

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

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

**IT(SS)A No.166, 167 and 168 /Ind/2016
Asstt.Year : 2008-2009, 2009-2010 and 2010-11
AND**

**ITA No.949/Ind/2016
Asstt.Year 2011-12**

Century 21 Malls P.Ltd. 731-732, Usha Nagar Extension Above Axis Bank Annapurna Road Indore. PAN : AADCC 0761 A	Vs.	ACIT, Ward-2(1) Indore.
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**IT(SS)A No.173, 174 and 175 /Ind/2016
Asstt.Year : 2008-2009, 2009-2010 and 2010-11
AND**

**ITA No.952/Ind/2016& ITA No.255/Ind/2017
Asstt.Year 2011-12 and 2012-13**

DCIT, Ward-2(1) Indore.	Vs.	Century 21 Malls P.Ltd. 731-732, Usha Nagar Extension Above Axis Bank Annapurna Road Indore. PAN : AADCC 0761 A
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/(Respondent)
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Assessee by :	Shri S. S. Deshpande, CA
Revenue by :	Shri P.K. Mishra, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : **29/11/2022**
घोषणा की तारीख /**Date of Pronouncement**: **23/02/2023**

आदेश/O R D E R

PER BENCH:

These are cross-appeals by the Revenue and assessee against respective orders of the Id.Commissioner of Income-tax (Appeals)-1, Indore. The details of orders of the Id.CIT(A) which are under

challenge by the Revenue as well as the assessee before us are as under:

Appeals by Revenue:

Sr.No.	Asstt.Year	CIT's order dated
1	2008-09	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
2	2009-10	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
3	2010-11	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
4	2011-12	29-4-2016 against order under section 143(3) of the Act.
5	2012-13	16-12-2016 against order under section 143(3) of the Act.

Appeals by the assessee:

Sr.No.	Asstt.Year	CIT's order dated
1	2008-09	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
2	2009-10	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
3	2010-11	29-4-2016 against order under section 153A r.w.s. 143(3) of the Act.
4	2011-12	29-4-2016 against order under section 143(3) of the Act.

2. All these appeals have arisen consequent upon search action under section 132 of the Income Tax Act, 1961 carried out at the premises of assessee and simultaneous survey actions at various business premises of other group concerns. The assessee belonged to the "M.P. Bullion" group of cases. Consequently, the assessment order was framed under section 153A read with section 143(3) of the Act by making certain additions. Against these additions, the assessee went in appeal before the first appellate authority, but partly succeeded. Against decisions of the Id.CIT(A) both the

Revenue and assessee are before the Tribunal. First we take up appeals for the Asst.Year : 2008-09 by the both the parties.

**IT(SS)A.No.173/Ind/2016 : AY 2008-09 (Revenue's appeal) and
IT(SS)A.No.166/Ahd/2016 : AY 2008-09 (Assessee's Appeal)**

3. Since the issue raised in the appeals is inter-connected, we take up the appeals of the Revenue and the assessee for the Asst.Year 2008-09 together for adjudication.

4. Revenue, by way of Ground no.1 to 3, challenges deletion of addition of Rs.18,89,21,765/- on account of alleged cash credits by holding that the amount belonged to Shri Keshav Nachani, while the assessee is aggrieved in sustaining/ enhancing the addition from Rs.33,30,846/- to Rs.1,77,59,500/- by the Id.CIT(A) on account of DVO's report. The grounds raised by Revenue and the assessee's are as under:

Revenue's Grounds:

"1. Ld. CIT (A) erred in deleting the addition of Rs. 18,89,21,765/- observing that the amount belongs to Shri Keshav Nachani whereas in Keshav Nachani's case addition was restricted to Rs. 3,35,10,500/- only.

2. Ld. CIT (A) erred in deleting the addition of Rs. 5,17,80,000/- made by the AO u/s 68 of the IT Act whereas credit worthiness of the creditors was not proved either at the time of assessment or at the time of appellate proceedings.

3. Ld. CIT (A) erred is not considering the fact that financials of most of the creditors is question are having no capital, no funds and no income to provide funds to the assessee."

Assessee's Grounds:

1. On the facts and in the circumstances of the case the learned/ Commissioner of Income Tax (Appeals)-I, Indore has erred in sustaining the addition made by invoking the provisions of section 153A, wherein additions ; have been made on surmises, conjunctures, whims and hypothetical grounds, whereas nothing has been found which can be said that incriminating in nature and/or forming part of undisclosed transactions.

2. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in sustaining the rejection of books of accounts by invoking the provisions of section 145(3), even though he has hold that the impugned material so found recorded in Rahul Pen Drive are belonging to director Shri Keshav Kumar Nachani and confirming addition on this account in his hands and thus, there remains no materials on the strength of which rejection of books may be justified.

3.1. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in law in sustaining / enhancing the addition made on account of alleged excess expenditure from Rs.33,30,846/- to Rs.1,77,59,500/-.

3.2. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in sustaining the addition made on account of alleged excess expenditure found on the basis of valuation report of DVO on the under construction Commercial Project, without considering the technical objections raised.

3.3. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in sustaining the addition made on account of alleged excess expenditure found on the basis of valuation report of DVO on the under construction Commercial Project by treating the same as unexplained, without considering the fact that the difference so observed by the DVO is much less than 10% of the cost so debited in the books of accounts.

4. On the facts and in the circumstances of the case the learned Commissioner of Income Tax (Appeals)-I, Indore has erred in sustaining the addition made on account of transactions found recorded in folder 21B/RSJNRS.DBF in Rahul Pen Drive at Rs.1,77,59,500/-, even after holding that the contents of the said pen drive are belonging to director Shri Keshav Kumar Nachani and confirming addition on this account in his hands, which has resulted in double addition of the same amount.

5. The respondent craves leave to make an addition, alteration, deletion and/or amendment in the grounds of cross objection arising out of £ this order.

5. Brief facts as emerging out from orders of the Revenue authorities are that the assessee is belonged to M.P. Bullion group of cases. A search action was conducted under section 132 of the Act at the premises of the assessee situated at 263, Orbit Mall, Indore; that the assessee-company was engaging in the construction work, and undertaking project in the name of '21-1 Malls'. During the search action, certain documents including a pen-drive were seized, which were inventorised as Annexure BS-1; that tally accounts with

the name “Bhopal Hoshangabad” and “bm” were found in the said pen-drive along with various accounting computer files. These tally accounts were also contained accounts of C-21 Mall P.Ltd., and Globus Telecom Ltd. One of the files viz. ‘21b/RSJNRS.DBF’ was an important file. This DBF files contained accounted and unaccounted data of assessee-company viz. C-21 Malls P.Ltd.; that Shri Keshav Kumar Nachani was one of the directors of the company. He confirmed that these DBF files were accounts of the assessee-company. It was noticed by the assessee that most of the transactions found in the pen-drive were unrecorded. The AO noticed that the assessee has received deposits and advances against various shops in that projects from the customers; that Shri Keshav Kumar Nachani being director of the assessee-company was asked to produce cash bank and bank book and explain the contents of the entries appearing in the seized tally data. Shri Keshav Kumar Nachani explained that the loose papers and the alleged tally data are nothing but journal entries/memorandum entries relating to various activities carried out in the field of bullion trading, future trading, mobile trading, real estate of Shri Keshav Kumar Nachani and other group concerns. The pen-drive folder containing various tally accounts were all transactions in respect of the transactions done by himself; that lot of debit and credit entries in cash under various heads like Ashok, Sunil, Kamal etc. all these nomenclature were in respect of the transactions done by him; that he was looking after the work of construction at Bhopal; that all credit entries represented the amount received from him and the debit entries were in respect of cash deposited in ‘Tijori’ account and also various advances given; since all these unaccounted entries were of him, he has prepared daily cash book of debits and credits and have worked out the excess of credit in these accounts; that the

