

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO.1425/MUM/2022 (A.Y: 2008-09)

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| DCIT – Central Circle – 6(4) Room No. 1925, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021 | v. | Jailaxmi Realty and Developers Ltd., 11, B Wing, Mittal Tower Free Press Journal Marg Nariman Point, Mumbai - 400021 PAN: AABCJ9315M |
| (Appellant) | | (Respondent) |

**C.O. NO.105/MUM/2022
[ARISING OUT OF ITA.NO.1425/MUM/2022 (A.Y: 2008-09)]**

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| Jailaxmi Realty and Developers Ltd., 11, B Wing, Mittal Tower Free Press Journal Marg Nariman Point, Mumbai - 400021 PAN: AABCJ9315M | v. | DCIT – Central Circle – 6(4) Room No. 1925, 19 th Floor Air India Building, Nariman Point Mumbai – 400 021 |
| (Appellant) | | (Respondent) |

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| Assessee Represented by | : | Madhur Aggarwal & Lata Parulekar |
| Department Represented by | : | Shri Nimesh Yadav |
| | | |
| Date of Hearing | : | 30.11.2022 |
| Date of Pronouncement | : | 22.02.2023 |

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal and cross objection are filed by the Revenue and assessee respectively against the order of the Learned Commissioner of Income Tax (Appeals) – 54, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 07.01.2022 for the A.Y. 2008-09.

2. Revenue has raised following grounds in its appeal: -

(1) *"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs.17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though Shri Madan Kolambekar, in his statement recorded on oath u/s. 132(4) of the Act, during the search action had admitted to have received unaccounted receipts from and made unaccounted cash expenditure on behalf of the Jai Corp Group, for purchase of land in lieu of commission/brokerage."*

(2) *"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs.17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though agricultural land transactions actually took place in the hands of the assessee company (through nominated farmers), after making the said unaccounted/unexplained payment."*

(3) *"On the facts and in the circumstances of the case and in law, the CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs. 17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though it has been held in the impugned order that the transactions of the assessee company with Shri Madan Kolambekar were not on 'principal to principal' basis."*

(4) *"On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs. 17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though vide the impugned order, the action of the AO to reject*

the retraction affidavit filed by Shri Madan Kolambekar and Shri Hiren Oza has been upheld."

(5) on the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs. 17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though it has been held in the impugned order that the transactions that documents seized from the premises of Shri Madan Kolambekar and impounded from the premises of M/s. Weldone Real Estate Limited can be used as evidence against the assessee."

6. "On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in deleting the addition made u/s.69C aggregating to Rs. 17,67,72,393/- (5,40,00,000+ 12,23,72,393) even though plethora of evidences were found during the course of search, which corroborate the statements recorded on oath of various persons and substantiate the fact that the assessee company had made unaccounted/unexplained payments."

(7) The Applicant craves to leave, to add, to amend and/or to alter any of the ground of appeal, if need be.

3. Brief facts of the case are, during the course of assessment proceedings, the Assessing Officer observed that search u/s.132 of the Act was carried out on 05.03.2009 in the case of Jai Corp Group which also included the search in the case of the appellant. During the course of search proceedings, it was revealed that Jai Corp Group was traditionally in the business of cold rolled coils, galvanized coils, galvanized corrugated sheets, small woven sacks, fabrics, jumbo bags and partially oriented yam. In recent past, this group had extended its operation to realty sector. The group was partner in two major upcoming Special Economic Zones of India (SEZS.), being developed in the vicinity of

Mumbai namely Navi Mumbai Special Economic Zone (NMSEZ) & Mumbai Special Industries Ltd. (MSEZ). Mr.Anand Jain was chairman of both NMSEZ and MSEZ The group had also purchased huge chunks of land in the vicinity of these SEZS with an objective to develop township in these areas anticipating potential price rise and good returns. The group had also purchased huge agricultural/non-agricultural lands in the suburbs of Mumbai, Thane, Panvel, Alibaug and Pune. The lands were purchased in the name of various companies of this group as well as in individual names.

4. This group's real estate operations were handled mainly by Mr.Virendra Jain, Mr.Gaurav Jain and Mr. Dilip Dherai. Mr. Virendra Jain and Mr.Gaurav Jain handled the acquisition of land for Jai Corp Ltd. and its various subsidiaries. As explained by Mr.Virendra Jain and Mr.Gaurav Jain in their statements, entire land acquisition process was supervised by them. These land dealings were done some times directly with the farmers but mainly through various land aggregators/brokers.

