand disposed of in the same terms and with same directions.

25. The learned AR of the assessee has pointed out during the course of hearing that the AO has attached the bank account and property of the assessee for recovery of the outstanding demands. Since, the matter is set aside to the record of the AO therefore, the AO is directed to release the bank account and properties of the assessee, if any, for recovery of the demand in question.

24. In the result, both the appeals in ITA No. 15/Alld/2018 & ITA No.16/Alld/2018 are partly allowed for statistical purpose.

Order pronounced on 16.02.2023 at Allahabad, U.P.

**[RAMIT KOCHAR]**  
**ACCOUNTANT MEMBER**

Dated: 16/02/2023  
Varanasi/Allahabad  
sh

**As per separate Concurring Order**

**Sd/-**  
**Ramit Kochar**  
**15/2/23**

**Sd/-**  
**[VIJAY PAL RAO]**  
**JUDICIAL MEMBER**

Copy forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A), Allahabad
4. CIT
5. DR

By order  
Sr. P.S.

I.T.A. NO. 15/Alld./2018 (Assessment Year: 2013-14) in the case of Smt. Neeta Nath L/H Late Dr. Jitendra Nath, Allahabad(PAN:ABEPN1795Q) v. The ACIT, Central Circle, Allahabad & I.T.A. NO.16/Alld./2018 (Assessment Year: 2013-14) in the case of Mr. MadhunrendraNath, Allahabad(PAN:AAIPN8161D) v. The ACIT, Central Circle, Allahabad

### **Concurring Order**

#### **PER RAMIT KOCHAR, ACCOUNTANT MEMBER:**

I concur with the conclusion reached by my learned Brother(J.M.) vide order(s) for assessment year 2013-14 in the case of both the assessee's namely Mrs. Neeta Nath Legal Heir(L/H) late Dr. Jitendra Nath and Mr. Madhurendra Nath, however, I am writing this concurring order to express my view, reasoning and finding on the issues which are discussed by me in later part of this order.

2. I will first take up appeal filed by Mrs. Neeta Nath L/H of Dr. Jitendra Nath, and since the facts are identical in the case of Mr. Madhurendra Nath, my view, reasoning and finding on the issues in the case of Mrs. Neeta Nath L/H Dr. Jitendra Nath shall apply mutatis mutandis to the appeal filed by Mr. Madhurendra Nath. The brief facts of the case are enumerated by my ld. Brother(JM) in his order. The grounds of appeal are also reproduced by my ld. Brother(JM) in his order. So far as Ground No. 1-4 raised by the assessee in ITA no. 15/Alld/2018 in memo of appeal filed with ITAT, Allahabad Bench, Allahabad, I concur with decision of my ld. Brother(JM) in dismissing these grounds of appeal No. 1-4. Now, I will take up the Grounds of appeal no. 5-20 raised by assessee in memo of appeal filed with tribunal in ITA No. 15/Alld/2018, which grounds of appeal concerns with the addition of Rs. 45 lacs made by the AO on account of unexplained income allegedly received by the assessee for vacating the premises 17(earlier No. 11 and then 13 and now 17), Stanley Road, Allahabad, U.P.. My ld. Brother(JM) has dealt with this issue in para 15-23 of his appellate order. The assessee is Dental Surgeon. There was