excess credit so worked out has been offered as his income in the return filed under section 153A of the Act; that he was looking after the day to day activities of construction work of the assessee company, for which he was remunerated by the company; that all the entries related to the bank transactions were of the assessee-company and were reflected in the books of accounts of the company; that all the entries, except the entries relating to bank, have already been taken into consideration while working of the excess of credit; that all the unrecorded entries were belonged to him and disclosed in his hand while filing the return under section 153A of the Act. As for Bhopal Hoshangbad account, it was explained by him that they were merely journal entries for the purpose of projection to be given to the bank; that in other words, they were merely credit and debit entries and no cash was flown in these transactions; that the project in fact could not take off due to various reasons; that he has worked out excess of debit and credit entries by taking into account all the transactions together and the excess of credits so worked out was less than Rs.13 crores, which was offered as his income; but for abundant caution he declared and offered an income of Rs.15 crores, which would cover the excess of credits in the 'BM' account, '21B account, and Bhopal Hoshanabad account, which the AO found to be unexplained. However, the ld.AO did not satisfy with the explanation of the assessee stating that integration of all the transactions, i.e. integration of accounts viz. (i) 21b/RSJNRS.DBF, (ii) Bhopal Hoshangabad, and (iii) 'bm' accounts in the names of M/s.C-21 Malls P.Ltd, (ii) Globus Megha Projects P.Ltd, and (iii) Globus Housing P.Ltd. was not proper because the same was hypothetical integration done by the assessee to cover all three separate entries into one single account in order to limit tax liability to the surrendered amount of Rs.15 crores. The AO was of

the view that for calculating the peak credits, all three accounts should be taken separately, more so because of the above three companies were engaged in construction and real estate business, and the unaccounted amount found in these three separate accounts was received as advance booking from the customers; that there was no instance that funds were transferred from one entity to another, or amongst the above three companies; that therefore it was a case where section 292C would come to play, because despite number of instances of unaccounted money being not recognized in the accounts. He held that integration of all the three accounts and taking all the unaccounted and accounts of all three companies together for the calculation of peak credit was not justified, and hence, could not be allowed. While holding so, the Id.AO also observed that in case the assessee wanted to integrate all these three accounts, then why the assessee has maintained three separate accounts in names of these three companies, therefore, all three accounts were independent and separate *per se* as the trial balance, profit & loss account with balance sheets were found in the data contained in the pendrive seized during the search, and therefore, there was no question of integration of three separate accounts as done by the assessee. The AO further observed that the *modus operandi* behind owning up of all the transaction by the said Keshav Kumar Nachani to save others who had introduced unaccounted cash money in the system, from the tax net. Though certain names were found in the accounts, however, the said Keshav Kumar Nachani did not disclose the identity of these persons. Accordingly, the Id.AO rejected the working of peak credit by the assessee. The AO has noticed year-wise unrecorded cash receipts in his impugned order as under:

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

6. From the above, the ld.AO has noticed that entries found in the pendrive were not recorded in the books of accounts except bank transactions, and that all the cash entries found in the tally data found in the pendrive were not being recorded or accounted for in the books. Since the ld.AO noticed various discrepancies in the books of accounts, he issued notice to the assessee show causing as to why books accounts should not be rejected. In the show cause notice, the AO mentioned certain instances where the entries with regard to cash transactions found in the seized pen-drive were not recorded. The assessee explained that the assessee has maintained regular books of accounts and the details of all the construction activities carried out by it and all the purchases and expenses incurred were furnished and could be fully vouched, and therefore there was no question of rejection of books of accounts of the assessee. The observation of the AO was baseless and hypothetical without support of any documentary evidences. With regard to the specific instances pointed out by the AO in the show cause notice, the assessee had filed a detailed explanation before the AO, and the same were reproduced by the AO at page no.14 to 19 of the assessment order. After considering detailed submissions given by the assessee, the AO examined the issue; however, he was not satisfied with explanation of the assessee. He held that the books of accounts did not contain any of cash receipts as found in 21b/RSJNRS.DBF file folder, and therefore, he rejected the books of

accounts of the assessee, and made an addition of Rs.20,66,81,265/- substantively in the hands of the assessee and equal amount was added in the hands of Keshav Kumar Nachani protectively.

7. Thereafter, on finding that the assessee has been constructing a commercial project in the name of 'C-21 Shopping Mall' at Bhopal, which was started in Asst.Year 2008-09, a reference has been made to DVO under section 142A of the Act for the valuation of the cost of construction. The DVO assessed the cost of construction for the period of FYs 2007-08 to 2012-13, and on perusal of the report of the DVO, the AO noticed that there was a difference in the cost of construction shown by the assessee to the DVO and the cost assessed by the DVO i.e. the assessee has shown expenditure of Rs.3,68,14,619/- whereas the DVO assessed the cost at Rs.4,01,45,455/-, and thus having a difference of Rs.33,30,846/-. The ld.AO had accordingly proposed an addition of Rs.33,30,846/- by issuance of notice. The assessee in his reply/objection dated 31.01.2013 objected to the DVO's estimation by pointing out various defects, which the AO had reproduced in his impugned order at page no.3 and 4. The main objections of the assessee against the DVO's report were as under:

- i) *The learned DVO has taken the plinth area rate method (PAR) for adopting the valuation.*
- ii) *The learned DVO has adopted the CPWD rates but, has not considered local PWD rates, which are nearly 15% lower than the CPWD rates.*
- iii) *Further he has taken the extra cost of items at a very high price without considering the actual rates as per the bills supplied to him.*

- iv) *That the difference in value so estimated by the learned DVO and the cost debited in books of accounts is much less than 10% and in such a big construction the estimation is bound to differ. Similarly, the difference is well within norms.*
- v) *The DVO has not further considered the fact that the assessee is himself a builder and has provided the materials at cheaper rates and economies the cost in all the directions.*
- vi) *The contractor's profit would be very less in the case of builder, since, the construction work is done under the self- supervision and at a very low rate. Normally, for a self-supervision a deduction @ 10% is allowed. It has been held by various tribunals that 15-20% of cost is reduced from CPWD rates in the case of construction in small areas, wherein sand and stone chips are available at a very low rate. Even the labour charges are nearly 30% cheaper as compared to the Delhi Rates.*
- vii) *The learned DVO while calculating the PAR has taken a uniform indexed cost which is totally unjustified.*

8. However, the DVO rebutted the contentions of the assessee against the method adopted by the DVO for determining estimated cost of construction, and the DVO reiterated that the method adopted by him was the most appropriate method and in accordance with the norms and rules. However, the Id.AO in the light of the report of the DVO, accepted the cost estimation of construction determined by the DVO and further observed that the assessee has not maintained proper records with the supporting bills and vouchers, and whatever details furnished by the assessee, the genuineness of the expenses were doubtful. Accordingly, the cost of expenditure on construction valued by the DVO was accepted and the difference of Rs.33,30,846/- towards unexplained expenditure and added to the income of the assessee under section 69C of the Act.

9. The assessee aggrieved by the action of the AO, in making additions of Rs.33,30,846/- under section 69C of the Act on account of difference in estimation of cost of construction by the DVO, and Rs.20,66,81,265/- as unexplained cash credit being the alleged unrecorded and unaccounted entries found in the data contained pendrive seized during the course of search. The assessee went in appeal before the first appellate authority.

10. Before the ld.CIT(A) assessee has reiterated submissions made before the AO. He also gave point-wise reply to the observations/allegations made by the AO in the impugned order. The ld.CIT(A) has recorded the same in his impugned order at page no.28 to 33. The ld.CIT(A) has examined the issue in details; he has also gone through submissions of the assessee before the AO as well as given during the appellate proceedings. The CIT(A) also examined comments of the AO in response to the submissions made by the assessee during the appellate proceedings. After undertaking all these exercises, the ld.CIT(A) found that similar issue was arisen in the Asst.Year 2008-09 in the case of Keshav Kumar Nachani, and therefore, in the case of the present appellant also it has to be held that the transactions were to be considered in the hands of the Shri Keshav Nachani. In other words, the additions made on the basis of the impugned transactions were to be made in the case of Shri Keshav Nachani substantively, and not in the case of the assessee-company. He further observed that the transactions found in the Rahul pendrive, which was the basis for impugned addition were belonged to Shri Keshav Nachani as individual, and not as Keshav Nachani as director of the assessee-company, as both are separate and distinct from the company. Since Shri Keshav Nachani has owned up all the transactions found mention in the data contained in the seized pen-drive, and he was the real beneficiary of the