5. Mr. Madan Kolambekar was one of their land aggregators and had one of his offices at B-3. Vashi, Navi Mumbai. The group had purchased

substantial agricultural land and 12.5% CIDCO plots through him Mr.LM Dhanda and Mr.Jeevan Anant Surve, the employees of "Jai Corp Group directly supervised the transactions through Mr. Madan Kolambekar. Further, Mr.Hiren Oza, another employee of group supervised the transactions of land done by the group through Mr.Madan Kolambekar. In their sworn statement, Mr Hiren Oza, Mr. Jeevan Anant Surve and Mr.L.M.Dhanda had accepted that they were visiting Mr.Madan Kolambekar's office three to four times a week. Mr. Mahendra Bhantia was also one of the land aggregators, through whom the group had purchased substantial agricultural land in and around New Panvel. The group had one of its office at Shiv Parvati Building, New Panvel, from which they supervised the land acquisition done through Mr.Mahendra Bhantia. Mr.Ganesh Atmaram Mokashe was another land aggregator of the group involved in the land acquisition in Ahirwade, Chikhalse and Naigaon villages of Pune District. From the group's office at Nakoda Center, Pune, Mr.Atul Pawar controlled and handled the group's operations in relation to purchase of land in and around Pune and Nashik.

6. CIDCO 12.5% plots/lands was purchased in the name of subsidiaries and other group companies at Jai Corp. Ltd. and agricultural land was

purchased in the name of subsidiaries also. Part of agricultural land was also purchased in names of various employees. Those employees were called company nominated farmers of those concerned companies. Such agricultural lands was purchased in the names of those company nominated farmers because those agricultural lands could not be transferred in the name of those companies due to some legal compulsions/requirements.

7. During the course of search proceedings, the statement of Mr.Anand Jain, Mr Virendra Jain, Mr.Gaurav Jain, Mr.L.M.Dhanda, Mr.Jeevan Surve, Mr. Atul Pawar, Mr.Hiren Oza, Mr.Dilip Dherai and Mr. Sanjay Punkhia were recorded. Further, during the course of survey/search in the case of Mr. Madan Kolambekar, certain incriminating documents regarding unaccounted cash payments were also seized/impounded and statement of Mr. Madan Kolambekar was also recorded. The affidavits were filed by Mr.Hiren OZa and Mr.Madan Kolambekar in which they retracted from their admission about unaccounted cash receipts and cash expenditure on behalf of M/s Jai Corp Group. However, the Assessing Officer has rejected these affidavits for the reason that the affidavits were filed after four months from the date of recording the statement. Further, there was no

pressure or coercion on them by the authorized officers during the course of search proceedings.

8. Thereafter, the Assessing Officer had issued a show cause notice dated 18.10.2020, 07.12.2010. In response to the show cause notice, the assessee had submitted replies/information to the Assessing Officer. After considering the submissions of the assessee, the Assessing Officer has discussed various aspects of the issue at hand in para 13 onwards of the Assessment Order. In para 13.1, the Assessing Officer has discussed the concept of 12.5% CIDCO plots of the land and related transactions. In para 13.2, the Assessing Officer has discussed the concept of land aggregators involved in the land transaction. In para 13.1.9 the Assessing Officer has discussed about land transactions of various group companies of Jai Corp group with Mr. Madan Kolambekar, which was as under: -

- (i). *Iconic Realtors Ltd. - 12.5% CIDCO plots at Dronagiri Node*
- (ii). *Ekdant Reality & Developers Ltd.-12.5% CIDCO plots at Taloja Node*
- (iii). *Rudradev Developers Ltd. - 12.5% CIDCO plots at Wadhghar Node.*
- (iv). *Krupa Realtors Ltd. - 12.5 CIDCO plots at Ulwe Node,*
- (v). *Jailaxmi Realty Developers Ltd. - Agricultural land.*

9. The Assessing Officer has also noted similar transactions of the group companies with Mr.Mahendra Banthia and Mr.Ganesh Mokashe, the land aggregators: The Assessing Officer has referred to the statements of

Mr. Gaurav Jain and Mr. Hiren Oza who had explained the business relations of the group companies with the land aggregators. The statement of Mr.Gaurav Jain is reproduced in para 13.1.11 of the Assessment Order.

10. After discussing the concept of 12.5% CIDCO land transaction and the role of land aggregators, Assessing Officer noticed that the land transactions concluded by the land aggregators was for the main entities of Jai Corp group and these land transactions were not independent land transactions between the land aggregators or any other persons or entity. The Assessing Officer also noticed that Mr.LM Dhanda, Vice President Project of Jai Corp Ltd. and Director of Iconic Realtors Ltd. alongwith Mr.Jeevan Anant Surve (Manager in Iconic Realtors Ltd.) and Mr. Hiren Oza (Accountant of Welldone Real Estate Pvt. Ltd.) and other legal consultants were devoting their substantial time and efforts to control the fund transfer and its utilization by Mr. Madan Kolambekar

11. During the search proceedings, Mr. Madan Kolambekar had admitted in his statement recorded u/s 132(4) of the Act that he was entitled for commission/brokerage @ ₹.1,000/- per sq.m in respect of

tripartite agreement and ₹.500/- per sq.m in respect of kacha file for 125 CIDCO plot He also admitted that he was entitled to brokerage/commission of ₹.2 lacs for agricultural land deals with Jailaxmi Realtors and Developers Ltd. Further, Mr.Madan Kolambekar had included the brokerage and commission income from land transactions on behalf of the group companies of Jai Corp group as income in the return filed after search proceedings. Further, incriminating evidences seized during the search proceedings also indicated the land transactions done by Mr.Mahendra Banthia and Mr.Ganesh Mokashe with M/s Novelty Realty & Developers Ltd, and other group companies.