a search and seizure proceedings u/s 132 of the Income-tax Act, 1961(hereinafter called "the Act") conducted by Revenue in the case of Mr. Hemant Kumar Sindhi , Mr. Dinesh Kumar Pahuja Group, residential premises of partners , directors and various residential and business premises of partners, directors and proprietor of the group, on 05.12.2013. During the aforesaid search and seizure operations conducted by Revenue u/s 132 , cash ,jewellery etc. as per Annexures to various Panchanama drawn, were found and seized. As per Revenue, the assessee has allegedly received payments from one of the group companies of Mr. Hemant Sindhi and Mr. Hemant Sindhi as per seized documents. After recording satisfaction in writing, a notice u/s 153C dated 05.09.2014 was issued by the AO requiring assessee to furnish return of income latest by 20.09.2014. The assessee did not filed return of income within stipulated time, but filed reply on 22.09.2014 that return filed u/s 139 on 30.07.2013 may be treated as return of income filed in compliance to notice u/s 153C. The AO issued notice u/s 143(2), dated 16.11.2015. Thereafter, notice u/s 142(1) was issued by the AO with detailed questionnaire on 05.11.2015. The assessee appeared before the AO and , inter-alia, submitted that the assessee has received cheque's aggregating to Rs. 60 lacs from M/s H K Infraventures Private Limited ( his brother Mr. MadhurendraNath also received cheques aggregating to Rs. 60 lacs from M/s H K Infraventures Private Limited) for vacating the tenancy rights of premises 17(Earlier No. 11 and then 13 and now 17), Stanley Road, Allahabad , wherein he along with his brother was tenant. The AO observed that during the search operations in the case of Mr. Dinesh Kumar Pahuja at Lotus Apartment , Allahabad on 05.12.2013 , out of many incriminating documents, an incriminating document related to the assessee where it was showing over and above payment for vacating the tenancy rights as per the agreement, was found and seized, marked as

Annexure LP-5/Page 124 and the back side of Page 124. The said seized document LP-5 page 124 and back side of Page 124 are reproduced hereunder:

HK-IPL  
17, INDUSTRIAL COLONY  
NAINI  
ALLAHABAD

**Sindhu Sakhari Avas Samiti**  
Ledger Account  
1251/LA Civil Station,  
Kastoorba Gandhi Marg  
Allahabad

1-Apr-2011 to 31-Mar-2014

Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
3-9-2011	To ING VYSYA BANK LIMITED Being Advance given via RTGS Ch. No. 823052	Payment	1	40,00,000.00	
	To ING VYSYA BANK LIMITED	Payment	2	45,00,000.00	
26-9-2011	To ING VYSYA BANK LIMITED Being Advance given via RTGS Ch. No. 823053 & 54 Cancelled.	Payment	3	10,00,000.00	
10-10-2011	To ING VYSYA BANK LIMITED Ch. No. 823055 paid as advance	Payment	5	50,00,000.00	
18-10-2011	To Cash	Payment	6	1,00,00,000.00	
20-10-2011	To ING VYSYA BANK LIMITED	Payment	8	5,00,000.00	
29-10-2011	To Cash Being Cash paid.	Payment	9	1,00,00,000.00	
3-11-2011	To Cash	Payment	10	2,50,00,000.00	
4-11-2011	To Cash	Payment	12	1,00,00,000.00	
6-11-2011	To Cash Being Cash paid.	Payment	15	59,52,250.00	
3-12-2011	To Cash Being Cash Paid.	Payment	20	2,50,000.00	
				7,62,02,250.00	
	By Closing Balance				7,62,02,250.00
				7,62,02,250.00	7,62,02,250.00
1-4-2012	To Opening Balance			7,62,02,250.00	
23-4-2012	To Cash	Payment	18	1,50,00,000.00	
11-8-2012	To Cash Being Cash paid.	Payment	112	52,00,000.00	
22-10-2012	To Cash	Payment	191	5,00,000.00	
12-12-2012	To Cash cash paid.	Payment	256	31,00,000.00	
13-3-2013	To Cash	Payment	397	54,40,000.00	
31-3-2013	By Land Purchase	Journal	301		10,54,42,250.00
				10,54,42,250.00	10,54,42,250.00

2545.27  
3044.1  
100456716.36  
100.00.000.00  
90456.11

Neeta Nath

HK-IPL  
 17, INDUSTRIAL COLONY  
 NAINI  
 ALLAHABAD

**Land Purchase**  
 Ledger Account

1-Apr-2011 to 31-Mar-2014

15/12/14/Bechride  
 LS


Particulars	Vch Type	Vch No.	Debit
Cash	Payment	13	51,49,500.00 ✓
Registry made and Stamp duty paid 5139500/- and Other Fees paid Receipt 185622.			
Cash	Payment	22	2,500.00 ✓
Cash paid to Nagar Nigam Allahabad Name entry Fees in Landlord Register.			
Closing Balance			51,52,000.00
			51,52,000.00
Opening Balance			51,52,000.00
			51,52,000.00
per details)	Journal	208	2,10,00,000.00 ✓
Mont--Jitendra Nath	1,05,00,000.00 Cr		
Mont- Madhurendra Nath	1,05,00,000.00 Cr		
nsferred.			
ndhu Sahkari Avas Samiti	Journal	301	10,54,42,250.00
Land Purchase Cost as per Sir			
atement paid to dinesh p			
Closing Balance			13,15,94,250.00
			13,15,94,250.00
			13,15,94,250.00