impugned unrecorded transactions. Further, Shri Keshav Kumar Nachani has stated that he was looking after the construction activities of the assessee-company and managing the finance and all day-to-day activities of the projects; that various work expenses were incurred by him for construction activities which were not recorded in the books, and such expenses were excluded from the peak which they were incurred; that as per the peak working such expenses amounted to Rs.1,77,59,500/- which was in fact the investment made in the asset of the company, and remained unrecorded in the books of accounts of the assessee-company. The Id.CIT(A) however observed that for the year under consideration there were unrecorded expenditure involved in the Bhopal project viz. 'Century 21 Mall' which as per the working of peak was Rs.1,77,59,500/- against the excess investment of Rs.33,30,846/- determined by the DVO. The assessee had contended, *interalia* that difference in the valuation determined by the DVO and investment as reflected in the books of accounts was less than 10%, and since the same was within the permissible norms, the construction cost estimated by the assessee should be accepted. However, the Id.CIT(A) did not accept this contention of the assessee, and harping on the alleged transactions found in the pendrive seized during the search, the Id.CIT(A) observed that the assessee-company has been benefited, and value of the assessee-company was gone up to the extent of Rs.1,77,59,500/- which was to be brought into tax. Considering from this angle, the Id.CIT(A) found that addition on account of the unexplained investment in the real estate project should be taken at the amount of Rs.1,77,59,500/- on the basis of transactions found in the pendrive as against the excess investment of Rs.33,30,846/- determined by the DVO. In other words, the Id.CIT(A) enhanced the addition made under section 69C on this behalf from Rs.33,30,846/-

made by the AO to Rs.1,77,59,500/-. So far the protective addition of Rs.20,66,81,265/- is concerned, as aforesaid, the same was deleted considering the order passed in the case of Keshavkumar Nachani for the Asst.Year2008-09, wherein this addition was made in his hand on substantive basis, and therefore he held that protective addition in the hands of the assessee-company was not sustainable. However, the ld.CIT(A) retained the addition of Rs.1,77,59,500/- on account of cost of construction.

11. Both the parties are aggrieved by the above order of the ld.CIT(A); the Revenue is aggrieved by the action of the ld.CIT(A) in restricting the addition to Rs. 18,89,21,765/- and assessee is aggrieved in sustaining/enhancing the addition of Rs.1,77,59,500/-. Thus, both the Revenue and assessee are now before the Tribunal.

12. Before us, the ld.DR supported order of the AO and sought for upholding of his order. The arguments of the ld.counsel for the assessee were on similar line as were made during the assessment proceedings as well as appellate proceedings before the ld.CIT(A). He further submitted that the basis for the impugned addition was data found in the pen-drive seized during the search. He further submitted that as far as recorded transactions were concerned, they belonged to various group companies of the assessee, and whatever remaining unrecorded transactions were in fact owned up by Shri Keshav Kumar Nachani and admitted and disclosed the same and offered to tax. In order to compute undisclosed income, he worked out peak credit by integrating all unrecorded transactions, and he offered an amount of Rs.15 crores as additional income under section 132(4) of the Act. Without considering this vital fact that Shri Keshav Kumar Nachani has owned up all the unrecorded transactions, and has offered an amount of Rs.15 crores as

undisclosed income under section 132(4) of the Act, the AO has observed that on the basis various loose papers found during the search, the books of accounts of the assessee were un-reliable, accordingly he rejected the books of the assessee and made the impugned addition, though there was no incriminating material with the AO to make such a finding and make the impugned addition. The ld.counsel for the assessee further submitted that the assessee has maintained regular books and audited, and the tax audit report was filed along with income-tax return, and the AO had not pointed out any defect. Assessee further reiterated that Shri Keshav Nachani owned all the entries in the pendrive and explained that he was in-charge of the project and all the transactions of cash receipts and payments were done by him. It was further stated that the entries which were not recorded in the books belonged to him and accordingly he surrendered an amount of Rs.15 crores as an addition income for various years, which was disclosed in the return and offered for taxation; that a peak was arrived at on the basis of cash entries which totaled to Rs.13.5 crores, however, for abundant caution, Shri Keshv Nachani offered the additional income of Rs.15 crores in respect of the entries in the pendrive and paid taxes; that the assessee had explained various loose papers and peak credit worked out by the assessee was also explained to the AO; that the details of contained in the pendrive were in respect of two projects at Bhopal; all the details with regard to the transactions were furnished to the AO; most of the data contained in the pendrive were debits and credits and all JV entries; that it was explained to the AO that th amount of agreed sale value of units has been debited and credit irrespective of the fact whether the cash was received or not; that in these journal entries there was not cash receipts or payments; that the cash utilized and cash withdrawn from the project were debited

and credit in various names of the persons who were working for the same; that the amounts sent from Bhopal to Indore were debited in the name of HO; that the cash expenses made were also debited in this account. As for the peak work, the ld.counsel for the assessee pleaded that the assessee has taken all date-wise cash entries in the three projects for debits and credits; entries of expenses have been removed while computing the peak because the amounts have gone out of the hands of the assessee; that the ld.AO has erred in rejecting peak credit worked out by the assessee and held that the total credits or debits were income from undisclosed sources and has made huge additions. In this behalf, the assessee has made the following pleadings:

“The learned CIT(A) accepted the working of the peak and merging of three projects in arriving at the peak. The CIT(A) discussed the details in para 8 at page 76 and relied upon the decision taken in the case of Shri Keshav Nachani. While allowing the appeal in the case of Shri Keshav Nachani, the Ld. CIT(A) relied on the decision of Hon'ble IT AT, Indore Bench, in the case of Explorer Marketing Private Limited vs. ACIT, in which it was held that the peak statement recording each receipt and payment as arranged date wise and amount wise is the correct method. The Ld. CIT(A) in that case observed that the facts of the assessee's case are nearly identical to the facts of that case as far as the nature of the entries in the document found during the course of search and working of the peak credit. He further observed that the entries clearly show that there was rotation of funds and whenever the cash was irretrievably gone out as expenses, the entry has been recorded and the cash has been accordingly reduced and not taken back into rotation. He further observed that the AO has not pointed out any defect in the working of the peak during the assessment proceedings as well as during remand proceedings. Most importantly he observed that as a result of search action, the undisclosed investments found do not match with undisclosed income assessed and hence the addition made to the total income were not justified as these were far removed from the concept of real income.

The Ld. CIT(A) further observed that since Shri Keshav Nachani has owned these entries, the transactions are required to be considered in the case of Shri Keshav Nachani on the substantive basis and not in the hands of the company. He therefore deleted the additions made in the hands of the assessee company.

However, while discussing the additions to be made, the Ld. CIT(A) observed that in the pen drive there are entries about the expenses incurred by Shri Keshav Nachani. These expenses have not been recorded in the books by the assessee and as such, the assessee company is the beneficiary on account of transaction recorded in the pen drive. He further observed that two are distinct entities and the expenditure incurred has benefitted the company and not individually to Shri Keshav Nachani. The assessee company has failed to recognized the said expenditure in its account. Thus, the said expenditure incurred is to be assessed in the hands of the company on a substantive basis.

13. The ld.counsel for the assessee has accordingly summed up his pleadings as under:

It is humbly submitted that Shri Keshav Nachani owned all the transactions and declared additional income. The amounts received; paid to various projects have been taken while working the peak. Once it is established that Shri Keshav Nachani was looking after all the three projects, then the cash received and paid would be out of the cash balance. The Ld. CIT(A) has correctly held it that the addition is required to be maintained in the hands of Shri Keshav Nachani on the basis of peak credits worked out by the assessee. It may be mentioned here that a search has taken place and every nuke and corner has been searched. The Ld. AO has made the addition of more than Rs. 200 crores which has not been found during the course of the search. If the assessee had earned this income then that amount should have been found somewhere in the investment/asset.

Regarding the additions maintained by the Ld. CIT(A) in respect of difference in the valuation of the property done by the DVO and disclosed in the books of accounts, it is submitted that the said difference is less than 10% of the total investment. The assessee has raised detailed objection before the Ld. AO and also submitted the arguments before the Ld. CIT(A). The assessee has shown the total investment in the building at Rs.66,71,59,512/- and the Ld. DVO has valued the same at Rs.72,75,21,558/-. Thus, the difference is of Rs.6,03,62,046/- which is 9%. It was submitted before the CIT(A), the difference is less than 10% as such no addition can be made on this basis. The Ld. CIT(A) observed that the unaccounted expenditure has been found in the pen drive and as such it is established that the additional investment has been done in the construction of the property. On this ground the Ld. CIT(A) has dismissed the assessee's appeal. The Ld. CIT(A) however, observed that since the extra expenditure has been incurred therefore, to that extent the assessee has received a benefit. To this extent, the Ld. CIT(A) maintained the addition and for some year he has enhanced the addition.