12. During the assessment proceedings, the assessee has submitted that its transactions with Mr.Madan Kolambekar were on principal to principal basis and Mr Madan Kolambekar was an independent land aggregator. However, the Assessing Officer was of the view that many tripartite agreements were made by the assessee directly with sellers/farmers inspite of Mr. Madan Kolambekar being facilitator of such transactions. During the course of search, it was revealed that control was exercised by the Jal Corp Group over Mr Madan K. Kolambekar regarding land transaction and utilization of funds. Further, disclosure of

brokerage/commission income from such transaction for taxation in the return of income by Mr. Madan Kolambekar also established that the transaction with Mr.Madan Kolambekar was not on principal to principal basis.

13. The Assessing Officer further observed that Mr.Hiren Oza was not only actively involved in controlling and monitoring of land transaction Mr.Madan Kolambekar, but also regularly reporting it to the top management of the group. The Assessing Officer has further rejected the claim of the assessee that the amount paid to Mr. Madan Kolambekar in respect of land transaction was in the nature of incentive. The Assessing Officer has further referred to Page No:52 of Annexure A-1 seized from the premises of Welldone Real Estate Pvt. Ltd. This page mentioned about the meeting convened to decide and finalise agricultural land acquisition process in the case of Jailaxmi Realty & Developers Ltd. The entire terms and procedure regarding advancing of funds to Mr.Madan Kokambekar and its utilisation was decided by the team of Jai Corp Group in the absence of Mr. Madan Kolambekar. Thus, the Assessing Officer concluded that Mr. Madan Kolambekar was not an independent land aggregator and

the transactions of Jain Corp with him were not on principal to principal basis.

14. Further, the Assessing Officer has reproduced para B of the assessment orders of Iconic Realtors Ltd Ekdant Realty & Developers Ltd., Krupa Realtors Ltd. and Rudradev Developers Ltd (Page Nos 52 to Page No.79 of the Assessment Order).

15. A detailed discussion in respect of para B of the Assessment Order in the case of Iconic Realtors Ltd. has been made in the appellate order of Iconic Realtors for AY 2008-09 (Para No.7.1 alongwith sub-paras). Therefore, it is not reproduced here.

16. Thereafter, in para Nos 13.12 to 13.17, the Assessing Officer has discussed various incriminating evidences gathered during the search and survey proceedings in the case of Jai Corp Group. The Assessing Officer has discussed the contents of page No 52 of Annexure A-1 found from the premises of M/s. Welldone Real Estate Ltd. Page No.52 contained the minutes of meeting held at New Panvel Office which was attended by Mr.LM.Dhanda, Mr. Jaiswal, Mr.Shridharan, Mr.J. Survey, Mr.B. P.Gupta and Mr. Hiren Oza. The Assessing Officer has concluded that as per these

documents, the team of Jai Corp Group had decided the transfer of funds and its utilization to M/s Deva Realtors in the absence of Mr Madan Kolambekar. This proved that Mr.Madan Kolambekar was acting as per the directions of Jai Corp Group.

17. Thereafter, the Assessing Officer has referred to MIS report/Status report which contained the land transactions carried out by Jai Corp Group through Mr Mudan Kambekar.

18. Further, the Assessing Officer has referred to page No.64 & 65 of Annexure A-2 impounded from the office of M/s. Welldone Real Estate Pvt Ltd. The contents of these pages shown that ₹.12,23,72,393/- was transferred from Iconic (Iconic Realtors Ltd) to Deva (M/s. Deva Realtors) and an amount of ₹.13,00,00,000/- was transferred from Jailaxmi (Jailaxmi Realty & Developers Ltd.) to Deva (M/s Deva Realtors). The amount of ₹.13,00,00,000/- was reflected in the books of Jailaxmi Realty & Developers Ltd. but the amount of ₹.12,23,72,393/- and ₹.5,44,00,000/- (development charges) was not appearing either in the books of Iconic Realtors Ltd. or Jailaxmi Realty & Developers Ltd.

19. Further, page No.27 of Annexure A-1 impounded from Mr.Hiren Oza contained the details of sources and deployment of funds. The amount of ₹.4,30,00,000/- and ₹.1,14,00,000/- (totaling to ₹.5,44,00,000/-) on source side shown as 'development charges' was nothing but cash payment. This fact was admitted by Mr.Hiren Oza in his statement recorded during the search proceedings.