111,45,6716.36

51,49,500.00

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11,66,06,216.36



13.12

*(Handwritten signatures)*

Neeta Nath

The AO confronted the assessee with the aforesaid seized document's and asked assessee to explain the whole transaction as is recorded in the said seized document's which is ledger account of 'Land Purchase' in the books of H K Infraventures Pvt Ltd from 01.04.2011-31.03.2014 which shows that Rs. 2.10 crores has been paid to the assessee and his brother Mr. Madhurendra Nath, out of which Rs. 1.20 crores has been paid through cheque's. The AO also asked assessee to explain the whole transaction and also explain whether the said transaction is reflected in assessee's books of accounts and the said amount is disclosed amount, and also to explain whether Capital Gains were paid on the aforesaid transaction. The assessee in reply confirmed that he received Rs. 60 lacs through three cheques from M/s. H K Infraventures Private Limited vide agreement dated 30.05.2012 for vacating the premises number 17(Earlier No. 11 , then 13 and now No. 17) , Stanley Road, Allahabad, which was under the tenancy of the assessee and his bother Mr. Madhurendra Nath( the assessee's brother also received Rs. 60 lacs through cheques from M/s H K Infraventure for vacating tenancy property 17 , Stanley Road, Allahabad ). The AO observed that the reply of the assessee is not acceptable because as per the seized document, the money over and above the agreement is clearly mentioned in the aforesaid seized document. The AO issued fresh notice dated 16.02.2016 to the assessee ( reproduced at page 3-4 of assessment order) , seeking explanation w.r.t. aforesaid seized document LP-5 page 124 back, and relevant part of the aforesaid notice is reproduced by my Id. Brother(JM) at para 17 of his order. The assessee in reply submitted that compensation was received from Mr. Hemant Sindhi for vacating premises No. 13(Now No. 17) Stanley Road , Allahabad which was under their tenancy. The assessee submitted that he had no dealing with M/s Sindhu Sahkari Avs Samiti whatsoever. The assessee submitted that he does not know Mr. Dinesh Kumar Pahuja. He submitted that he never met Mr. Dinesh Kumar Pahuja. The assessee submitted that he is not

concerned with what Mr. Dinesh Kumar Pahuja writes in his books as he has got nothing to do with that. The assessee explained that he has dealings with Mr. Hemant Sindhi of M/s. H K Infraventures Pvt. Ltd. only and with no other person. The assessee explained that he is not aware as to how name of Mr. Dinesh Kumar Pahuja has come in between. The AO rejected the reply of the assessee with respect to seized document Annexure LP-5/Page 124 and its back, as not satisfactory and unacceptable. The AO observed that Shri Dinesh Kumar Pahuja is son of Late Narayan Das Pahuja, who was Secretary of Sindhu Sahkari Awas Samiti and the said Samiti is owner of the property 17, Stanley Road, Allahabad. Presently, Shri Dilip Pahuja (brother of Mr. Dinesh Kumar Pahuja) is the Secretary of Sindhu Sahkari Awas Samiti. The AO observed that in the aforesaid seized documents, certain other transactions related to Sindhu Sahkari Awas Samiti and M/s H K Infraventures Private Limited are also recorded. The AO observed that as per seized documents, the amount paid to the assessee was Rs. 1.05 crores (and further also Rs. 1.05 crores was paid to the brother of the assessee namely Mr. Madhurendra Nath) is also found recorded, out of which Rs. 60 lacs was disclosed by M/s H K Infraventures Private Limited and by the assessee, while Rs. 45 lacs was not disclosed either by the assessee as well by M/s H K Infraventures Private Limited. The AO observed that said M/s H K Infraventures Private Limited has accepted transaction of Rs. 51,49,500/- mentioned on the seized documents during assessment proceedings in its case. Thus, the AO concluded that the transaction of a seized document cannot be partly true and partly incorrect. The AO further concluded that therefore, the amount received by the assessee of Rs. 1.05 crores as recorded in the seized document is also correct, and the contentions raised by the assessee that he only received Rs. 60 lacs for vacating the property through cheques was rejected by the AO, and the AO held that out of Rs. 1,05,00,000/- received by the assessee, an amount of Rs. 60,00,000/- was

disclosed , while remaining amount of Rs. 45,00,000/- was treated by the AO as unexplained u/s 69 and added to income of the assessee and taxed as per provision of Section 115BBE of the 1961 Act.

3. Aggrieved by assessment framed by the AO, the assessee filed first appeal with ld. CIT(A) who dismissed the appeal of the assessee on this issue. My ld. Brother(JM) has reproduced the written submissions filed by the assessee before ld. CIT(A) in para 20 page 19-23 of his appellate order(ld. CIT(A) reproduced the same in para number 2 page 5-11 of his appellate order) . My ld. Brother(JM) has also reproduced the operative part of the decision of ld. CIT(A) dismissing the appeal of the assessee on this issue , in para 22 at page 25-27 of his order( ld. CIT(A) has considered and decided this issue in para's 3-9 at page 11-14).

4. The assessee being aggrieved by appellate order passed by ld. CIT(A) has filed second appeal with tribunal. Both the parties have vehemently argued on this issue before the Bench. My learned Brother(JM) has recorded in his order the arguments advanced by both the parties on this issue This document LP-5/124 and its back page was found and seized during the search operations conducted by Revenue on Mr. Dinesh Kumar Pahuja from his residence at Lotus Apartment, Allahabad, on 05.12.2013. The aforesaid seized document LP-5 page 124 and its back page are reproduced hereunder:

HK-IPL  
17, INDUSTRIAL COLONY  
NAINI  
ALLAHABAD

**Sindhu Sakhari Avas Samiti**  
Ledger Account  
1251/LA Civil Station,  
Kastoorba Gandhi Marg  
Allahabad

1-Apr-2011 to 31-Mar-2014

Page 1

Date	Particulars	Vch Type	Vch No.	Debit	Credit
3-9-2011	To ING VYSYA BANK LIMITED Being Advance given via RTGS Ch. No. 823052	Payment	1	40,00,000.00	
	To ING VYSYA BANK LIMITED	Payment	2	45,00,000.00	
26-9-2011	To ING VYSYA BANK LIMITED Being Advance given via RTGS Ch. No. 823053 & 54 Cancelled.	Payment	3	10,00,000.00	
10-10-2011	To ING VYSYA BANK LIMITED Ch. No. 823055 paid as advance	Payment	5	50,00,000.00	
18-10-2011	To Cash	Payment	6	1,00,00,000.00	
20-10-2011	To ING VYSYA BANK LIMITED	Payment	8	5,00,000.00	
29-10-2011	To Cash Being Cash paid.	Payment	9	1,00,00,000.00	
3-11-2011	To Cash	Payment	10	2,50,00,000.00	
4-11-2011	To Cash	Payment	12	1,00,00,000.00	
6-11-2011	To Cash Being Cash paid.	Payment	15	59,52,250.00	
3-12-2011	To Cash Being Cash Paid.	Payment	20	2,50,000.00	
				7,62,02,250.00	
	By Closing Balance				7,62,02,250.00
				7,62,02,250.00	7,62,02,250.00
1-4-2012	To Opening Balance			7,62,02,250.00	
23-4-2012	To Cash	Payment	18	1,50,00,000.00	
11-8-2012	To Cash Being Cash paid.	Payment	112	52,00,000.00	
22-10-2012	To Cash	Payment	191	5,00,000.00	
12-12-2012	To Cash cash paid.	Payment	256	31,00,000.00	
13-3-2013	To Cash	Payment	397	54,40,000.00	
31-3-2013	By Land Purchase	Journal	301		10,54,42,250.00
				10,54,42,250.00	10,54,42,250.00

2545.27  
3044.1  
100456716.36  
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90456.11

Neeta Nath

15/12/14/Bechride  
 LS

HK-IPL  
 17, INDUSTRIAL COLONY  
 NAINI  
 ALLAHABAD

Land Purchase  
 Ledger Account

1-Apr-2011 to 31-Mar-2014

Particulars	Vch Type	Vch No.	Debit
Cash	Payment	13	51,49,500.00 ✓
Registry made and Stamp duty paid 5139500/- and Other Fees paid Receipt 185622.			
Cash	Payment	22	2,500.00 ✓
Cash paid to Nagar Nigam Allahabad Name entry Fees in Landlord Register.			
Closing Balance			51,52,000.00
			51,52,000.00
Opening Balance			51,52,000.00
per details)	Journal	208	2,10,00,000.00 ✓
Mont--Jitendra Nath Mont- Madhurendra Nath nsferred.	1,05,00,000.00 Cr 1,05,00,000.00 Cr		
ndhu Sahkari Avas Samiti	Journal	301	10,54,42,250.00
Land Purchase Cost as per Sir statement paid to dinesh p			
Closing Balance			13,15,94,250.00
			13,15,94,250.00
			13,15,94,250.00



11,45,6716.36  
 51,49,500.00  
 11,66,06,216.36

13.12

*(Handwritten signatures)*

Neeta Nath

As is emerging from the records, Property at 17(earlier No. 11 , then No. 13 and now No. 17) , Stanley Road , Allahabad , was owned by Sindhu Sahkari Awas Samiti. Mr. Dinesh Kumar Pahuja was the President of the said Sindhu Sahkari Awas Samiti. Mr. Dilip Kumar Pahuja (who is brother of Mr. Dinesh Kumar Pahuja )was the Secretary of Sindhu Sahkari Awas Samiti. The said Sindhu Sahkari Awas Samiti sold the property at 17(Earlier No. 11 , then No. 13 and Now No. 17), Stanley Road, Allahabad , to M/s H K Infraventures Private Limited. Mr. Hemant Kumar Sindhi is the Director of M/s H K Infraventure Private Limited. The assessee (along with his brother Mr. Madhurendra Nath ) were the tenants of the said property. The assessee has admitted that he (along with his brother Mr. Madhurendra Nath) entered into MOU dated 30.05.2012 with M/s H K infraventures Private Limited for vacating the said premises and received Rs. 60 lacs( Rs. 60 lacs was also confirmed to have been received by assessee's brother Mr. Madhurendra Nath through cheques from M/s H K Infraventures Private Limited for vacating the aforesaid premises) through cheques. The assessee has filed an affidavit to that effect, which is placed in paper book at page 17-19. The MOU dated 30.05.2012 is also placed in Paper book at page 20-23. The assessee has denied to have any dealings with Sindhu Sahkari Awas Samiti and the assessee has also denied to have known Mr. Dinesh Kumar Pahuja. Incidentally, Mr. Dinesh Kumar Pahuja in the capacity of President of Sindhu Sahkari Awas Samiti has countersigned the said MOU dated 30.05.2012 acknowledging that Sindhu Sahkari Awas Samiti was the previous owner as well Landlord with respect to aforesaid land, and presently there are no dues of any kind payable by the tenants namely the assessee and Mr. Madhurendra Nath to Sindhu Sahkari Awas Samiti. Although, the assessee has denied to have known Mr. Dinesh Kumar Pahuja as well denied to have any dealings with Sindhu Sahkari Awas Samiti , which is prima-facie against the preponderance of human probabilities in the teeth of the assessee and his

brother Mr. Madhurendra Nath being tenants of the property 17, Stanley Road, Allahabad, of which said Sindhu Sahkari Awas Samiti was the Landlord prior to the sale of the said land to H K Infraventures Private Limited vide registered sale deed dated 04.11.2011. I leave this matter here as I am refraining from making any comments on the merits of the issue , keeping in view the matter is to be restored to the file of the AO for denovo assessment on this issue of additions to the tune of Rs. 45 lacs as was made by the AO and later confirmed by Id. CIT(A). On perusal of the seized document LP-5/page 124 and its back page, it transpires that these are allegedly ledger ( allegedly part of books of accounts) of M/s H K Infraventures Private Limited , 17 , Industrial Colony , Naini, Allahabad , and the front page LP-5/page 124 consists of Ledger Account of Sindhu Sahkari Avas Samiti from 01.04.2011 to 31.03.2014 in the books of H K Infraventures Private Limited. It is admitted position that M/s H K Infraventures purchased Property No. 17, Stanley Road, Allahabad, U.P. from Sindhu Sahkari Awas Samiti who were the owners of this property. This seized document allegedly record payments made by M/s H K infraventures Private Limited( both through banking channel as well cash) to M/s Sindhu Sahkari Awas Samiti towards purchase of aforesaid land/property 17, Stanley Road, Allahabad, aggregating to Rs. 10,54,42,250/- , starting from 03.09.2011 to 13.03.2013. On 31.03.2013, the entire amount of Rs. 10,54,42,250/- was transferred vide Journal Voucher No. 301 to Land Purchase Account, which strengthens the view that all the payments recorded were towards Land/Property Purchase viz. 17( Previous No. 11 , then No. 13 and Now No. 17) , Stanley Road, Allahabad, U.P. by H K Infraventures Private Limited from M/s Sindhu Sahkari Awas Samiti. The payments are systematically recorded date wise , amount wise etc. in the aforesaid seized document.

On perusal of seized document LP-5/back page of 124, it transpires that this is alleged ledger(allegedly part of books of accounts) of M/s H K Infrastructures

Private Limited, 17 , Industrial Colony , Naini, Allahabad , and the back page LP-5/page 124 consists of Ledger Account of Land Purchase from 01.04.2011 to 31.03.2014 in the books of H K Infraventures Private Limited. It is admitted position that M/s H K Infraventures purchased Property No. 17(Earlier No. 11, then No. 13 and Now No. 17), Stanley Road, Allhabad, U.P. from Sindhu Sahkari Awas Samiti who were the owners of this property. The first entry recorded is cash payment of Rs.51,49,500/- which is allegedly paid by H K Infraventures Private Limited towards Registry of the Property, and for which stamp duty charges and other fees allegedly paid in cash were recorded. This transaction as is recorded in seized document is admitted by M/s H K Infraventures Private Limited. The second entry is cash paid of Rs. 2,500/- to Nagar Nigam , Allahabad towards name entry fee in Landlord Register. This cash payment is also admitted by M/s H K Infraventures Private Limited. The next entry is Journal entry wherein in the Land Purchase Account in the books of H K Infraventures Private Limited is debited to the tune of Rs. 2,10,00,000/- vide Journal Voucher No.208 and the account of Dr. Jitendra Nath(assessee) and Mr. Madhurendra Nath are credited with Rs. 1,05,00,000/- each. The date of this voucher is 31.12.2012 ( recorded by the AO in assessment order /page 3, while incomplete document furnished by the assessee in Paper book/page 25(which is reproduced above in this order)). Thus, on 31.12.2012, there is a transfer Journal entry, wherein an amount aggregating to Rs. 2,10,00,000/- is transferred to Land Purchase Account in the books of H K Infraventures Private Limited, and the accounts of Dr. Jitender Nath(assessee) and Mr. Madhurendra Nath were credited to the tune of Rs. 1,05,00,000/- each . It is admitted position that M/s H K Infraventures purchased Property No. 17(earlier No. 11 , then No. 13 and now No. 17), Stanley Road, Allhabad, U.P. from Sindhu Sahkari Awas Samiti who were the owners of this property. It is also an admitted position that the assessee and his brother Mr. Madhurendra Nath were tenants in the

property 17, Stanley Road, Allahabad, which was acquired by M/s H K Infraventures Private Limited from Sindhu Sahkari Awas Limited vide registered sale deed dated 04.11.2011. Mr. Hemant Kumar Sindhi is Director of M/s H K Infraventures Private Limited . It is also an admitted position that the assessee as well his brother Mr. Madhurendra Nath entered into MOU dated 30.05.2012 with M/s H K Infraventures Private Limited and admitted to have received Rs. 60 lacs each vide cheques from M/s H K Infraventures Private Limited for vacating the aforesaid property 17, Stanley Road, Allahabad. The assessee has denied to have received any amount over and above the aforestated amount of Rs. 60 lacs received vide cheques under the MOU dated 30.05.2012. However, the said sized document records that Rs. 2,10,00,000/- was , inter-alia, debited to Land Purchase Account by H K Infraventures Private Limited in its books of accounts w.r.t. transactions with the outgoing tenants namely the assessee as well his brother Mr. Madhurendra Nath. The assessee has denied to have any dealings with Sindhu Sahkari Awas Samiti and the assessee has also denied to have known Mr. Dinesh Kumar Pahuja. Incidentally, Mr Dinesh Kumar Pahuja in the capacity of President of Sindhu Sahkari Awas Samiti has countersigned the said MOU dated 30.05.2012 acknowledging that Sindhu Sahkari Awas Samiti was the previous owner as well Landlord with respect to aforesaid land, and presently there are no dues of any kind payable by the tenants namely the assessee and Mr. Madhurendra Nath to Sindhu Sahkari Awas Samiti. As is emerging from the records, Property at 17, Stanley Road , Allahabad , was owned by Sindhu Sahkari Awas Samiti. Mr. Dilip Kumar Pahuja (who is brother of Mr. Dinesh Kumar Pahuja , President of Sindhu Sahkari Awas Samiti)was the Secretary of Sindhu Sahkari Awas Samiti. The seized documents was found and seized from the residential premises of Mr. Dinesh Kumar Pahuja, and is an allegedly are ledger accounts which are part of books of accounts of M/s H K Infraventures Private Limited .Although, the

assessee has denied to have known Mr. Dinesh Kumar Pahuja as well denied to have any dealings with Sindhu Sahkari Awas Samiti , but the same is prima-facie against the preponderance of human probabilities in the teeth of the assessee and his brother Mr. Madhurendra Nath being tenants of the property 17, Stanley Road, Allahabad for a very long time , of which said Sindhu Sahkari Awas Samiti was the Landlord prior to the sale of the said land to H K Infraventures Private Limited vide registered sale deed dated 04.11.2011. The assessee has admitted to the dealings with M/s H K Infraventures Private Limited w.r.t. vacating the premises 17, Stanley Road, Allahabad, and the assessee has admitted to entering of MOU dated 30.05.2012 with M/s H K Infraventures Private Limited, the owners of 17, Stanley Road , Allahabad who have purchased the said property from M/s Sindhu Sahkari Awas Samiti. The assessee has also admitted to know Mr. Hemant Kumar Sindhi, who is Director of M/s H K Infraventures Private Limited. The name of the assessee is appearing in the said seized document which is allegedly a ledger account title Land Purchase Account allegedly part of books of accounts of H K Infraventures Private Limited. The assessee has merely denied that it did not received any amount over and above Rs. 60 lacs for vacating the aforesaid premises and reliance is placed on MOU dated 30.05.2012, but the assessee never produced Mr. Hemant Kumar Sindhi before the Revenue nor any affidavit of Mr. Hemant Kumar Sindhi or M/s H K Infraventures Private Limited was filed before the authorities below. I leave this matter here as I am refraining from making any comments on the merits of the issue , keeping in view the matter is to be restored to the file of the AO for denovo assessment on this issue of additions to the tune of Rs. 45 lacs as was made by the AO and later confirmed by Id. CIT(A). The aforesaid seized document LP-5/Page 124 and its back page was found and seized by Revenue on 05.12.2013 during searches conducted u/s 132 on Mr. Dinesh Kumar Pahuja from his residence at Lotus Apartment.

Presumption u/s 132(4A) and 292C shall apply, and the contents of the documents shall be presumed to be true. The name of the assessee and his alleged transactions w.r.t. vacating the property 17, Stanley Road, Allahabad, are allegedly recorded in the aforesaid seized document. It is equally true that the seized document LP-5/Page 124 and its back page were not found and seized from the possession of the assessee. No doubt, the assessee was confronted by Revenue with the aforesaid seized document, but the assessee asked for summoning of the said Mr. Dinesh Kumar Pahuja from whose possession this document was found and seized by Revenue during searches conducted u/s 132 on 05.12.2013, as is emanating from the appellate order passed by Id. CIT(A), but the department did not produce Mr. Dinesh Kumar Pahuja before the assessee for examination/cross examination. The assessee has denied to have known Mr. Dinesh Kumar Pahuja and also denied to have any dealings with M/s. Sindhu Sahkari Awas Samiti. It is also true that the assessee was tenant of the premises/property 17, Stanley Road, Allahabad and M/s Sindhu Sahkari Awas Samiti was earlier owner/landlord of the said property, which property was sold by M/s Sindhu Sahkari Awas Samiti to M/s H K Infraventures Private Limited vide registered sale deed dated 04.11.2011. Mr. Dinesh Kumar Pahuja was the President of M/s Sindhu Sahkari Awas Samiti, while his brother Mr. Dilip Kumar Pahuja was the Secretary of M/s Sindhu Sahkari Awas Samiti. Under these circumstances, it becomes important that all the relevant extracts of the statements recorded by Department during the course of search proceedings as well post search enquiries of Mr. Hemant Kumar Sindhi Director of M/s H K Infraventures Private Limited, Mr Dinesh Kumar Pahuja (President of Sindhu Sahkari Awas Samiti- and from whose possession this seized document was found and seized by Revenue during searches conducted u/s 132 on 05.12.2013), Mr Dilip Kumar Pahuja (Secretary of Sindhu Sahkari Awas Samiti), or of any other relevant

person, having bearing with the aforesaid alleged transactions of the assessee , be made available to the assessee for rebuttal , and the assessee be allowed to examine/Cross examination the said persons, keeping in view principles of natural justice . If so required , the fresh examination of relevant persons may be undertaken by the AO , and accordingly examination/cross examination by assessee be allowed. Fair hearing and adherence to principles of natural justice are the important pillars of justice delivery system. It will be not out of place to refer at this stage that income tax proceedings are governed by Principles of preponderance of human probabilities, and that there is no such requirement to prove the fact beyond reasonable doubt as is required under criminal proceedings. So far as the seized document found and seized during search proceedings u/s 132 is concerned, presumption u/s 132(4A) and 292C shall apply. The contents of the seized document shall be presumed to be true, even if it is unsigned document. It is not uncommon in India that on-money is paid in real estate transactions , and such on-money paid are commonly in cash which are over and above the disclosed value as recorded in the registered sale deed, and seldom did any signed document will be found and seized during searches to reflect on-money in real estate transactions. The factum of proving on-money has to be based on considering the entire facts and circumstances of the case which may vary from case to case, and preponderance of human probabilities is to be considered before fastening any tax-liability. Contents of the part of the seized document LP-5/Page 124 and back page of 124 is admitted by M/s H K Infraventures Private Limited. The name of the assessee is recorded in the said seized document. It is for the assessee to rebut the said presumption. It is also true that this document was not seized from possession of the assessee. It is also true that the assessee has during the impugned assessment year, transactions with M/s. H K Infraventures Private Limited w.r.t. vacating of tenanted property situated at 17, Stanley Road, Allahabad,

U.P.. Thus, with these remarks and reasons as enumerated above in my concurring order, I set aside the impugned order and remand the matter to the record of the AO for fresh/denovo assessment , as enumerated in detail as above in this separate concurring order. I order accordingly.

5. Since the issue, facts and circumstances in ITA No. 16/Alld/2018 on this issue are similar to the facts, issue and circumstances in ITA no. 15/Alld/2018, my decision as above shall apply mutatis mutandis to ITA no. 16/Alld/2018 on this issue.

6. In the result, both the appeals in ITA No. 15 & 16/Alld/2018 for assessment year 2013-14 are allowed for statistical purposes, as indicated above .I order accordingly.

Order pronounced in Open Court on 16.02.2023 at Allahabad, U.P.

***Sd/-***  
[RAMIT KOCHAR]  
ACCOUNTANT MEMBER

DATED: 16/02/2023  
Allahabad, U.P.

Copy forwarded to:

1. Appellant –Mrs. Neeta Nath L/H Dr. Jitendra Nath & Mr. Madhurendra Nath , B-502, Vinayak Le Grande , 16/12, Lal Bahadur Shastri Road, Allahabad-211001, U.P
2. Respondent – The ACIT, Central Circle , Aayakar Bhawan , Allahabad-211001, U.P.
- 3.The CIT, Allahabad, U.P.
4. The CIT(A),Allahabad,U.P./The CIT(A), Lucknow, U.P.
- 5.The CIT-DR–ITAT, Allahabad, U.P.
6. The Guard File

By order  
Assistant Registrar