It is humbly submitted that the difference in value between the DVO and as shown by the books of accounts is less than 10% and on this basis no addition can be made since it is merely a difference of the estimation. Detailed objections are raised before the AO and the Ld. CIT(A) which have

not been considered. In this connection attention is drawn to the following judgments:

CIT Vs Ambience Developers 210 Taxmann 187 (Del)

VimlaSinghVsCIT 222 CTR 404 (Patna)

In view of this it is submitted that the additions maintained by the Ld. CIT(A) on this account are un-warranted for.

Regarding the additions maintained by the Ld. CIT(A) on the ground that the assessee has received a benefit on account of incurring expenses by Shri Keshav Nachani, it is submitted that Shri Keshav Nachani was in-charge of the construction and has incurred the expenses. There is no benefit received by the assessee since the final accounting was to be finalized. Even otherwise this is not an unaccounted expenditure since the amount has already been included in the working of the peak credit which has been offered as income by Shri Keshav Nachani. Thus, it cannot be treated as unexplained expenditure since the source is explained and has been taxed in the hands of Shri Keshav Nachani. Under these circumstances no addition can be maintained on account of difference in valuation and on account of benefit received by the assessee.

It is further submitted that if the benefit is received by the assessee the same should be consider as an expenditure incurred which would make not affect the income of the assessee. In this connection attention is drawn to the judgment of the Hon. Kerala High Court in the case of CIT Vs PD Ibrahim Alias reported in 252 CTR 407. The Hon. Court observed as — even when un accounted income is determine from business carried on, the statue does not authorized assessment of anything other than "undisclosed income" which has to arrived at after allowing expenditure incurred by the assessee whether it be accounted in the regular books or not. The copy of the judgment is enclosed herewith.

It is, thus submitted by the ld.counsel for the assessee that the addition maintained/enhanced by the ld.CIT(A) on account of cost of construction determined by the DVO, which according to the ld.CIT(A) otherwise spent by Shri Keshav Nachani and to that extent benefited by the assessee-company, deserves to be deleted.

14. So far as addition on account of cash credit is concerned, it is submitted that the AO has made additions on account of the loans taken from various parties as not genuine on the ground that the creditworthiness and genuineness have not been established by the assessee. The ld. CIT(A) has deleted these additions on the ground that the loans have been taken through banking channel and the

bank statements found during the course of search have been verified. Necessary confirmations, and copies of the balance sheet of the creditor have been filed. No adverse evidence has been found during the course of search and as such no addition could be maintained. It is further submitted that submitted the entries are already made in the books of accounts and the amounts have been received through the banking channel. Necessary evidences have been filed during the course of assessment. The transaction is genuine and has been done through the banking channel. In view of this, the learned CIT(A) is right in deleting the addition.

15. We have heard both the parties; and gone through the impugned orders in the light of the submissions made before the lower authorities. On going through the grounds of appeals of both the parties in the light of submissions made by both the parties that we find that disputes involved in these appeals are with regard to two additions viz. (i) addition of Rs.20,66,81,265/- on account of some unrecorded data find in the seized pen-drive, and (ii) sustenance/enhancing of excess expenditure from Rs.33,30,846/- to Rs.1,77,59,500/- on the basis of DVO report. The Revenue is aggrieved by the first addition, while the assessee is agitated over the second addition.

16. We find that, the ld.CIT(A) in the present case restricted the addition to Rs.18,89,21,765/- on the basis that in the case of Shri Keshav Nachani for A.Y.2008-09 similar issue was examined wherein the then ld.CIT(A) held that the unrecorded transactions were to be considered in the hands of Shri Keshav Kumar Nachani on substantive basis and not in the hands of the assessee-company. It was also held that since Shri Keshav Nachani has owned up all unrecorded transactions in his personal capacity, the same could

not assessed in the hands of the assessee-company, because Shri Keshav Nachani was sole beneficiary of the impugned transactions, and therefore, the same could not fastened on the company. It was also found that Shri Keshav Nachani was looking after the construction activities of the assessee-company and was managing the funds for the projects and all the expenses were incurred by him. The expenses which were not recorded or recognized in the books were excluded from the peak working done by the assessee for arriving at the unrecorded transactions and to offer undisclosed income to tax. Such unrecorded transaction was worked at Rs.1,77,59,500/- which was the amount of expenses incurred by Shri Keshav Nachani for the projects and to that extent the assessee-company was benefited. Therefore, the impugned transactions to the extent of Rs.1,77,59,500/- to be considered in the hands of the assessee-company on substantive basis. Accordingly, the Id.CIT(A) restricted the addition to this extent and the balance amount of Rs.18,89,21,765/- was directed to be deleted. The relevant part of the order of the Id.CIT(A) on this issue are at page no.76 to 78, which we reproduce hereinbelow for the sake of clarity:

“8. Ground No. 2 b.1 & 2b.2: By these grounds the appellant has disputed the addition of Rs.20,66,81,265/- made on substantive basis in the hands of the appellant and on protective basis in the hands of the director Shri Keshav Nachani, being transactions recorded in the folder 21B/RSJNRS.DBF in the Rahul pen drive found and seized from 263 Orbit Mall Indore and inventorised as BS-1 / 1 / 1.

8.1 The detailed facts of the case pertaining to the above disputed A additions as per the assessment order are reproduced at para No. 2 page 13 to 18 above and the detailed submissions of the appellant on the merits of the issues are reproduced at para No.3 page 44 to 49 above. The remand report of the AO and the comments of the appellant are reproduced at para No. 4 above.

8.2 The facts of the case on the issue under consideration are identical to the facts prevailing in the case of the director Shri Keshav Nachani. The issue has been discussed in detail by the CIT(A)-I Indore in appeal order No. IT-330/2013-14 dated 29-4-2016 in the case of Shri Keshav Nachani for the

A.Y.2008-09 while adjudicating ground nos. 4(e & f). In view of the detailed discussion on the issue in the A.Y.2008-09 in the case of Shri Keshav Nachani in the case of the appellant also it is held that the transactions are to be considered in the hands of Shri Keshav Nachani. These are therefore to be considered on substantive basis in the hands of Shri Keshav Nachani and not in the hands of the company.

8.3 However from the order of the CIT (A)-I Indore referred to above it is seen that it has been held that the transactions in the rahul pen drive, which form the basis of the impugned addition, belong to Shri Keshav Nachani individual as distinct from Shri Keshav Nachani Director of the appellant company and the appellant company as Shri Keshav Nachani was the beneficiary of the said transactions in the light of the circumstantial evidence on record and also his own admission. However it is to be noted that it was admitted by Shri Keshav Nachani that the real estate project(s) were being looked after by him and he was managing the finance and all day to day activity of the project under construction. In the working of peak it has been clearly stated by him that expenses in the construction of the project were incurred which were not recorded in the books of accounts. Such expenses have also been excluded from the working of the peak once they have been incurred and have gone out of circulation. Such expenses incurred in the project Century 21 Mall at Bhopal for the year under consideration as per the working of peak come to Rs. 1,77,59,500/-. Thus investment to the extent of Rs.1,77,59,500/- has been made in the asset of the appellant company which is not recorded in the books of accounts of the appellant company. The company has thus benefitted to the above extent as per the admission of the director of the appellant company. As discussed in detail in para No.5 above while adjudicating ground no. 2(a) of the present appeal a finding has been recorded that to the extent of Rs.1,77,59,500/- expenditure has been incurred which is not explained/recorded in the books of the appellant company. Thus to the above extent the appellant company is the beneficiary on account of the transactions recorded in the seized rahul pen drive. These transactions are therefore to be considered in the hands of the appellant company, on substantive basis, as an entity legally distinct from Shri Keshav Nachani individual. Appellant has taken the plea that the expenditure stands explained as being out of income owned by Shri Keshav Nachani. However it is to be noted that the two are distinct and as a result of the above expenditure the company has benefitted and not the individual Shri Nachani and the company has failed to recognize the said expenditure in its accounts and although in the case of Shri Keshav Nachani it has been held that the transactions belong to Shri Keshav Nachani individual on substantive basis however a distinction has to be drawn in respect of the expenses of Rs.1,77,59,500/- as these expenses do not belong to Shri Keshav Nachani Individual. These are thus to be considered on substantive basis in the hands of the appellant company. In view of the above the addition of Rs.20,66,81,265/- is directed to be reduced to Rs.1,77,59,500/- in the hands of the appellant on substantive basis. The balance addition of Rs. 18,89,21,765 is directed to be deleted. These grounds of the appellant are therefore partly allowed.