20. Further, deployment side of page No.65 showed payment of ₹.3,75,50,000/- to Mr. Suresh Raut & Mitra Mandal and ₹.3,24,62,835/- as payment to Mitra Mandal & Others. From the books of accounts of Mr.Madan Kolambekar, the Assessing Officer found that payment of ₹.3,24,62,835/- made to Mitra Mandal were reflected in the books of account, but the payment of ₹.3,75,00,000/- made to Mr.Suresh Raut and Mitra Mandal was not appearing in the books of account of Mr. Madan Kolambekar and also in the books of Jai Corp Group entities. Thus, the payment of ₹.3.75,00,000/- shown as deployment charges was cash payment made to Mr Madan Kolambekar by Jai Corp Group.

21. Thus, on the basis of material seized from the office of Mr. Madan Kolambekar, from the possession of Mr. Hiren Oza and from office of

M/s.Welldone Real Estate Pvt. Ltd., the Assessing Officer concluded that the total amount of ₹.30,67,72,393/- (13,00,00,000+ 12,23,72,393 + 5,40,00,000) was transferred from Jai Corp Group to Mr.Madan Kolambekar for purchase of agricultural land Out of this total amount of ₹.30.67,72,393/-, the amount of ₹.17,67,72,393/- (12,23,72,393+ 5.44,00.000) was not appearing in the books of account of Jai Corp Group entities. Finally, the Assessing Officer concluded that out of unaccounted payment of ₹.17,67,72,393/-, the amount of ₹.5,44,00,000/- was paid in cash and balance of ₹.12,23,72,393/- (out of which atleast ₹.2,40,00,000/- was cash payment) was undisclosed and unexplained expenditure by the Jai Corp Group.

22. Further the Assessing Officer held that as per Annexure O-3 enclosed with the Assessment order, it was clear that the agricultural land was first purchased by Mr.Madan Kolambekar and other nominated farmers of M/s.Deva Realtors. Thereafter, those agricultural lands was transferred in the name of nominated farmers of Jailaxmi Realty & Developers Ltd, which was admitted by Jailaxmi Realty & Developers Ltd. As per land details submitted by Jailaxmi Realty & Developers Ltd. and on comparison of the Annexure O-8, it could be seen that the land firstly

purchased in the name of Mr. Madan Kolambekar and other nominated farmers of M/s Deva Realtors was subsequently transferred in the name of nominated farmers viz. Mr.Balaprasad Gupta, Mr.Hirasingh Rawat, Mr.Bijay Kumar Saraf, Mr.Manoj Dadhich and Mr.Ramswaroop Gupta of Jailaxmi Realty & Developers Ltd. The above facts further confirmed that all the agricultural transactions actually took place in the hands of Jailaxmi Realty & Developers Ltd. (through the nominated farmers) after making the above-mentioned unaccounted/unexplained payments.

23. Accordingly, the unexplained payments/unaccounted cash payments of ₹.5,44,00,000/- was held by the Assessing Officer as unexplained expenditure in the hands of Jaylaxmi Realty & Developers Ltd. u/s.69C of the Act for AY 2008-09. Further, the unexplained payments (including unaccounted cash payments) of ₹.12,23,72,393/- was held as unexplained expenditure in the hands of the assessee u/s 69C of the Act for A.Y.2008-09.

24. Further, the Assessing Officer held that in the computation of total income, the unexplained expenditure of ₹.12,23,72,393/- and

₹.5,44,00,000/- could not be allowed as a deduction as per proviso to section 69C under any head of income.

25. Aggrieved assessee preferred an appeal before the Ld.CIT(A) and Ld.CIT(A) following the decision of the ITAT in the case of M/s. Krupa Land Ltd., and decision of the Hon'ble Jurisdictional High Court in the case of M/s. Lavanya Land Pvt. Ltd., & other entities of the group concern, deleted the additions made by the Assessing Officer.

26. Aggrieved revenue is in appeal before us. It is observed that this appeal was filed on 27.05.2022 after corona pandemic period. After considering the Hon'ble Supreme Court decision on extension of limitation period, the delayed period of filing the appeal is condoned.

27. At the time of hearing, Ld. DR brought to our notice Page No. 84 of the Assessment Order and submitted that during search incriminating material were found which are listed by the Assessing Officer in the case of M/s. Welldone Realty Pvt. Ltd., and discussed in detail in Para No. 13.14.1 of the Assessment Order and submitted that assessee is one of the group concerns who are involved in purchasing of the land and transferred huge funds from assessee to M/s. Deva Realtors which are appearing under the head "loans and advances" in the books of the assessee and he submitted that an amount of ₹.12,23,72,393/- which is the amount Assessing Officer made the addition which does not appear

in the books of Iconic realtors Ltd. Further, he submitted that the amount of ₹.5,44,00,000/- which was shown transferred as development charges is nowhere appearing in the books of account of these two companies i.e. Iconic Realtors Ltd., and Deva Realtors. Ld.DR supported the findings of the Assessing Officer and further, he submitted that Mr. Madan Kolambekar has accepted the transactions in the statement recorded and he submitted that it is also fact that the above statements were retracted by the other parties. He further brought to our notice Para No. 7.3.6.2 of the Ld.CIT(A) order and submitted that Ld.CIT(A) has deleted the addition without actually going through the document found during the search and he vehemently supported the findings of the Assessing Officer.