17. A perusal of the above order of the Id.CIT(A), we do not find any ambiguity in the finding of the Id.CIT(A) in deleting the addition

to the extent of Rs.18,89,21,765/- more so, when there is no material has been placed before us to contradict finding of the ld.CIT(A) on this issue. Even otherwise, since the impugned issue has already discussed in the case of Shri Keshav Kumar Nachani for the Asstt.Year 2008-09, wherein it was held that the addition, if at all, was to be made in the hands of Shri Keshav Kumar Nachani in his individual capacity and not in the hands of the assessee-company. Therefore, having found no infirmity in the order of the ld.CIT(A), for deleting the addition of Rs.18,89,21,765/- we are incline to confirm his order, which we do so. This ground of appeal raised by the Revenue is rejected.

18. In the appeal of the assessee, it has challenged sustenance/enhancement of estimation of cost of construction i.e. difference between the cost of construction declared by the assessee and the cost of construction estimated/determined by the DVO. The reason put forward by the AO for reference to DVO for the valuation of the construction of property is that the value declared by the assessee is less. As pointed out by the Ld. AR, the assessee had got the books of accounts audited as per the requirement of statute and also duly filed the tax audit report. The AO had not identified any defects in any of these records and the only reason put forward for reference is the difference between the estimated value given by the assessee and value estimated by the DVO. In other words, for the year under reference the assessee had shown expenditure of Rs.3,68,14,619/- whereas the DVO assessed the cost of construction at Rs.4,01,45,465/-, thus the difference of Rs.33,30,846/- was added by the AO as unexplained expenditure. However, the ld.CIT(A) further enhanced the same to Rs.1,77,59,500/- on the basis of data contained in the pendrive, which was disclosed and offered to tax by

Shri Keshav Nachani. The ld.counsel for the assessee has submitted that various methods adopted by the DVO were not proper and in accordance with rule, more so, in view of the fact that difference upto 10% in the cost construction shown by the assessee and the value determined by the DVO was required to be ignored, and when PWD rates were available in the State concerned, then no CPWD rates should be applied, and therefore, estimation by the DVO was not proper and unjustified. Further, the ld.CIT(A) has himself noted, while deleting various addition in the case of the assessee, that no incriminating material was found by the Revenue so as to make the impugned additions. Besides pointing out various anomalies by the ld.counsel for the assessee in the method adopted by the DVO for estimation of cost of construction, he submitted that the project in question under construction and cost of the material used in the project was also taken by the DVO at very high, ignoring the fact that the assessee-company was purchasing the material in whole sale and directly manufacturers, and the cost of material would be naturally very low. During the assessment proceedings, the books of accounts, vouchers, bills and other documents were produced and scrutinized for the impugned year, and therefore, there was no reason either for the AO to refer to the DVO for estimation of the cost of construction or the ld.CIT(A) to enhance the cost of construction to the extent impugned herein, while at the same time, the ld.CIT(A) himself found that no incriminating material found during the search, which directly attributed to the additions. Considering the submissions of the assessee, and orders of the Revenue in entirety, we find that the ld.CIT(A) has not justified in taking cost of construction determined by the DVO and make the impugned addition. Further, all the cash transactions found in the impugned pendrive were all owned up and disclosed an amount of Rs.15 crores

and paid tax thereon, and whatever impugned transactions in respect of cost of expenditure also covered. This fact has been noted by the Id.CIT(A) himself in the impugned order, and therefore, there was no reason for the Revenue to make a separate addition in the hands of the assessee-company also, and there was no requirement for making reference to the DVO for the purpose of estimating the cost of construction. When nothing incriminating has been uncovered during the search, Revenue is not required to refer the matter to DVO, more so when books of accounts were maintained regularly, the same were audited and the tax audit report was submitted to the Revenue. It is settled position of law that when actual investment in the property was greater than the apparent investment, as disclosed by the assessee, then burden was on the Department to demonstrate the same. Besides that even the differential amount between the estimated expenditure given by the AO and assessed by the DVO is less than 10%, which being margin different, then the valued determined by the DVO should be ignored. Therefore, considering all the facts and circumstances, and the impugned orders, we are of the view that there was no justification for the Revenue to make the impugned addition of Rs.1,77,59,500/- in the hands of the assessee-company, more so in view of the fact that all the unrecorded and unaccounted transactions found in the pendrive were owned up by Shri Keshav Nachani in his individual capacity, and taxed accordingly. Thus, addition of Rs.1,77,59,500/- stands deleted, and grounds of appeal of the assessee are allowed.

19. Ground No.2 (Revenue's appeal). This ground relates to deletion of addition of Rs.5,17,80,000/- made by the AO under section 68 of the Act, which the Revenue has taken in the following manner:

“2. Ld. CIT (A) erred in deleting the addition of Rs. 5,17,80,000/- made by the AO u/s 68 of the IT Act whereas credit worthiness of the creditors was not proved either at the time of assessment or at the time of appellate proceedings.”

20. During the 153A assessment, it was noticed by the AO that the assessee has shown unsecured loans from various, which the AO has noticed in his impugned order at page no.19. They are produced below for the sake of brevity:

Name	Amount
Globus Housing	5000000
GSMT Real Estates& DevelopersPvt. Ltd.	7000000
Purshottam Keshwani	12500000
Soni Khemani	4080000
Sunil Keshwani	1700000
Tejinder Singh Ghumman	2500000
K.C. Developers Pvt. Ltd.	1,90,00,000/-
Total	5,17,80,000/-

21. The assessee was asked to establish identity and creditworthiness of the loan donors and genuineness of the transactions, but the assessee failed to do so. Therefore, in the absence of any documentary evidences, the identity and creditworthiness of the lenders were not established, and therefore, the AO made an addition of Rs.5,17,80,000/- to the income of the assessee under section 68 of the Act. This addition was challenged before the Id.CIT(A).

22. The primary arguments of the assessee before the Id.CIT(A) was that the AO has not provided sufficient opportunity to the assessee to establish identity and creditworthiness of the lenders. Whatever details and evidences were furnished during the assessment proceedings were not discussed by the AO in his impugned order and made the impugned addition without appreciating the material placed on record. The assessee submitted that, in various submissions most of the queries were substantiated

with supporting materials and requested the AO for personal appearance for further clarification. But no opportunity was provided to the assessee to prove its case. The AO has hurriedly finalized the assessment without considering the material available on record. In other words, substantial details with regard to identity, genuineness and creditworthiness of the unsecured loan creditors though available on record were not considered by the AO. The assessee further submitted that it has filed various documents viz., confirmation letters of all unsecured loan creditors, copies of relevant bank statements of the assessee, wherein appeared the transactions relating to the impugned loans, and other documents; that unsecured loan creditors amounting to Rs.5,17,80,000/- were shown in the audited balance sheet of the assessee-company; details of PAN of the lenders were furnished and all the impugned transactions were routed through bank; that therefore the assessee-company has discharged its onus to prove the impugned transactions in accordance with the provisions of section 68 of the Act. The assessee had also submitted various other documents during the appellate proceedings which were mentioned at page no.51 and 52 of the order of the Id.CIT(A). The Id.CIT(A) after considering submissions of the assessee and comments of the Id.AO, found no justification in the action of the AO in making the impugned addition mainly on the ground that despite furnishing details of the lenders viz. bank statements showing details of deposits of loan amounts, PAN details of the lenders, confirmation letters, addresses of the lenders etc. the AO failed to make any further, if he had any doubt over the genuineness of the impugned transactions. Accordingly, by holding that the impugned loan transactions were routed through banking channel and creditors were assessed to tax, and other adverse evidences were brought on

record to doubt the lenders, the ld.CIT(A) deleted the impugned addition and allowed the claim of the assessee.

23. Aggrieved by the deletion of impugned addition by the ld.CIT(A), Revenue is before the Tribunal.

24. Before us, the ld.DR supported order of the AO, while the ld.counsel for the assessee supported order of the ld.CIT(A). The ld.counsel for the assessee further submitted that the assessee had filed confirmations of the creditors along with balance sheet to establish its case that the loan was genuine. It is further submitted that even the ld.CIT(A) has appreciated the facts that the relevant materials were filed by the assessee during the assessment proceedings, and if the AO had any doubt about the genuineness of the transactions, he could have undertaken an inquiry to this effect, and therefore, having failed to do so, the AO was not justified in making the impugned addition under section 68 of the Act. The ld.CIT(A) even appreciated to the fact that the impugned transactions were routed through banking channels, PAN details of lenders were available and the bank statements indicated the loan transactions. Therefore, the ld.CIT(A) was right in deleting the addition made by the AO. He, therefore, requested to maintain the impugned order of the ld.CIT(A).