28. On the other hand, Ld. AR brought to our notice the other decisions of the group concerns in which similar additions were proposed based on the statement of Mr. Madan Kolambekar and Hiran Ojha and in the subsequent appellate proceedings the ITAT and Hon'ble Jurisdictional High Court has deleted the similar additions made by the Assessing Officer. He relied on the order of the Coordinate Bench in the case of JCIT *v.* M/s. Krupa Land Limited in ITA.No. 633/Mum/2012 dated 18.10.2018 and decision of the Hon'ble Jurisdictional High Court in the

case of CIT *v.* M/s. Lavanya Land Pvt. Ltd., in Income Tax Appeal No. 72 of 2014 dated 23.06.2017.

29. Considered the rival submissions and material placed on record, we observe that the addition was made u/s. 69 of the Act in respect of the unexplained expenditure mainly on the basis of documents seized and impounded from the premises of Mr. Madan Kolambekar and office premises of M/s. Welldon Realty Pvt. Limited. Similar additions u/s. 69 of the Act was made in all the group concerns of Jai Corp Group based on the documents seized from Mr. Dilip Dherai one of the land aggregator and his statement admitting cash payment in respect of purchase of lands by the group concerns of Jai Corp Group. The facts in this appeal is exactly similar to the facts in M/s Krupa Land Limited, M/s. Lavanya Land Pvt. Ltd., and other concerns of Jai Corp Group. We observe from the record that Ld.CIT(A) has deleted the addition relying on the decision of the Coordinate Bench in the case of JCIT *v.* M/s. Krupa Land Limited (supra) and decision of the Hon'ble Jurisdictional High Court in the case of CIT *v.* M/s. Lavanya Land Pvt. Ltd., (supra). Since the facts in the present appeal are exactly similar to the above facts on which the Hon'ble

Jurisdictional High Court has deleted the addition, relevant ratio of the decision are reproduced below: -

"20. The Tribunal noted the grounds of Appeal. It also noted the facts pertaining to the search and seizure action under Section 132 and the statement of Dilip Dherai. The Tribunal noted the fact that the entire land acquisition was looked after by Central Leadership Team of which Mr. Dilip Dherai, Mr. Anand Jain, Mr. Sanjay Punkhia and Mr. Ajit Warthy are key members. The Tribunal also referred to the seized documents. The Tribunal then referred to the order passed by the Commissioner of Income Tax (Appeals). Then the Tribunal noted the arguments of both sides. These arguments were noted in great details. Then, the Tribunal, in paragraph 18 and 19, held as under:

"18. Thus it is clear that before issuing notice u/s. 153C, the primary condition has to be fulfilled and which is that the money, bullion, documents etc., seized should belong to such other person. If this condition is not satisfied, no proceedings could be taken u/s. 153C of the Act. The seized documents marked as page 1 & 2 of our order do not belong to the assessee but were seized from the residential premises of Shri Dilip Dherai. It is not the case of the Revenue that the impugned documents are in the handwriting of the assessee. At this stage, it would be fair to the Revenue that it cannot be in the handwriting of the assessee since the assessee is a legal person, so to extend our observation, the seized documents are not even in the handwriting of any person related with the assessee because Shri Dilip Dherai is neither a Director nor a shareholder/member nor even an employee of the assessee company. We may mention at this stage that the provisions of the Indian Evidence Act are not strictly applicable to the proceedings under the Income Tax Act, but the broad principles of law of evidence do apply to such proceedings. Further an entry in the books of account maintained in the regular course of business is relevant for the purpose of considering the nature and impact of a transaction, but noting on slip of papers or loose sheet of papers are required to be supported/ corroborated by other evidence. There is also a distinction

between loose papers found from the possession of assessee and similar documents found from a third person. In the present case, impugned documents were not found from the possession of the assessee but was found from the possession of a third person i.e. Shri Dilip Dherai. Mere mention of the names of the villages where the companies may have purchased lands would not give any basis to assume/presume/surmise that the name of the companies are mentioned in the impugned documents. The very foundation of Sec. 153C has been shaken by not fulfilling the condition precedent for the issue of notice. It is the say of the Ld DR that in the present case there is no need for recording of the satisfaction. If this plea of the DR is accepted then the legislative intent of inserting sec. 153C in the Act would get defeated because the AO will get unstoppable powers to reopen assessments for 6 year in the case of the ' Other Person ' without recording any basis [satisfaction] for his action. Therefore this plea of the Ld DR cannot be accepted.