25. Having heard both the parties, perused orders of the Revenue in the light of the material available on record, we find that no error can be attributed to order of the ld.CIT(A) on this issue, because he observed that all the relevant documents viz. bank statements, copy of confirmation, etc. were furnished, and the fact that impugned loan transaction was channelized through bank, and the creditors were assessed to tax, and still if the ld.AO was not satisfied with the

genuineness of the loan transactions, he could have made an inquiry because the details of creditors were on the record. For clarity, we would reproduce the relevant part of the order of the Id.CIT(A) on this issue as under:

“9.2 The addition is based primarily on the ground that the appellant has failed to file any documents to establish the identity & credit-worthiness of the lenders. The appellant has drawn attention to the fact that the loan from the said loan creditors was through banking channel and the bank accounts/statements etc. were found during the course of search and also produced during assessment proceedings and also appeal proceedings. It was also contended that the confirmations were filed during assessment proceedings as also during appeal proceedings. The AO has made detailed observations in the remand report on the above issue. The gist of the AO's observations is that the requisite documents and confirmations were not filed at the time of assessment and the confirmations now filed during appellate proceedings in some cases were not signed by the loan creditor and that the bank statement of the loan creditor was not filed and that in some cases where the bank statements were filed there were deposits of equivalent amounts in the bank account of the loan creditor just before the loan was given to the appellant company.

9.3 The appellant has filed confirmations, copies of bank account reflecting the credit in the bank account from the various loan creditors and copies of audited accounts/balance sheet etc. and copies of acknowledgement of filing return.

9.4 The observation of the AO made in the remand report are taken note of however it is pertinent to point out that the appellant had filed confirmations and copies of bank statements reflecting the deposits of loan amounts in its accounts. The appellant has also filed details of PAN, Copies of acknowledgement of filing of ITR, in many cases has also filed copies of bank statements of the loan creditors and has highlighted the loan transactions which are co-related with the deposits in its accounts. In the case of M/s K C developers/K C real tech Pvt. Ltd. it has also been explained that the amount was received as advance for sale of multiplex unit situated in the mall, and has also filed a copy of sale agreement. Addresses of all the loan creditors were also filed. In view of the above, if discrepancies were noticed and found to be unsatisfactory appellant should have been given specific opportunity to explain the discrepancy if any. Further no enquiry was carried out to disprove the submission of the appellant. In the light of the above, merely on the ground that bank statements were not furnished and that there were deposits in the bank account immediately prior to issue of loan cheques, does not justify drawing of an inference that the appellant failed to discharge the primary onus cast on it u/s 68 of The Act. AO has relied on the decisions in the case of Agrawal Coal Corporation Pvt. Ltd. and Rathi Finlease P.Ltd.. Such reliance is however misplaced as the AO has failed to notice a vital fact of those cases that in both the above cases enquiry was carried out and the parties were not found. This is not the case in the present appeal.

9.5 Considering the fact that loan was through banking channel and the loan creditors are assessed to tax and no other adverse evidence is brought on record to establish that the loan was not genuine or that the creditworthiness was doubtful the addition is directed to be deleted. This ground of the appellant is therefore allowed.”

Before us, the Id.DR has not disputed this factual finding of the Id.CIT(A) with material proof, and therefore, we are not inclined to deviate from the finding of the Id.CIT(A) on this issue, which is accordingly confirmed, and this ground of appeal of the Revenue is dismissed.

26. In the result, the appeal of the Revenue is dismissed, and that of the assessee is allowed.

27. We now take up other three appeals of the Revenue's appeals for the Asst.Years 2009-10, 2010-11 and 2011-12 in IT(SS)A.No.174, 175 & 952/Ahd/2016 along with assessee's cross-appeals.

28. At the outset, we note that the grounds raised in the above appeals Revenue and the assessee are identical i.e. verbatim same except variations in the figures of quantum addition/deletion. Further, the assessee has raised as many as eight grounds in its each appeal, but only effective ground raised for our adjudication is against determination of cost of construction by the DVO. This proposition has not been disputed by both the parties. Therefore, for clarity and brevity, we depict below the grounds raised in the appeals in tabular form.

Asstt.Years	Particulars	Appeals by	
		Revenue	Assessee
		Ground No.1 Deleting addition by observing that the amount	Ground No.2 Addition under section 68 Aggrieved by the action of the CIT(A) in sustaining/enhancing excess expenditure on account of cost of

		belongs to Shri Keshav Nanchani		construction determined by the DVO.
2009-10		Rs.20,04,41,842/-	7,03,97,955	Rs.1,99,42,216/- to Rs.2,60,39,729/-
2010-11		Rs.14,83,94,965/-	Rs.6,02,02,833/-	Rs.1,26,57,731/- to Rs.81,26,170/-
2011-12		Rs.5,66,72,500/-	Rs.4,37,44,669/-	Rs.62,61,191/- To Rs.20,87,800/-

29. A perusal of the above grounds indicates that the issues raised therein are identical to the issues raised in the appeal of the Revenue for the Asst.Year2008-09, which we have already dealt with hereinabove. This proposition has not been disputed by both the parties before us. A reading of impugned orders of both the AO and the ld.CIT(A) demonstrates that the issues are similar and the submissions and arguments were on similar line except variation in the quantum as that of earlier years. The ld.CIT(A)'s observations, finding and the reasons for deletion of the impugned additions were also on the same line and were on same subject matter, as he had made for the Asst.Year2008-09, which we have upheld. To make it more clear and precise, we would reproduce the findings of the ld.CIT(A) in Asst.Year 2009-10 for disposal of both the grounds as under:

“8. Ground No. 2 b.1 & 2b.2: By these grounds the appellant has disputed the addition of Rs.22,64,81,571/- made on substantive basis in the hands of the appellant and on protective basis in the hands of the director Shri Keshav Nachani, being transactions recorded in the folder 21B/RSJNRS.DBF in the Rahul pen drive found and seized from 263 Orbit Mall Indore and inventorised as BS-1 / 1 / 1.

8.1 The detailed facts of the case pertaining to the above disputed additions as per the assessment order are reproduced at para No. 2 page 4 above and the detailed submissions of the appellant on the merits of the issues are reproduced at para No.3 page 30 to 34 above. The remand report of the AO and the comments of the appellant are reproduced at para No. 4 above.

8.2 The issue is covered by the decision of the CIT(A)-I Indore in the case of the appellant in appeal No.IT-131/13-14 dated 29-04-2016 for the A.Y. 2008-09. In view of the detailed discussion on the issue in the case of the appellant for A.Y 2008-09 for the impugned year also as the facts for the year are identical it is held that the transactions in the rahul pen drive,

which form the basis of the impugned addition, belong to Shri Keshav Nachani individual as distinct from Shri Keshav Nachani Director of the appellant company and the appellant company as Shri Keshav Nachani was the beneficiary of the said transactions in the light of the circumstantial evidence on record and also his own admission . However the expenses incurred in the project Century 21 Mall at Bhopal for the year under consideration as per the working of peak which come to Rs.2,60,39,729/- represents investment made in the asset of the appellant company which is not recorded in the books of accounts of the appellant company. The company has thus benefitted to the above extent as per the admission of the director of the appellant company. As discussed in detail in para No.7 above while adjudicating ground no. 2(a) of the present appeal a finding has been recorded that to the extent of Rs.2,60,39,729/- expenditure has been incurred which is not explained/recorded in the books of the appellant company. Thus to the above extent the appellant company is the beneficiary on account of the transactions recorded in the seized rahul pendrive. These transactions are therefore to be considered in the hands of the appellant company, on substantive basis, as an entity legally distinct from Shri Keshav Nachani individual. Distinction has to be drawn in respect of the expenses of Rs.2,60,39,729/- as these expenses do not belong to Shri Keshav Nachani Individual. These are thus to be considered on substantive basis in the hands of the appellant company. In view of the above the addition of Rs.22,64,81,571/- is directed to be reduced to Rs.2,60,39,729/- in the hands of the appellant on substantive basis. The balance addition of Rs.20,04,41,842/ is directed to be deleted.