19. Considering the entire facts and circumstances in the light of the impugned seized documents, we have no hesitation to hold that action taken u/s. 153C of the Act is bad in law."

21. Thereafter, in paragraph 20, the Tribunal considered the merits and once again, at great length. The particular argument revolving around the statement of Dilip Dherai and his answer to question No. 24 was also considered in paragraph 21 of the impugned order. Then, in paragraph 22, the Tribunal refers to the additions made under Section 69C. After reproducing Section 69C and advertng to the fact that Dilip Dherai has retracted his statement, the Tribunal arrived at the conclusion that merely on the strength of the alleged admission in the statement of Dilip Dherai, the additions could not have been made. The concurrent findings of fact would demonstrate that the essential ingredients of Section 69C of the IT Act enabling the additions were not satisfied. This is not a case of 'no explanation'. Rather, the Tribunal concluded that the allegations made by the authorities are not supported by actual cash passing hands. The entire decision is based on the seized documents and no material has been referred which would conclusively show that huge amounts revealed from the seized documents are

transferred from one side to another. In that regard, the Tribunal found that the Revenue did not bring on record a single statement of the vendors of the land in different villages. None of the sellers has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands. It is in these circumstances that the Tribunal found that on both counts, namely, the legal issue, as also merits, the additions cannot be sustained. Eventually, the Tribunal held in paragraph 25 (page 188) as under:

"25. A perusal of the balance sheet of the assessee show that the authorized, issued and subscribed paid up capital is at Rs. One lakh and the assessee had not done any business during the year under consideration. With such a small corpus and no business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of account. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee. In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum, over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s. 69C of the Act to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained."

22. We do not think that this case is any different from the one considered by the Division Bench in the case of M/s. Arpit Land Pvt. Ltd. and M/s. Ambit Reality Pvt. Ltd. The Assessment Year in the case of M/s. Arpit Land Pvt. Ltd. was 2008-09 and in the case of M/s. Ambit Reality Pvt. Ltd., it was 2007-08. The controversy was identical. The Division Bench, having concluded that no substantial question of law arises for consideration in the Appeals by the Revenue in the case of identical land transactions of two assessees involved in Income Tax Appeal Nos. 83 of 2014 and 150 of 2014, then, a different conclusion is not possible. We do not think that the shift in the stand of the Revenue carries its case any further. We are of the opinion that the Revenue has rightly been faulted for its

approach by the Tribunal. The above are pure findings of fact and consistent with the material placed on record. Thus, the jurisdiction and vesting in the Assessing Officer could have been exercised and the satisfaction in that regard was enough, are not matters which can be decided in the further appellate jurisdiction of this Court. It is not possible for us to reappraise and re-appreciate the factual findings. The finding that Section 153C was not attracted and its invocation was bad in law is not based just on an interpretation of Section 153C but after holding that the ingredients of the same were not satisfied in the present case. That is an exercise carried out by the Tribunal as a last fact finding authority. Therefore, the finding is a mixed one. There is no substantial question of law arising from such an order and which alternatively considers the merits of the case as well.

23. As a result of the above conclusion, we cannot agree with the learned Additional Solicitor General that we can pass a different order and entertain these Appeals for the current year of the search, namely, the Assessment Year 2009-10. That was based on the argument that the action under Section 153C for this year is an incorrect conclusion. All the earlier orders in these Appeals having being noted by us, we have no hesitation in concluding that despite sufficient opportunity being given to the Revenue, it has not been able to satisfy this Court that a different view can be taken.

24. As a result of the above discussion, and when it is conceded that all these Appeals involve identical issue and challenge, we proceed to dismiss them but without any orders as costs."

30. We observe that the Ld.CIT(A) has passed a consolidated order in the case of Krupa Land Ltd for A.Ys. 2008-09 and 2009-10 as the facts for both the years were similar. Both the assessee and the Revenue were in appeal before the Coordinate Bench. The Tribunal allowed the assessee's appeal for A.Y. 2008-09 on the technical ground of there being no satisfaction recorded by the Assessing Officer of the searched person as required u/s. 153C of the Act and, therefore, did not adjudicate the merits

of the matter in the said year. However, the Coordinate Bench in the appeal for the A.Y. 2009-10 adjudicated the issue on the merits and concluded that the provisions of section 69C are not applicable on the facts of the present case as the statement of Mr. Dilip Dheria has been withdrawn by him. Further, the Coordinate Bench has held that addition made by the Assessing Officer is merely on the basis of the loose paper found during search, however the same is not supported by any material showing cash passing hands. Further, the revenue authorities have not brought a single statement on record of the vendors to substantiate the claim of the Revenue that extra cash has actually change hands. The Coordinate Bench has held as under in the case of Krupa Land Limited (supra) on merits: -

"20. Now coming on to the merits of the case, which is without prejudice to our findings hereinabove, the submissions of the Ld. Sr. Counsel have been incorporated hereinabove to which the Ld. DR in addition to his oral arguments filed a written submission. The Ld. DR has mainly relied upon the findings of the AO. So far as payments outside the regular books of accounts are concerned, in his written submission, the Ld. DR has explained the modus operandi of the assessee relying upon various documents seized from the premises of Shri Dilip Dherai and M/s. Jai Corp group. The Ld. DR strongly contended that the retraction of Shri Dilip Dherai is only self serving and has to be rejected as an afterthought. For this preposition the Ld DR relied upon several judgements. It is the say of the Ld. DR that the statement of Shri Dilip Dherai was recorded u/s. 132(4) of the Act on 5.3.2009 whereas Shri Dilip Dherai has filed an affidavit on 14.5.2009 retracting from his admission on 5.3.2009. The Ld. DR pointed out that after 5.3.2009 Shri Dilip Dherai appeared before the

DDIT on 6.4.2009, 8.4.2009, 20.4.2009, 22.4.2009 & 8.5.2009 and none of these appearances Shri Dilip Dherai never stated that his statement on oath recorded on 5.3.2009 was done under threat, force, coercion. Therefore, the affidavit filed by Shri Dilip Dherai is only an afterthought. In his written submission, the Ld. DR has pointed out that Shri Dilip Dherai in order to escape the consequences of law, has filed the affidavit as an afterthought which deserves to be ignored especially when the affidavit has been controverted and repelled by the Authorised Officer Shri Manoj Kumar. Thereafter in his written submission, the Ld. DR went on to explain how the cash transactions have taken place as mentioned in the seized documents. It is the say of the Ld. DR that on perusal of these seized documents, there is clear mention of cash required at the bottom of these pages. Further in all these documents, total cost of land has been arrived by multiplying area of land with rate per acre. Referring to page-22 and 23 of Annexure-A1, which are at page 1 & 2 of our order, the Ld. DR submitted that since 5 columns of the chart are entered into the books of account, then it cannot be accepted that the 6th & 7th column do not belong to the assessee company. This view has been accepted by the Ld. CIT(A). The Ld. DR finally concluded that in view of all the surrounding facts and circumstances, it is very clear that cash payments have been made and an addition has to be made on this account. To substantiate his claim, the Ld. DR has also referred to seized materials 101 to 108. According to the Ld. DR, these seized materials described the modus operandi of the group. The Ld. DR in his written submission has tried to explain the nature of transaction recorded in the seized documents 101 to 108.

21. We have considered the rival submissions on merits and perused the orders of the lower authorities. The entire assessment revolves around the statement of Shri Dilip Dherai recorded u/s. 132(4) of the Act on the date of search i.e. 5.3.2009. The relevant question which has been relied upon by the AO and the Ld. CIT(A) is as under:

Q. 24. Please note page No. 22 and page No. 23 which is kept before you. As I understand these are the statement as on 28th November, 2008 for the land

purchased herein list of accounted payments are provided against each village. Please clarify the same.?

Ans. These documents reflect total amounts disbursed for purchase of land. The details of area, village, payments made through cheque alongwith payments made through —cash|| is shown very clearly in the chart. The highlighted portion reflects the cash payments disbursed through Jaicorp Office at Maker and Jai Towers. The same has been mentioned separately. The cash payment from Maker adds upto Rs. 28.01 Cr and cash payment from Jai Towers adds upto Rs. 10.43 cr. All these cash were received for these projects from Jaicorp Ltd. and the total of all these amounts works out to Rs. 38.45 Cr in cash. I was provided with these cash as and when required by Shri Sanjay Punkhia||

22. *However, subsequently Shri Dilip Dherai has retracted from his statement which has been strongly objected by the Ld. DR in his submission. The entire dispute revolves around the alleged cash payment amounting to Rs. 43 crores approx. and which has been added u/s. 69C of the Act. Sec. 69C of the Act reads as under:*

"Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure or part thereof, or the explanation, if any, offered by him is not, in the opinion of the AO, satisfactory, the amount covered by such expenditure or part thereof, as the case may be, may be deemed to be the income of the assessee for such financial year.

23. *A perusal of the aforementioned section shows that the requirement of the section is that an expenditure has been found to have been incurred by an assessee in any financial year. Consequently, the assessee fails to indicate satisfactorily the source of such expenditure or any part thereof. Then section 69C is attracted in such circumstances. The emphasis is on the fact that —an assessee has incurred any expenditure||. This itself show that the assessee must have been found to have incurred any expenditure to invoke the provisions of Sec. 69C of the Act. Even if*