These grounds of the appellant are therefore partly allowed.

9. Ground No. 2(c): This ground is directed against the addition of Rs.7,03,97,955/- being unsecured loans taken from various loan creditors treated as unexplained cash credits u/s 68 of The Act. The detailed facts of the case pertaining to the above disputed addition as per the assessment order are reproduced at Para No. 2 page 5 & 6 above and the detailed submissions of the appellant on the merits of the issues are reproduced at Para No. 3 page 34 to 39 above. The remand report of the AO and the comments of the appellant are reproduced at Para No. 4 above.

9.1 The addition is based primarily on the ground that the appellant has failed to file any documents to establish the identity & creditworthiness of the lenders. The appellant has drawn attention to the fact that the loan from the said loan creditors was through banking channel and the bank accounts /statements etc. were found during the course of search and also produced during assessment proceedings and also appeal proceedings. It was also contended that the confirmations were filed during assessment proceedings as also during appeal proceedings. The AO has made detailed observations in the remand report on the above issue. The gist of the AO's observations is that the requisite documents and confirmations were not filed at the time of assessment and the confirmations now filed during appellate proceedings in some cases were not signed by the loan creditor and that the bank statement of the loan creditor was not filed and that in some cases where the bank statements were filed there were deposits of equivalent amounts in the bank account of the loan creditor just before the loan was given to the appellant company.

9.3 The appellant has filed confirmations, copies of bank account reflecting the credit in the bank account from the various loan creditors and copies of audited accounts /balance sheet etc. and copies of acknowledgement of filing return.

9.4 The observation of the AO made in the remand report are taken note of however it is pertinent to point out that the appellant had filed confirmations and copies of bank statements reflecting the deposits of loan amounts in its accounts. The appellant has also filed details of PAN, Copies of acknowledgement of filing of ITR, in many cases has also filed copies of bank statements of the loan creditors and has highlighted the loan transactions which are co-related with the deposits in its accounts. In the case of M/s K C developers/ K C real tech Pvt. Ltd. it has also been explained that the amount was received as advance for sale of multiplex unit situated in the mall, and has also filed a copy of sale agreement. Addresses of all the loan creditors were also filed. In view of the above, if discrepancies were noticed and found to be unsatisfactory appellant should have been given specific opportunity to explain the discrepancy if any. Further no enquiry was carried out to disprove the submission of the appellant. In the light of the above, merely on the ground that bank statements were not furnished and that there were deposits in the bank account immediately prior to issue of loan cheques, does not justify drawing of an inference that the appellant failed to discharge the primary onus cast on it u/s 68 of The Act. AO has relied on the decisions in the case of Agrawai Coal Corporation Pvt. Ltd. and Rathi Finlease Pvt. Ltd.. Such reliance is however misplaced as the AO has failed to notice a vital fact of those cases that in both the above cases enquiry was carried out and the parties were not found. This is not the case in the present appeal.

9.5 Considering the fact that loan was through banking channel and the loan creditors are assessed to tax and no other adverse evidence is brought on record to establish that the loan was not genuine or that the creditworthiness was doubtful the addition is directed to be deleted. This ground of the appellant is therefore allowed.

Rs.7,03,97,955/- Deleted”

30. We have also gone through the facts and figures of other two cases of the Revenue for the Asst.Year 2010-11 and 2011-12. We have also perused orders of the ld.CIT(A) for these years and submissions/pleadings of the assessee and the findings of the AO. All these issues raised in the grounds revolve around common set of facts and circumstances, and based on which the impugned orders were passed by holding to be similar to the issues raised in the Asst.Year2008-09. Considering our order for the Asst.Year 2008-09, we agree with this finding of the ld.CIT(A)qua deletion of addition

in the hands of the assessee-company in respect of unaccounted receipts on the basis of alleged data contained in pendrive to be found in the course of search, because the Id.CIT(A) found the same was not based on some incriminating material. Even the Id.DR has not pointed out any disparity of facts in any of the assessment years under consideration, so that we can take a different view other than that of earlier year i.e. Asst.Year 2008-09. However, we have taken a divergent view on the issue of determination of cost of construction by the DVO, thereby the Id.CIT(A) enhanced the same and made the addition to that extent. While considering the appeal of the assessee for the Asst.Year2008-09 in the foregoing paragraphs, we have deleted the similar addition. Therefore, since admittedly issue and the facts & circumstances are similar in the present assessment years as well, we adopt the same observation and finding here also and delete enhanced cost of construction by the Id.CIT(A). As a consequence, we rejected all the grounds of appeal of the Revenue and allow the grounds of appeal of the assessee.

31. Now we take-up, the Revenue's appeal for the Asst.Year 2012-13.

32. In this appeal of the Revenue, there are two effective issues viz. (i) deletion of addition of Rs.3,15,00,000/- under section 68, and (ii) deletion of addition of Rs.1,01,11,118/- made by the AO on account of unexplained expenditure based on DVO's report. These issues are reflected in the following grounds:

“1. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in deleting the addition of Rs.3,15,00,000/- made by the AO u/s 68 of the IT Act because the creditworthiness of the loan/Share Capital providers and the genuineness of the transaction was not established during the assessment as well as appellate proceeding.

2. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in not considering the fact that for providing credit worthiness,

.bank statement or documents showing available capital of creditors are to be filed if their return of income reflects meager income vis a vis loan amount/Share Application Money.

3. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in not considering the fact that financial position of most of the 'creditors is in question' and it do not prove their creditworthiness as most of them are having nominal income, no capital and no funds.

4. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in deleting the addition made u/s 68 of the I.T. Act, of Rs. 3,15,00,000/- on the basis of additional evidence filed by the assessee and also in not following the provisions of Rule 46A of the IT Rule 1962.

5. Whether on the facts and in the circumstances of the case, Ld. CIT (A) has erred in deleting the addition of Rs.1,01,11,118/- made by the AO on account of unexplained expenditure even when addition during the year was based on DVO's report.”

33. Brief facts of the case are that the during the assessment proceedings, the ld.AO noticed from the balance sheet of the assessee company that the assessee had taken loan from Globus Housing of Rs.25,00,000/- and from GSMT Real Estates & Developers P.Ltd. of Rs.1,90,00,000/- plus Rs.1,00,00,000/- (share application money) aggregating to Rs.3,15,00,000/-. According to the AO, these lender-companies have no business activity and only paper company providing accommodation entries. The assessee had filed confirmation of loan, but on perusal of IT returns of the lender, it was revealed to the AO that the income declared therein was NIL. The AO disbelieved the explanation of the assessee and rejected the same. Accordingly, the AO made addition of Rs.3,15,00,000/- to the income of the assessee under section 68 of the Act. The assessee went in appeal against this addition.

34. Before the ld.CIT(A) the assessee had submitted that the assessee had explained about the impugned loans/advances with evidences and confirmations from time to time, however, the ld.AO could not bring any contrary materials or evidences on record and straightway made additions without any basis. The assessee had

furnished substantial details related to the identity, genuineness and credit-worthiness of unsecured loans creditors. The AO made the impugned additions mostly on stereo type reasons as adopted while finalizing earlier assessment years i.e. from 2008-09 to 2011-12. The details of evidences furnished by the assessee during the assessment proceedings were detailed out by the Id.CIT(A) in his impugned order at page no.26 and 27. Accordingly, the assessee submitted before the Id.CIT(A) that in light of the various documents furnished, the onus cast on the assessee to prove the transactions was discharged, and therefore, the impugned addition made under section 68 is not sustainable. Considering the order of the Id.AO in the light of submissions made and details furnished by the assessee during the assessment and appellate proceedings, and considering similar issue raised in the Asst.Year2011-12 in the case of assessee, the Id.CIT(A) deleted the impugned addition and allowed the claim of the assessee. His finding to this effect read as under:

“6.1 For the year under consideration the appellant has taken loan from GSMT Real Estate & Developers P.Ltd. Rs.19000000/- and Globus Housing Rs.2500000/- and has shown receipt of Share Application from GSMT of Rs.10000000/-. The same issue was involved in the AY 2011-12 in the case of the appellant and the CIT(A)-I Indore vide order in Appeal No.IT-143/2013-14 dated 29-4-2016 has observed as under:

“This ground is directed against the addition of Rs.43744649/- being unsecured loans taken from various loan creditors treated as unexplained cash credits u/s 68 of The Act. The detailed facts of the case pertaining to the above disputed addition as per the assessment order are reproduced at Para No. 2 page 4 & 5 above and the detailed submissions of the appellant on the merits of the issues are reproduced at Para No. 3 page 27 to 31 above. The remand report of the AO and the comments of the appellant are reproduced at Para No. 4 above.

The addition is based primarily on the ground that the appellant has failed to file any documents to establish the identity & creditworthiness of the lenders. The appellant has drawn attention to the fact that the loan from the said loan creditors was through banking channel and the bank accounts/statements etc. were found during the course of search and also produced during assessment proceedings and also appeal proceedings. It was also contended that the confirmations were filed during assessment proceedings as also during appeal proceedings. The AO has made detailed observations in the remand report on the above issue. The gist of the AO's observations is that the requisite documents and. confirmations were not filed

at the time of assessment and the confirmations now filed during appellate proceedings in some cases were not signed by the loan creditor and that the bank statement of the loan creditor was not filed and that in some cases where the bank statements were filed there were deposits of equivalent amounts in the bank account of the loan creditor just before the loan was given to the appellant company. The appellant has filed confirmations, copies of bank account reflecting the credit in the bank account from the various loan creditors and copies of audited accounts / balance sheet etc. and copies of acknowledgement of filing return.

The observation of the AO made in the remand report are taken note of however it is pertinent to point out that the appellant had filed confirmations and copies of bank statements reflecting the deposits of loan amounts in its accounts. The appellant has also filed details of PAN, Copies of acknowledgement of filing of ITR, in many cases has also filed copies of bank statements of the loan creditors and has highlighted the loan transactions which are co-related with the deposits in its accounts. In the case of M/s K C developers/ K C real tech Pvt.Ltd. it has also been explained that the amount was received as advance for sale of multiplex unit situated in the mall, and has also filed a copy of sale agreement. Addresses of all the loan creditors were also filed. In view of the above, if discrepancies were noticed and found to be unsatisfactory appellant should have been given specific opportunity to explain the discrepancy if any. Further no enquiry was carried out to disprove the submission of the appellant. In the light of the above, merely on the ground that bank statements were not furnished and that there were deposits in the bank account immediately prior to issue of loan cheques, does not justify drawing of an inference that the appellant failed to discharge the primary onus cast on it u/s 68 of The Act. AO has relied on the decisions in the case of Agrawal Coal Corporation Put, Ltd. arid Rathi Pin. Finlease Pin. Ltd.. Such reliance is however misplaced as the AO has failed to notice a vital fact of those cases that in both the above cases enquiry was earned out and the parties were not found. This is not the case in the present appeal.

Considering the fact that loan was through banking channel and. the loan creditors are assessed, to tax and. no other adverse evidence is brought on record to establish that the loan was not genuine or that the creditworthiness was doubtful the addition is directed to be deleted. This ground of the appellant is therefore allowed."

6.2 For the A.Y.2011-12 the appellant had taken loans from the same two concerns namely GSMT Real Estates & Developers Pvt. Ltd. Rs.33500000/- & Globus Housing Rs.8400000/-. For the year under consideration the appellant had filed confirmations and all other documents to establish the identity, creditworthiness of the lender and the genuineness of the transaction and hence the findings for the A.Y. 2011-12 hold good for the year under consideration also as for the year under consideration also no material has been brought on record to disprove the documents filed by the appellant. In view of the above the addition is directed to be deleted for this year also. These grounds of the appellant are therefore allowed.

35. Revenue is aggrieved by order of the Id.CIT(A) on this issue, and therefore came in appeal before the Tribunal.

36. Before us, the Id.DR supported order of the AO, while the Id.counsel for the assessee reiterated submissions made before the

Revenue authorities. He, accordingly, sought for confirmation of the order of the ld.CIT(A) on this issue.

37. We have considered rival submissions and perused the orders of the Revenue authorities. The basis of deletion of the impugned addition by the ld.CIT(A) his earlier decision on the similar for the 2011-12 wherein he has deleted similar addition. He has substantiated reproduced the same in his impugned order, which we have also reproduced hereinabove for the sake of brevity. Before us, the ld.DR was unable to controvert the factual finding of the ld.CIT(A) on this issue. There is no material with the Revenue to substantiate the impugned additions of Rs.3,15,00,000/- on account of loan taken from two concerns viz. GSMT Real Estate & Developers P.Ltd., and Globus Housing Ltd. The ld.CIT(A) had observed that the impugned transactions routed through banking channels and all the relevant records were furnished before the lower authorities. There is no reason for the AO to doubt the transactions so as to make the additions on account of unexplained cash credit. No incriminating materials were unearthed by the Revenue during the search. Therefore, in the absence of any cogent material to establish otherwise, we unable to find any error in the order of the ld.CIT(A) on the issue, and thus we confirm the ld.CIT(A) deleting the impugned addition of Rs.3,15,00,000/-. Thus, these grounds no.1 to 4 of appeal of the Revenue are rejected.

38. Next issue raised in the ground no.5.

39. In this ground the issue is regarding determination of cost of construction in respect of construction work undertaken in the project named 'C21 Shopping Mall at Bhopal. The ld.AO made a reference by the AO to the DVO for valuation of cost of construction. The DVO assessed the cost of construction for the period of FY

2007-08 to FY 2012-12. On perusal of the report of the DVO, the AO noticed that against the expenditure of Rs.11,17,54,475/- shown by the assessee, the DVO has assessed the same at Rs.12,18,65,593/-, thus making a difference of Rs.1,01,11,118/-, which was added by the AO as unexplained expenditure under section 69C of the Act. This addition was deleted by the Id.CIT(A) on the ground that the differential amounts of cost of construction shown by the assessee and assessed by the DVO was only 0.87% of the value determined by the DVO, which was marginal in view of the fact that the value determined by the DVO was only an estimation, and allowed the claim of the assessee. This deletion by the Id.CIT(A) being challenged before the Tribunal by the Revenue.

40. Heard both the parties and perused impugned orders of both the authorities below. The Id.CIT(A) has deleted the impugned addition basing his earlier orders passed in Asst.Years 2008-09 to 2011-12. The relevant finding at para 5.3 of the order of the Id.CIT(A) are as under:

“5.3 However, it is to be noted that on the basis of the material found as a result of action u/s.132of The Act assessments for the A.Y. 2008-09 to 2011-12 were finalized and these were subject matter of appeal before the CIT(A)-1 Indore. As a result of the appellate orders for these years the addition on account of unexplained investment stood as given in the chart below:

<i>Sr.No.</i>	<i>Assessment Year</i>	<i>After valuation added by AO</i>	<i>After appeal assessed</i>
1.	2008-09	3330846	17759500
2.	2009-10	19942216	26039729
3	2010-11	12657731	8126170
4	2011-12	6261191	2087800
5	2012-13	10111118	

	Total	52303102	54013199
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From the above chart it is seen that the total addition up to A.Y.2012-13 was 52303102/- as against which the amount upheld in appeal is Rs.54013199/-. As has already been noted in the Para above the total cost of construction determined by the DVO was at Rs.727521558/- as against Rs.667159512/- shown by the appellant for the period covered by A.Y.2008-09 to A.Y.2013-14. The difference is therefore Rs.60362046/- against which the addition of Rs. 54013199/- is confirmed in appeal as pointed out above. The difference of Rs.6348847/-(60362046 - 54013199) is only 0.87% of the value determined by the DVO which is marginal in view of the fact that the value determined by the DVO is an estimation.

Considering the above facts the addition of Rs.10111118/- is therefore directed to be deleted. This ground of the appellant is therefore allowed.”

41. A perusal of the above order, we find that similar additions made by the Revenue for the Asst.Year 2008-09 to 2011-12 were deleted by the Tribunal while considering the appeals of assessee as discussed in the foregoing paragraphs of this order. Since the facts in the present cases are similar, we find no reason to take a contrary view in the present case. Similar additions on similar basis were made in those cases also and same were also deleted on the same line by us. Ld. DR has not disputed that the facts are identical and hence following the precedent, in the present case also, we uphold the order of the Ld. CIT(A).

42. In the result, all appeals of the Revenue are dismissed, while all appeals of the assessee are allowed.

Order pronounced as per Rule 34 of Income Tax (Appellate Tribunal) Rules, 1963 on 23 February, 2023 at Ahmedabad.

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

**Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER**

True Copy

Ahmedabad,
Dated : 23/02/2023

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

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

आदेशानुसार/ BY ORDER,

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