for the sake of arguments, the retraction of Shri Dilip Dherai is ignored, in his reply to question No. 24 on the date of search, Shri Dilip Dherai has categorically mentioned that cash payment from Makers is at Rs. 28.01 crores and cash payment from Jai Towers is at Rs. 10.43 crores, total of these amounts works out at Rs. 38.45 crores which was provided to Shri Dilip Dherai by one Shri Sanjay Punkhia CEO of SEZ Project. Shri Dilip Dherai is not even remotely related to the assessee company. It is also not the case of the Revenue that Dilip Dherai was acting as agent of the assessee company. Merely on the strength of this admission, it cannot be said that the assessee has incurred certain expenditure over and above what has been recorded in its books of account. We find that the ultimate conclusions drawn by the AO and the Ld. CIT(A) have been reached merely on the entries found on loose sheet of papers for which Shri Dilip Dherai has stated that they are only estimates / budgetary figures. However, the allegations made by the lower authorities are not supported by actual cash passing hands. The entire additions are based on the seized documents and no other material has been adverted to and which could conclusively show that the huge amount of the magnitude mentioned in the seized documents travelled from, one side to the other. The Revenue authorities have not brought a single statement on record of the vendors of land in different villages. None of the seller has been examined to substantiate the claim of the Revenue that extra cash has actually changed hands.

24. *Our view is fortified by the decision of the Delhi High Court in the case of Malik Brothers Pvt. Ltd. Vs CIT 162 Taxmann 43 which is relied upon by the Ld. DR. In that case, the assessee purchased the property allegedly for Rs. 6 lakhs. The vendor in her statement confirmed that the sale consideration of said property was Rs. 45 lakhs and paid tax thereon. In view of vendor's statement, the AO made an addition of Rs. 39 lakhs to the income of the assessee towards unexplained investment. The action of the AO was justified and the additions were confirmed. Thus in view of the aforesaid decision, in the present case, none of the sellers have been examined by the AO to strengthen his views that cash has been paid over and above the registered amount. There is not even a single document/evidence of parties involved in the sale of land at different villages brought on record to show that an amount other than the*

payment of consideration has exchanged hands. No confession from the sellers have been brought on record. The entire additions have been made merely on the strength of loose papers found during the course of the search not supported by any independent authority. Considering the entire addition, in the light of the provisions of Sec. 69C, as per A.O's own interpretation, investments in purchase of land have been fully financed by some other persons, therefore, the addition in the hands of the assessee cannot be justified as the assessee has not incurred any expenditure. There may be one more possibility that the persons who were doing land purchase might have inflated the sale price in these loose sheets just to extract monies from their higher authorities in the guise of On-Money to be paid to the vendors. May be because of his possibility no documents were found to show that the money actually changed hands.

25. *A perusal of the balance sheet of the assessee show that the authorized, issued and subscribed paid up capital is at Rs. One lakh and the assessee had not done any business during the year under consideration. With such a small corpus and no business activity, nor any has been brought on record by the Revenue, it is not acceptable that the company may have incurred such huge expenditure outside its books of account. Further in his entire assessment order, the AO himself has pointed out time and again different persons, who are alleged, to have made cash payments. Even on that count, the additions cannot be sustained in the hands of the assessee. In our considerate view, there being no evidence to support the Revenue's case that a huge figure, whatever be its quantum , over and above the figure booked in the records and accounts changed hands between the parties, no addition could therefore be made u/s. 69C of the Act to the income of the assessee. Considering the entire facts brought on record, we have no hesitation to hold that even on merits, no addition could be sustained.*

26. *Since we have allowed the issue in the case of the present assessee on both counts i.e. on legal issue and on merit and the issues involved in all other appeals of other assesseees are similar and identical, though quantum may differ, for similar reasons, we quash the assessments and delete the additions on merit as well as on point of law in all other cases also.*

27. *In the result, the appeals filed by the assesseees are allowed."*

31. We observe from the above decision that the fact in the present case is similar to the case of Krupa Land Ltd. (supra) as the present proceedings also arise from the same search. Instead of the statement of Mr. Dilip Dheria, the Revenue is relying on the statement of Mr. Madan Kolambekar in the present proceedings. However, in the present case also, Mr. Madan Kolambekar has withdrawn his statement and other than loose papers, no further material has been brought on record by the Revenue to justify the addition in the hands of the assessee. The Revenue has not supported the allegation by any material showing cash passing hands. Further, the Revenue authorities have not enquired with the vendors or brought any statement on record of the vendors to substantiate the claim of the Revenue that extra cash has actually change hands. In view of the above facts, we are inclined to accept the findings of the Ld.CIT(A), who was justified in relying on the decision of the coordinate bench of the Tribunal in the case of Krupa Land Ltd. (supra).

32. Respectfully following the above said decision of the Hon'ble High Court and Coordinate Bench, since these decisions are binding decisions for all the group concerns of Jai Corp Group, as the facts in all these group concerns are similar. Accordingly, we do not find any reason to interfere

with the findings of the Ld.CIT(A) by deleting the additions proposed by the Assessing Officer u/s. 69C of the Act. Accordingly, various grounds raised by the revenue are dismissed. Since we have decided the main appeal against the revenue the relevant cross objection filed by the assessee is also dismissed.

33. In the result, Appeal filed by the Revenue as well as cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 22nd February, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 22/02/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum