

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

(CONDUCTED THROUGH VIRTUAL COURT)

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMBER &
 SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

IT(SS)A No.211/Ind/2021
 (Assessment Year: 2018-19)

| | | |
|----------------------------------|----|-----------------------------------------|
| ACIT Central-2, Indore | Vs | Rajendra Kumar Bansal Khandwa |
| PAN No. ABSPB 5125 E | | |
| (Appellant) | .. | (Respondent) |

| | |
|----------------------|-------------------------------------------------|
| Revenue by : | Shri P. K. Mitra, & Shri P.K. Mishra, CIT.D.Rs. |
| Assessee by : | Shri S. N. Agrawal, CA |

| | |
|------------------------------|-------------------------|
| Date of Hearing | 19.09.2022 & 19.12.2022 |
| Date of Pronouncement | 15.03.2023 |

O R D E R

PER B. M. Biyani, A.M.:

The instant appeal filed by the Revenue is directed against the order dated 09.08.2021 passed by the Ld. CIT(A)-3, Bhopal (M.P.) (hereinafter referred to as 'Ld. CIT(A)') arising out of the order dated 27.12.2019 passed by the DCIT (Central)-2, Indore (hereinafter referred to as 'Ld. AO') under Section 143(3) of

the Income-Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year (hereinafter referred to as 'A.Y.') 2018-19 with the following grounds:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs. 1,88,800/- u/s 69 of the Income Tax Act on account of unexplained Cash loans given to various persons & interest earned thereon.

2. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs. 1,53,83,960/- u/s 69B of the Income Tax Act on account of unaccounted/ undisclosed cash investment made & interest thereon in names of various parties.

3. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs. 56,05,000/- u/s 69B of the Income Tax Act on account of unaccounted/ undisclosed investment made in cash in C.K. Greens, Burhanpur.

4. On the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in law in deleting the addition of Rs. 1,07,000/- u/s 69A of the Income Tax Act on account of cash receipts, which is admitted by the assessee in the statements."

2. The assessee is a partner in the partnership firms, M/s Mayur Industries and M/s Motilal Gopikishan. The search and seizure operation under Section 132 of the Act was carried out at the business premises as well as residential premises of MG Oils Group of Khandwa including the assessee and other concerns/ business associates on 23.01.2018. The income-tax return of the assessee for the A.Y. 2018-19 was filed on 25.10.2018 declaring total income at Rs. 9,04,610/-. The Ld. AO during the course of assessment proceedings made additions of Rs. 1,88,800/-, Rs. 1,53,83,960/-, Rs. 56,05,000/- and Rs. 1,07,000/- to the total income of the assessee on different account, which were, in turn, deleted by the Ld. CIT(A). Hence, the instant appeal has been filed before us by the Revenue.

Ground No. 1:-

3. The Revenue through this ground of appeal has challenged the deletion of addition of Rs. 1,88,800/- made by the Ld. AO on account of alleged amount of cash loans given to various persons and interest calculated thereon by treating it as undisclosed income under section 69 of the Act.

4. The brief fact leading to the case is this that the Ld. AO on perusal of Page No. 01 to 13 of LPS-07 found and seized during the course of search from the residential premises of the assessee observed that the assessee had given cash loans to various parties out of his unaccounted income and had also received interest income on the same which had not been recorded in his regular books of accounts. The Ld. AO observed that all the transactions of cash loans and interest earned thereon were unrecorded transactions and accordingly, the Ld. AO made addition of Rs. 1,88,800/- to the total income of the assessee on account of alleged amount of cash loans given to various persons and interest calculated thereon by treating it as undisclosed income under section 69 of the Act, which was, in turn, deleted by the Ld. CIT(A).

5. The Ld. Counsel for the assessee submitted that small amount of temporary loans were advanced by the assessee to few parties out of cash available with him in his individual capacity and also out of cash of the partnership firm, M/s Motilal Gopikishan (PAN: AATFM8881E) lying with him. The Ld. Counsel also relied upon the copy of cash book of the assessee filed on Page No. 142-181 of the Paper Book which was prepared after incorporating all the entries relating to loans given in cash to various parties as noted in the assessment order along with the copy of capital account of the assessee in the

books of M/s Motilal Gopikishan for the period from 01.04.2011 to 31.03.2018 in support of cash withdrawn from the firm, M/s Motilal Gopikishan so as to substantiate that the assessee was having sufficient balance of cash available with him to justify the source of loans advanced by him to few of the parties on temporary basis. The Ld. Counsel further submitted that interest income of Rs. 85,410/- earned from such advances was actually received on 27.04.2018 i.e. during the F.Y. 2018-19 and accordingly, the said amount of interest income was duly offered for tax in the income-tax return of the assessee for the A.Y. 2019-20. Accordingly, the Ld. Counsel submitted that there was no justification for making addition to the total income of the assessee on account of alleged amount of cash loans given to various persons and interest calculated thereon.

6. On the other hand, the Ld. DR supported the findings of the Ld. AO.

7. We have heard the respective parties and perused the relevant material available on record. The Revenue is aggrieved with the findings of Ld. CIT(A) in deleting the addition of Rs. 1,88,800/- made on account of alleged amount of cash loans given to various persons and interest calculated thereon. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

“4.1.1. On perusal of the cash balance as available with the appellant and his other family members and cash in the book of M/s Motilal Gopikishan which was managed by the appellant himself, duly justify the availability of cash with the appellant for advancing the abovesaid temporary loans. Considering the overall facts of the case and submission as filed by the appellant and on perusal of the cash balance as available with the appellant and his family concerns, the source of temporary loans is duly explained. The assessing officer is therefore not justified in making addition in respect of amount advanced to the total income of the appellant. Therefore, the additions of Rs 2,17,430/- for A.Y. 2016-17, Rs 5,76,200/- for A.Y. 2017-18 and Rs

1,88,800/- for A.Y. 2018-19 are hereby **Deleted**. Therefore, the appeal on these grounds is **Allowed**.

Since the additions as made by the assessing officer on account of undisclosed income u/s 69 of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds.”

8. In this regard, we have gone through the cash book of the assessee appearing at Page Nos. 142-181 of the Paper Book. On perusal of the said cash book, we observe that the assessee had sufficient cash balance available with him for advancing temporary loans to various parties. Accordingly, we are of the considered opinion that there was no rationale for making addition of Rs. 1,00,000/- to the total income of the assessee on account of alleged amount of cash loans advanced to various parties. Further, on perusal of income-tax return of the assessee for the A.Y. 2019-20 appearing at Page Nos. 182-184 of the Paper Book, we find that the amount of interest income of Rs. 85,410/- earned by the assessee from such temporary loans was received during the F.Y. 2018-19 and was accordingly offered for tax in the income-tax return for the A.Y. 2019-20.

9. Thus, considering the entire aspect of the matter, we are of the considered opinion that there was no justification for making addition of Rs. 1,88,800/- to the total income of the assessee on account of alleged amount of cash loans given to various persons and interest calculated thereon by treating it as undisclosed income under section 69 of the Act, which has been rightly deleted by the Ld. CIT(A). Hence, we do not find any infirmity in the findings of the Ld. CIT(A) and accordingly, the deletion of addition of Rs. 1,88,800/- made by the Ld. CIT(A) is just and proper so as to warrant no interference. Hence,

Ground No. 1 of the appeal preferred by Revenue is found to be devoid of any merits and, thus, dismissed.

Ground No. 2:-

10. The Revenue through this ground of appeal has challenged the deletion of addition of Rs. 1,53,83,960/- made by the Ld. AO on account of alleged amount of unaccounted cash investment made in the name of various parties and interest calculated thereon by treating it as unaccounted/ undisclosed investment under section 69B of the Act.

11. The brief fact leading to the case is this that the Ld. AO on perusal of BS-01 and BS-02 found and seized during the course of search from the residential premises of the assessee observed that the registers, BS-01 and BS-02 were related to daily cash transactions which contained the details of investment made by the assessee and the nature of such investment was either giving loan to someone or making investment in any project. The Ld. AO thereafter tabulated the day-wise amount mentioned in the name of various parties in the register and treated the peak value of such amounts of Rs. 1,44,11,960/- as unaccounted investment made by the assessee. The Ld. AO further observed that the assessee had also earned interest @ 24% p.a. from such unaccounted investments which was worked out by the Ld. AO at Rs. 9,72,000/-. Accordingly, the Ld. AO made addition of Rs. 1,53,83,960/- (Rs. 1,44,11,960/- plus Rs. 9,72,000/-) to the total income of the assessee on account of alleged amount of unaccounted cash investment made in the name of various parties and interest calculated thereon by treating it as unaccounted/ undisclosed investment under section 69B of the

Act. The Ld. CIT(A) deleted the addition of Rs. 1,53,83,960/- made by the Ld. AO. In appeal preferred by the assessee. Hence, the instant appeal has been filed before us by the Revenue.

12. The Ld. Counsel for the assessee submitted that the assessee during the course of assessment proceedings itself explained that the transactions contained in the seized documents BS-01 and BS-02 actually represented the day-to-day summary of transactions of the partnership firm, M/s Motilal Gopikishan related to sales, purchases, debtors, creditors, stock etc. The Ld. Counsel relied upon the following screenshot of the submission filed before the Ld. AO during the course of assessment proceedings in support of his contention:

| Shree Rajendra Banasal Ganz Bazar, Khandwa ABSPB5125E | | | |
|--------------------------------------------------------------------|-------|----------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Detail of Loose Paper found on Residential Premises :- | | | |
| Sr. No. | Type | Page No. | Descriptions |
| 1 | BS-01 | 1 TO 31 | This are the summary of the day to day transactions related to the partnership firm of the assessee & his family members M/s Motilal Gopikishan, related to Sales, Purchase, Debtors, Creditors, Stock, etc. |
| 2 | BS-02 | 1 TO 8 | This are the summary of the day to day transactions related to the partnership firm of the assessee & his family members M/s Motilal Gopikishan, related to Sales, Purchase, Debtors, Creditors, Stock, etc. |

13. The Ld. Counsel further submitted that the assessee also filed ledger accounts of few of these parties in the books of M/s Motilal Gopikishan and relevant page of cash book of M/s Motilal Gopikishan before the Ld. AO as well as before the Ld. CIT(A) to substantiate the fact that the transactions contained in the seized documents BS-01 and BS-02 actually represented the transactions pertaining the firm, M/s Motilal Gopikishan and did not represent transactions entered into by the assessee in his individual capacity.

14. The Ld. Counsel also made us go through the screenshots of relevant extract of BS-01 and BS-02 which were reproduced in the assessment order as well as in the synopsis filed before us. On the basis of the screenshots of relevant extract of BS-01 and BS-02, the Ld. Counsel submitted that these papers contained day-to-day jotting of amounts in the name of various parties in respect of transactions of the firm, M/s Motilal Gopikishan for the purpose of maintaining control and also for remembrance as well as details with respect to stock of Toor dal, Moong Mogar, Urad Mogar, Rice and various other products related to the day-to-day business carried on by the firm, M/s Motilal Gopikishan. Hence, the Ld. Counsel vehemently argued that the Ld. AO adopted the approach of 'pick and choose' and picked only few of the transactions from these papers which contained the names of the parties and corresponding amounts and ignored the remaining transactions which contained details with respect to stock of Toor dal, Moong Mogar, Urad Mogar, Rice and various other products related to the day-to-day business carried on by the firm, M/s Motilal Gopikishan which proved that these papers and transactions contained therein actually pertained to the firm, M/s Motilal Gopikishan. The Ld. Counsel further submitted that nothing was found during the course of search to substantiate the fact that these transactions represented the amount actually advanced/ invested by the assessee and that the Ld. AO simply disbelieved the contentions of the assessee without bringing on record any evidence whatsoever to substantiate the fact that the amount mentioned in the seized documents BS-01 and BS-02 represented the amounts actually advanced by the assessee which was wholly unwarranted.

15. Alternatively, the Ld. Counsel submitted that daily balance in the registers found during the course of search and inventorized as BS-01 and BS-02 was either Rs. 10,00,000/- or less on each of these days' and therefore, the addition in dispute should have at most been Rs. 10,00,000/- and not Rs. 1,53,83,960/-. The Ld. Counsel further relied upon a summary chart containing the day-wise balances found noted in BS-01 and BS-02 along with the day-wise availability of cash in the books of M/s Motilal Gopikishan and in the books of the assessee on these days' which was filed on Page No. 225-232 of the Paper Book to substantiate the fact that addition of even upto Rs. 10,00,000/- was not justifiable since the said amount of cash stood duly explained with the cumulative amount of cash available in the regular books of accounts of M/s Motilal Gopikishan and the assessee. The Ld. Counsel demonstrated the same with the help of the following screenshot of the summary chart which was reproduced in the synopsis:

| Shri Rajendra Kumar Bansal C/o Motilal Gopikishan Ganj Bazaar, Khandwa PAN: ABSFPB5125E Assessment Year 2018-19 | | | | | | | | |
|-----------------------------------------------------------------------------------------------------------------------------|-------------|-------------------|-------------------|-------------------|-----------------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------------|--------------------------------------------------------------------|
| Summary of balances found noted in BS-01 and BS-02 and availability of cash with the appellant: | | | | | | | | |
| | | | | | | | | Amount [in Rs.] |
| S. No (1) | Date (2) | Column - 1 (3) | Column - 2 (4) | Column - 3 (5) | Cash balance in the books of Motilal Gopikishan (6) | Cash balance in the books of Rajendra Bansal (7) | Total cash available with the appellant (8) = (6) + (7) | Surplus cash available with the appellant (9) = (8) - (5) |
| 1 | 08-04-2017 | 2,83,410 | 5,01,603 | 2,18,193 | 3,96,060 | 6,22,442 | 10,18,502 | 8,00,309 |
| 2 | 09-04-2017 | 1,86,899 | 5,77,185 | 3,90,286 | 4,71,642 | 6,22,442 | 10,94,084 | 7,03,798 |
| 3 | 10-04-2017 | 1,06,263 | 5,54,820 | 4,48,557 | 6,61,803 | 6,22,442 | 12,84,245 | 8,35,688 |
| 4 | 11-04-2017 | 2,04,198 | 8,40,619 | 6,36,421 | 7,35,076 | 6,22,442 | 13,57,518 | 7,21,097 |
| 5 | 12-04-2017 | 2,53,634 | 9,31,568 | 6,77,934 | 8,26,026 | 6,22,442 | 14,48,468 | 7,70,534 |
| 6 | 13-04-2017 | | | - | 7,96,026 | 6,22,442 | 14,18,468 | 14,18,468 |
| 7 | 14-04-2017 | 3,64,618 | 10,21,334 | 6,56,716 | 9,15,791 | 6,22,442 | 15,38,233 | 8,81,517 |
| 8 | 15-04-2017 | 3,19,900 | 9,54,788 | 6,34,888 | 8,52,245 | 6,22,442 | 14,74,687 | 8,39,799 |
| 9 | 16-04-2017 | 8,06,033 | 14,38,061 | 6,32,028 | 13,32,518 | 6,22,442 | 19,54,960 | 13,22,932 |
| 10 | 17-04-2017 | 8,90,470 | 13,72,830 | 4,82,360 | 12,67,287 | 6,22,442 | 18,89,729 | 14,07,369 |
| 11 | 18-04-2017 | 8,49,673 | 13,19,421 | 4,69,748 | 12,13,878 | 6,22,442 | 18,36,320 | 13,66,572 |
| 12 | 19-04-2017 | 3,95,539 | 2,850 | 3,92,689 | 10,95,209 | 6,22,442 | 17,17,651 | 13,24,962 |
| 13 | 20-04-2017 | | | - | 10,98,162 | 6,22,442 | 17,20,604 | 17,20,604 |
| 14 | 21-04-2017 | 7,09,138 | 11,33,726 | 4,24,588 | 10,28,183 | 6,22,442 | 16,50,625 | 12,26,037 |
| 15 | 22-04-2017 | 13,52,279 | 17,66,334 | 4,14,055 | 16,60,791 | 6,22,442 | 22,83,233 | 18,69,178 |
| 16 | 23-04-2017 | 16,85,780 | 21,56,216 | 4,70,436 | 20,50,673 | 6,22,442 | 26,73,115 | 22,02,679 |
| 17 | 24-04-2017 | 16,86,227 | 20,87,355 | 4,01,128 | 19,81,812 | 6,22,442 | 26,04,254 | 22,03,126 |
| 18 | 25-04-2017 | 15,23,885 | 19,57,893 | 4,34,008 | 18,52,350 | 6,22,442 | 24,74,792 | 20,40,784 |

16. In light of the above-stated contentions, the Ld. Counsel submitted that there was no justification for making addition to the total income of the assessee on account of alleged amount of unaccounted cash investment made in the name of various parties and interest calculated thereon.

17. On the other hand, the Ld. DR supported the findings of the Ld. AO.

18. We have heard the respective parties and perused the relevant material available on record. The Revenue is aggrieved with the findings of Ld. CIT(A) in deleting the addition of Rs. 1,53,83,960/- made on account of alleged amount of unaccounted cash investment made in the name of various parties and interest calculated thereon. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

“4.4.4. On considering the assessment order and reply as filed by the appellant, it is clearly evident that the assessing authority while passing the assessment order picked certain entries as found recorded in BS-01 and BS-02 and added the same to the total income of the appellant by treating the same as advanced by the appellant. The appellant before the assessing officer clearly stated that these entries relate to his firm M/s Motilal Gopikishan and not relates to the appellant in his Individual capacity. The assessing officer brushed aside the explanation of the appellant and treated the same as related to the appellant without assigning any reason which was not the correct approach of the assessing officer. The addition made by the assessing officer in the hand of the appellant when transactions recorded in the BS-01 and BS-02 relates to the firm M/s Motilal Gopikishan is therefore not justified more so when the nature of transactions were duly explained and also found recorded in the books of account of the firm.

4.4.5. The difference of the opening and closing balance of particular day is less than Rs 10,00,000/- and cash balance as per book of the firm M/s Motilal Gopikishan and in the book of the appellant was higher than the difference as calculated. Hence, on this count also the assessing officer was not justified in adding the same to the total income.

*As explained the said diary was for his follow up purposes and the amount as recorded in the said book was entered in the book of the firm M/s Motilal Gopikishan. On the basis of said diary no inference can be drawn, the same is similar to the dumb documents. Hon'ble Apex Court in the case of **Common Cause (A Registered Society) Vs. Union of India – 30 ITJ 197 (SC)** has held that (refer Paras 16 to 20)*

16. With respect to the kind of materials which have been placed on record, this Court in V.C. Shukla's case (supra) has dealt with the matter though at the stage of discharge when investigation had been completed but same is relevant for the purpose of decision of this case also. This Court has considered the entries in Jain Hawala diaries, note books and file

containing loose sheets of papers not in the form of "Books of Accounts" and has held that such entries in loose papers/sheets are irrelevant and not admissible under Section 34 of the Evidence Act, and that only where the entries are in the books of accounts regularly kept, depending on the nature of occupation, that those are admissible.

17. It has further been laid down in V.C. Shukla (Supra) as to the value of entries in the books of account, that such statement shall not alone be sufficient evidence to charge any person with liability, even if they are relevant and admissible, and that they are only corroborative evidence. It has been held even then independent evidence is necessary as to trustworthiness of those entries which is a requirement to fasten the liability.

18. This Court has further laid down in V.C. Shukla (Supra) that meaning of account book would be spiral note book/pad but not loose sheets. The following extract being relevant is quoted hereinbelow :-

"14. In setting aside the order of the trial court, the High Court accepted the contention of the respondents that the documents were not admissible in evidence under Section 34 with the following words:

"An account presupposes the existence of two persons such as a seller and a purchaser, creditor and debtor. Admittedly, the alleged diaries in the present case are not records of the entries arising out of a contract. They do not contain the debits and credits. They can at the most be described as a memorandum kept by a person for his own benefit which will enable him to look into the same whenever the need arises to do so for his future purpose. Admittedly the said diaries were not being maintained on day-to-day basis in the course of business. There is no mention of the dates on which the alleged payments were made. In fact the entries there in are on monthly basis. Even the names of the persons whom the alleged payments were made do not find a mention in full. They have been shown in abbreviated form. Only certain 'letters' have been written against their names which are within the knowledge of only the scribe of the said diaries as to what they stand for and whom they refer to."

19. With respect to evidentiary value of regular account book, this Court has laid down in V.C. Shukla, thus;

"37. In Beni v. BisanDayal it was observed that entries in books of account are not by themselves sufficient to charge any person with liability, the reason being that a man cannot be allowed to make evidence for himself by what he chooses to write in his own books behind the back of the parties. There must be independent evidence of the transaction to which the entries relate and in absence of such evidence no relief can be given to the party who relies upon such entries to support his claim against another. In Hira Lal v. Ram Rakha the High Court, while negating a contention that it having been proved that the books of account were regularly kept in the ordinary course of business and that, therefore, all entries therein should be considered to be relevant and to have been proved, said that the rule as laid down in Section 34 of the Act that entries in the books of account regularly kept in the course of business are relevant whenever they refer to a matter in which the Court has to enquire was subject to the salient proviso that such entries shall not alone be sufficient evidence to charge any person with liability. It is not, therefore, enough merely to prove that the books have been regularly kept in the course of business and the entries therein are correct. It is further incumbent upon the person relying upon those entries to prove that they were in accordance with facts."

20. It is apparent from the aforesaid discussion that loose sheets of papers are wholly irrelevant as evidence being not admissible under Section 34 so as to constitute evidence with respect to the transactions mentioned therein being of no evidentiary value. The entire prosecution based upon such entries which led to the investigation was quashed by this Court.

4.4.6. *On perusal of the above decisions, it is clear that the documents as referred by the assessing officer was not a regular book of account and the assessing officer not having any corroborative evidences to interpret the entries as found noted in the BS-01 and BS-02 were actually the amount of loans and advances as given by the appellant, until the same has been proved with the corroborative evidences, the same cannot be used against the appellant. The BS-01 and BS-02 as found during the course of search is simply as dumb documents and same cannot be admissible under Section 34 of the Evidence Act. On this count also, the diary as referred by the appellant is a Dumb document and same cannot be the basis of any addition in absence of any corroborative evidences, the assessing officer was therefore not justified in making addition on the basis of these diary.*

4.4.7. *The appellant also challenged the addition under section 69B of the Act. Since, the provision of section 69B of the Act can be invoked Where in any financial year the assessee has made investments or is found to be the owner of any bullion, jewellery or other valuable article, and the Assessing Officer finds that the amount expended on making such investments or in acquiring such bullion, jewellery or other valuable article exceeds the amount recorded in this behalf in the books of account maintained by the assessee for any source of income, and the assessee offers no explanation about such excess amount or the explanation offered by him is not, in the opinion of the Assessing Officer, satisfactory, the excess amount may be deemed to be the income of the assessee for such financial year. In the present case, nothing valuable was found in possession of the appellant. The diary as referred by the assessing officer is a dumb document and therefore the assessing officer was not justified in making any addition to the total income of the appellant under section 69B of the Act. The appellant also succeeds in this ground also. The addition as made by the assessing officer amounting to Rs: 1,53,83,960/- under section 69B of the Act is not justified and hereby **Deleted.** Therefore, the appeal on this ground is **Allowed.***

Since the additions as made by the assessing officer on account of undisclosed investment u/s 69B of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds.”

19. The above findings of the Ld. CIT(A) have not been controverted by the Ld. DR. The facts discussed above squarely reveal that the assessee during the course of assessment proceedings itself explained that the transactions contained in the seized documents BS-01 and BS-02 actually represented the day-to-day summary of transactions of the partnership firm, M/s Motilal Gopikishan related to sales, purchases, debtors, creditors, stock etc. We also find that the assessee filed ledger accounts of few of these parties in the books of M/s Motilal Gopikishan and relevant page of cash book of M/s Motilal Gopikishan before the lower authorities as well as before us to substantiate that the transactions contained in the seized documents BS-01 and BS-02 actually represented the transactions pertaining the firm, M/s Motilal Gopikishan and did not represent transactions entered into by the assessee in his individual capacity. We have also

gone through the copy of registers found during the course of search and inventorized as BS-01 and BS-02 which have been placed on Page Nos. 185-224 of the Paper Book in order to ascertain the correct nature of transactions found noted in these registers, which contains day to day noting of amounts in the name of various parties and details of stocks of different products out of which Ld. AO picked up only few of those transactions and ignored others. Moreso, the firm, M/s Motilal Gopikishan was engaged in the business of trading of grains, grocery items such as wheat flour, poha, besan etc. and cotton seed cakes which further substantiated the contentions of the Ld. Counsel that details with respect to stock of Toor dal, Moong Mogar, Urad Mogar, Rice and various other products as well as jotting of amounts in the name of various parties found noted in such registers actually represented the transactions pertaining to M/s Motilal Gopikishan, in which assessee was one of the partners, and did not per se represent the transactions entered into by the assessee in his individual capacity. Considering the totality of facts discussed hereinabove, we are of the considered opinion that all the transactions found noted in the registers, BS-01 and BS-02 actually pertained to the partnership firm, M/s Motilal Gopikishan and did not relate to the assessee in his individual capacity and accordingly, we find that there was no justification for making any addition to the total income of the assessee on account of amounts found noted in the registers, BS-01 and BS-02 against the names of various parties/ projects and notional interest computed thereon by treating it as unaccounted investment of the assessee.

20. We also find force in the alternative contention of the Ld. Counsel that daily balance in the registers found during the course of search and inventorized as BS-01 and BS-02 was either Rs. 10,00,000/- or less on each of these days' and

therefore, the addition in dispute before us should have at most been Rs. 10,00,000/- and not Rs. 1,53,83,960/-. We have also gone through the summary chart containing the day-wise balances found noted in BS-01 and BS-02 along with the day-wise availability of cash in the books of M/s Motilal Gopikishan and in the books of the assessee on these days' which was placed on Page No. 225-232 of the Paper Book. On perusal of the summary chart annexed with the Paper Book, we find that the daily cash balance found noted in the register stood duly explained with the cumulative amount of cash balance available in the regular books of accounts of M/s Motilal Gopikishan and the assessee and accordingly, we are of the opinion that no addition was justified to the total income of the assessee even on this count.

21. Thus, considering the entire aspect of the matter, we are of the considered opinion that there was no justification for making addition of Rs. 1,53,83,960/- to the total income of the assessee on account of alleged amount of unaccounted cash investment made in the name of various parties and interest calculated thereon by treating it as unaccounted/ undisclosed investment under section 69B of the Act, which has been rightly deleted by the Ld. CIT(A). Hence, we do not find any infirmity in the findings of the Ld. CIT(A) and accordingly, the deletion of addition of Rs. 1,53,83,960/- made by the Ld. CIT(A) is just and proper so as to warrant no interference. Hence, Ground No. 2 of the appeal preferred by Revenue is found to be devoid of any merits and, thus, dismissed.

Ground No. 3:-

22. The Revenue through this ground of appeal has challenged the deletion of addition of Rs. 56,05,000/- made by the Ld. AO on account of alleged

investment made in cash in C K Greens, Burhanpur and profit calculated thereon on sale of such investment by treating it as unexplained/ undisclosed investment under section 69B of the Act.

23. The Ld. AO on the basis of Page No. 1-4 of LPS-11 found and seized during the course of search from the residential premises of the assessee presumed that the assessee made investment in C K Greens, Burhanpur in cash to retain a plot which was sold and an amount of Rs. 53,20,000/- was received on various dates. Further, the Ld. AO based on these loose papers also opined that the assessee gained profit of Rs. 2,85,000/- from the transaction related to C K Greens, Burhanpur. Accordingly, the Ld. AO made addition of Rs. 56,05,000/- (Rs. 53,20,000/- plus Rs. 2,85,000/-) to the total income of the assessee on account of alleged investment made in cash in C K Greens, Burhanpur and profit calculated thereon on sale of such investment by treating it as unexplained/ undisclosed investment under section 69B of the Act. In appeal, the addition was deleted by the Ld. CIT(A). Hence, the instant appeal has been filed before us by the Revenue.

24. The Ld. Counsel for the assessee submitted that the relevant pages of LPS-11 referred to by the Ld. AO while making the aforesaid addition constituted 'dumb documents' since there was no reference about any investment being made by the assessee in his name in C K Greens project in those papers. The Ld. Counsel further submitted that those papers merely contained reference of some amounts on the basis of which it was presumed by the Ld. AO that the assessee made investment in cash to retain plot in C K Greens colony. The Ld. Counsel submitted that the assessee during the course of assessment proceedings as well

as first appellate proceedings categorically explained that neither he nor any of his family members made any investment towards purchase of plot in C K Greens project related to M/s Rudra Developers, Burhanpur and that the plots in C K Greens project were booked through his son, Shri Rahul Bansal but not actually by him. The Ld. Counsel also pointed out to the fact that the Ld. AO herself while passing the assessment order in the case of Shri Rahul Bansal made addition on account of alleged unaccounted cash investment made towards booking of plot situated at C K Greens, Burhanpur in the Assessment Year 2015-16 and accordingly, there was no justification for taxing the amount of sale proceeds in the hands of the assessee even when cost of investment made in such plot had been taxed in the hands of Shri Rahul Bansal. The Ld. Counsel submitted that Plot No. 21 and Plot No. 23 in C K Greens colony were booked through the son of the assessee, Shri Rahul Bansal and it was for this reason that papers related to the said plots were found in possession of the assessee. The Ld. Counsel also placed reliance on the registries executed between M/s Rudra Developers and the purchasers in respect of sale of Plot No. 21 and Plot No. 23 situated at C K Greens, Burhanpur appearing at Page Nos. 104-139 of the Paper Book to substantiate his contention that neither the assessee nor any of his family members made any investment towards booking of plot at C K Greens, Burhanpur and consequently, the question of sale of the plots by the assessee, therefore, does not arise. The Ld. Counsel categorically dealt with and distinguished each and every finding of the Ld. AO noted in the assessment order on the basis of which aforesaid addition was made to the total income of the assessee. We have further considered inter alia the following submission made by the assessee in the synopsis submitted before us:

“3.1] The Department in the ground of appeal has challenged the action of Ld CIT(A) of deleting the addition of Rs. 56,05,000/- made to the total income of the respondent on account of alleged unaccounted investment made in cash in C K Greens, Burhanpur of Rs. 53,20,000/- and profit earned thereon on sale of such investment of Rs. 2,85,000/- by treating it as unexplained/ undisclosed investment under section 69B of the Income-Tax Act, 1961 and consequential charging of tax at the rates prescribed under section 115BBE of the Income-Tax Act, 1961.

3.2.1] The assessing officer on the basis of Page No. 1-4 of LPS-11 presumed that the respondent made investment in C K Greens, Burhanpur in cash to retain a plot which was sold and an amount of Rs. 53,20,000/- was received on various dates. Further, the assessing officer based on these loose papers opined that the respondent also gained profit of Rs. 2,85,000/- from the transaction related to C K Greens, Burhanpur. Accordingly, the assessing officer issued a show cause notice dated 13-11-2019 during the course of search assessment proceedings wherein the respondent was requested to show cause as to why an amount of Rs. 56,05,000/- should not be treated as unaccounted cash credit for the Assessment Year 2018-19. Copy of show cause notice dated 13-11-2019 as issued during the course of search assessment proceedings have already been filed on page nos. 49-90 of paper book filed before the Hon'ble Bench.

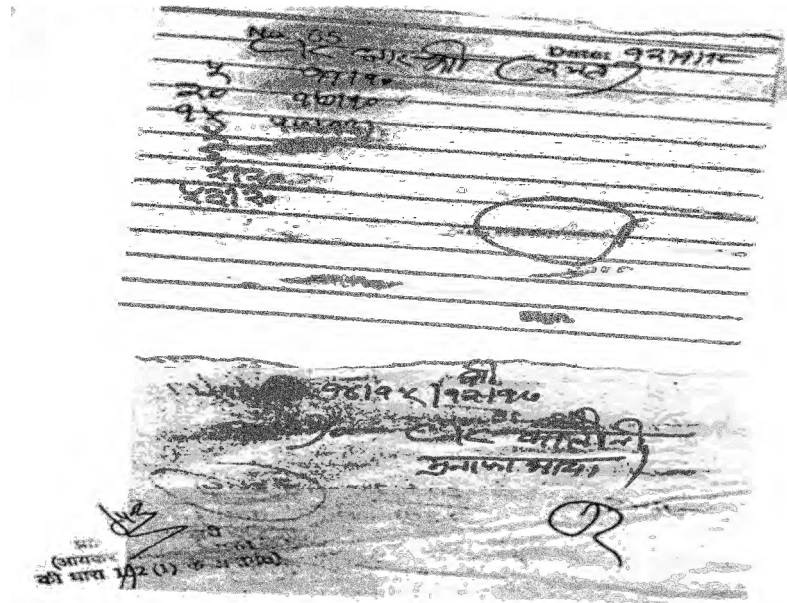
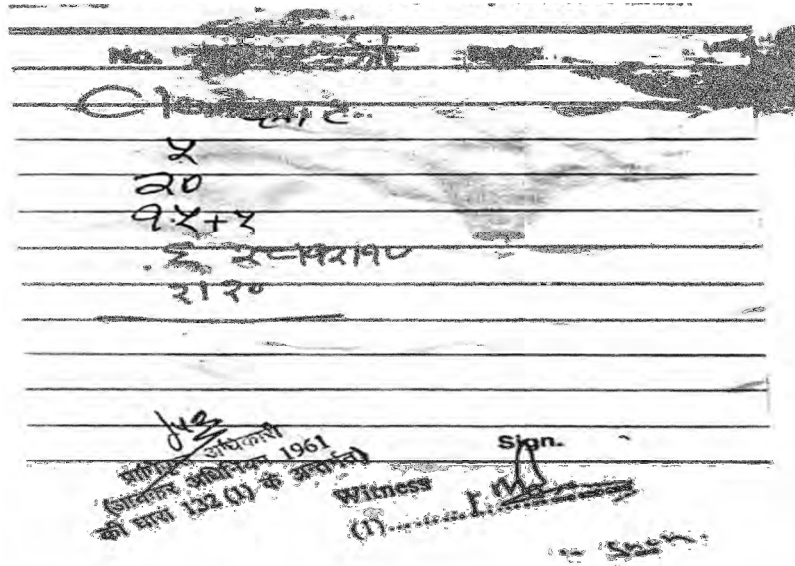
3.2.2] The respondent categorically stated during the course of search assessment proceedings and also during the course of appellate proceedings that neither the respondent nor any of his family members made any investment towards purchase of plot in C K Greens project related to M/s Rudra Developers, Burhanpur. It was categorically explained that plots in C K Greens project were booked through the son of the respondent, Shri Rahul Bansal but not actually by him. The screenshot of the relevant extract of the submission filed during the course of search assessment proceedings is reproduced hereunder for ready reference of the Hon'ble Bench:

| | | | |
|----------|--------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Page Nos | LPS-11 | 1 to 4 | Detail related to the sale of Plot at Ck Greens through Shri Rajendra Bansal. Initially the plot was booked in the name of Ramesh Chand Goyal [Page Nos 35 & 36 of LPS-10]. The papers as found on Page Nos 1 to 3 of LPS 13 also relates to that Plot No 21. Since, the amount was deposited through my son. Hence, receipt was issued in his name. These plots were later on sold and profit of Rs 28,500/- was earned. [Page No 1 to 4 of LPS-11]. The said profit actually belonging to the owner of the plot who booked the said plot, <u>Copy of registry of Plot Nos 21 and 23 at CK Greens are enclosed</u> in support that these plots were not actually booked by either Shri Rajendra Kumar Bansal or his other family members. That part amount was only paid at the time of booking by Shri Ramesh Chand Goyal and sauda was then transferred to the actual buyer. These transactions were actually executed amongst the brokers and real estate agents. Hence, the assessee has neither made any investment nor recieved profit on sale of the said plot |
|----------|--------|--------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

3.2.3] On perusal of Page No. 1 to 4 of LPS-11, it would be quite clear that there was no reference regarding booking of any plots in these papers. However, the respondent on the basis of loose papers found during the course of search in the case of Shri Rahul Bansal opined that these papers might be related to Plot No. 21 and Plot No. 23 of C K Greens, Burhanpur. Hence, the respondent also filed copy of registries as executed in respect of Plot No. 21 and Plot No. 23 C K Greens, Burhanpur before the assessing officer during the course of search assessment proceedings and also before the Ld CIT(A) during the course of appellate proceedings so as to substantiate the fact that Plot No. 21 and Plot No. 23 were not actually booked either by the respondent or by any of his family members. Copy of submission dated 24-12-2019 as filed before the assessing officer during the course of search assessment proceedings along with the copy of registries as executed in respect of Plot No. 21 and Plot No. 23 at C K Greens, Burhanpur have already been filed on page nos. 91-96, 104-139 of paper book filed before the Hon'ble Bench.


3.2.4] On perusal of the submission filed before the assessing officer during the course of search assessment proceedings, it shall be quite manifest that the respondent did not enter into any transaction relating to booking of plot at C K Greens, Burhanpur. The respondent also filed supporting documentary evidences in the form of registered sale deeds so as to substantiate his contention that the transactions contained in the loose papers represented the transaction of plot which was booked through his son, Shri Rahul Bansal. Hence, it could be satisfactorily inferred that no investment was actually made by the respondent in any plot situated at C K Greens, Burhanpur.

3.3.1] At this juncture, it becomes significantly important to go through Page No. 1-4 of LPS-11 which have also been scanned and reproduced in the assessment order. The screenshot of the relevant pages is also reproduced hereunder for ready reference of the Hon'ble Bench:



3.3.2] On perusal of the relevant pages of LPS-11 as reproduced hereinabove, it shall be quite clear that there was no reference in these loose papers of any investment being made by the respondent in his name in C K Greens. These papers were 'dumb documents' which merely contained some amounts on the basis of which it was presumed by the assessing officer that the respondent made investment in cash to retain a plot at C K Greens. In fact, the assessing officer herself mentioned in the assessment order that it could be PRESUMED that the deal would have been completed and amount of Rs. 53.20 might have been received or paid. The screenshot of the relevant extract of the assessment order is also reproduced hereunder for ready reference of the Hon'ble Bench:

Here it is being mentioning that in the loose paper at Page No. 1 the date against 6 has been written as 28/12/17. In this page the total amount has been written as 53/20. From the above and looking to the written figures in ascending order in date wise, it can be presumed that whatsoever the deal was, it had been completed and the transitioned



Shri Rajendra Bansal
A.Y.2012-13 to A.Y. 2018-19
amount i.e. Rs. 53.20 has been received or paid to the relevant person. Copy of page no4 is reproduced below for reference:

3.3.3] On perusal of the screenshot as reproduced hereinabove, it would be abundantly clear that the assessing officer made the addition merely on the basis of guess work and presumption since she herself was not sure as to whether the amount of Rs. 53.20 mentioned in the loose papers comprised of the amount received or paid by the respondent. Hence, it is beyond our understanding as to how the assessing officer made addition of Rs. 53,20,000/- to the total income of the respondent merely on the basis of a dumb document which contained no information whatsoever except for an amount of Rs. 53.20 which was mentioned on such loose paper.

3.3.4] Moreover, it also seems on perusal of the assessment order that the assessing officer was herself not sure as to whether the addition of Rs. 53,20,000/- as made to the total income of the respondent was on account of unaccounted investment in cash for booking of plot at C K Greens, Burhanpur or was on account of amount received on sale of such plot which in itself proves the assessing officer made addition purely on the basis of guess work and suspicion.

3.3.5] Further, the assessing officer on the basis of another loose paper wherein it was mentioned as "C K Colony, Munafa Aaya 28500/0 15/12/2017 kachchemai" opined that the respondent earned a profit of Rs. 2,85,000/- from transaction in plots situated at C K Greens, Burhanpur even when the actual amount written on such loose paper was of Rs. 28,500/- and not of Rs. 2,85,000/- as considered by the assessing officer. Further, it is worth mentioning that no plot was booked by the respondent or any of his family members in C K Greens project and henceforth, there arises no question of earning any profit from sale of such plot.

3.3.6] It is worth mentioning that the inference drawn by the assessing officer on the basis of these loose papers is totally baseless and vague since date written on the loose paper wherein it was mentioned as "C K Colony, Munafa Aaya 28500/0 15/12/2017 kachchemai" was of 15-12-2017 whereas the date written on another loose paper wherein bi-furcation of Rs. 53.20 was mentioned was of 28-12-2017 which is self-contradictory in itself since no profit could have been earned by the respondent even prior to the date of making investment/ sale. Hence, it can be satisfactorily concluded that the addition of Rs. 53,20,000/- and Rs. 2,85,000/- totaling to Rs. 56,05,000/- made by the assessing officer was based on mere surmises and conjectures and has no legs to stand and Ld CIT(A) was correct in deleting the aforesaid addition as made to the total income of the respondent.

3.3.7] It is also pertinent to note that the assessing officer herself while passing the assessment order in the case of Shri Rahul Bansal made addition on account of alleged unaccounted cash investment made towards booking of plot situated at C K Greens, Burhanpur in the Assessment Year 2015-16 and not in the Assessment Year 2018-19 as made in the case of the respondent. It is beyond our understanding as to how proceeds realized on sale of plot could have been added to the total income of the respondent more so when cost of investment in such plot was added in the case of Shri Rahul Bansal.

3.3.8] In view of the detailed reasons as listed hereinabove, it can be satisfactorily concluded that addition of Rs. 56,05,000/- made to the total income of the respondent on account of alleged unaccounted investment made in cash in C K Greens, Burhanpur of Rs. 53,20,000/- and profit earned thereon on sale of such investment of Rs. 2,85,000/- was neither legal nor proper and Ld CIT(A) was correct in deleting the aforesaid addition as made to the total income of the respondent.

3.4.1] It is worth mentioning that C K Greens colony was developed by M/s Rudra Developers in which Smt. Richa Bansal, daughter-in-law of the respondent was one of the partners. The Plot No. 21 and Plot No. 23 in C K Greens colony were booked through the son of the respondent, Shri Rahul Bansal. It was for this reason that papers related to the said plots were found in possession of the respondent. However, as stated above, the neither the respondent nor any of his family members made any investment towards booking of plot at C K Greens, Burhanpur.

3.4.2] Detail of Plot No. 21 and Plot No. 23 sold in C K Greens project related to M/s Rudra Developers, Burhanpur is as under:

| S. No | Description of plots | Name of the seller | Name of the buyer | Date of sale | Sales consideration [in Rs.] |
|-------|----------------------|----------------------|--------------------------------------------------------|--------------|------------------------------|
| 1 | Plot No. 21 | M/s Rudra Developers | Shri Swapnil Choudhary and Smt. Vijayshri Choudhary | 05-02-2018 | 30,12,000 |
| 2 | Plot No. 23 | M/s Rudra Developers | Shri Sunil Kumar Agnani and Shri Jitendra Kumar Agnani | 14-03-2016 | 26,76,600 |

3.4.3] Copy of registries as executed between M/s Rudra Developers and the purchasers in respect of sale of Plot No. 21 and Plot No. 23 situated at C K Greens, Burhanpur which were also filed before the assessing officer and Ld CIT(A) have already been filed on **page nos. 104-139** of paper book filed before the Hon'ble Bench.

3.4.4] It is worth noting that addition on account of alleged unaccounted cash investment made towards booking of Plot No. 21 at C K Greens, Burhanpur had already made in the case of Shri Rahul Bansal in the Assessment Year 2015-16 and henceforth, no addition was justifiable to the total income of the respondent in respect of Plot No. 21 since sale proceeds of such plot could not have been added to the total income of the respondent more so when cost of investment in such plot had already been added to the total income of Shri Rahul Bansal in the Assessment Year 2015-16. Further, Plot No. 23 was sold on 14-03-2016 i.e. during the previous year 2015-16 relevant to the Assessment Year 2016-17. Hence, there arises no question of making any addition to the total income of the respondent in respect of such plot and that too in the Assessment Year 2018-19.”

25. The Ld. DR supported the findings of the Ld. AO.

26. We have heard the respective parties and perused the relevant material available on record. The Revenue is aggrieved with the findings of Ld. CIT(A) in deleting the addition of Rs. 56,05,000/- made on account of alleged investment made in cash in C K Greens, Burhanpur and profit calculated thereon on sale of

such investment. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

*“4.5.2. On perusal of the assessment order and submission as filed by the appellant, it is clearly evident that the documents as referred by the assessing officer was not a regular book of account and merely a slip which does not bear even the name of the person who has invested and Plot No was also missing. The said documents clearly fall under the definition of dumb documents, it has no evidentiary value and the same cannot be admissible as evidence under section 34 of the Evidence Act. Further, the assessing officer also added investment of Plot in C K Greens Burhanpur in the hands of Shri Rahul Bansal, in that case, how sale can be added in the hand of the appellant. The assessing officer herself was not clear in which file she wants to add, the investment on the basis of loose paper was added in the case of Shri Rahul Bansal and also added in the case of the appellant. The said approach of the assessing officer was not correct. It is the duty of the assessing officer to collect information from the owner M/s Rudra Developers about the investment by the appellant or any other members of the appellant. In absence of any corroborative evidences, the assessing officer was not justified in making addition. Therefore, the addition as made by the AO amounting to Rs 56,05,000/- is **Deleted**.*

Since the additions as made by the assessing officer on account of undisclosed investment u/s 69B of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds.”

27. The above findings of the Ld. CIT(A) have not been controverted by the Ld. DR. The facts discussed above squarely reveal that the Ld. AO on the basis of Page No. 1-4 of LPS-11 opined that the assessee made investment in C K Greens, Burhanpur in cash to retain a plot which was sold for an amount of Rs. 53,20,000/- and that the assessee also gained profit of Rs. 2,85,000/- from the aforesaid transaction. We have perused Page No. 1-4 of LPS-11 reproduced in the assessment order which formed the very basis for making addition to the total income of the assessee. On perusal of these pages, we observe that name of the assessee was not mentioned on any of these pages. Further, it was also not mentioned in those pages whether the amount stated therein was received or paid and the said fact was duly acknowledged by the Ld. AO herself in Para 8.1 of the assessment order. These pages merely contained reference of some amounts against which dates were written. Hence, we are of the opinion that these pages were merely ‘dumb documents’ containing some notings related to dates and

amounts which could not have been interpreted in such a manner so as to reach to a far-fetched conclusion that the assessee made investment in plots situated at C K Greens, Burhanpur which were sold and the assessee earned profit thereon. It is a settled position of law that 'dumb documents' cannot be relied upon to draw any adverse inference in the case of the assessee. Accordingly, we find that the addition made by the Ld. AO on the basis of 'dumb documents' was unsustainable in eyes of law.

28. We have also gone through the registries of Plot No. 21 and Plot No. 23 situated at C K Greens colony, Burhanpur which have been placed on Page No. 104-139 of the Paper Book. On perusal of these registries, we find that the assessee was neither the seller nor the purchaser of these plots which puts to rest the unsubstantiated theory of the Ld. AO that the assessee made investment in C K Greens, Burhanpur in cash to retain a plot which was sold and profit was earned thereon. Further, we observe that the Ld. AO failed to collect information directly from M/s Rudra Developers, developer of C K Greens colony, regarding any investment made by the assessee in the said colony. We also find strong force in the contentions of the Ld. Counsel that the Ld. AO herself while passing the assessment order in the case of Shri Rahul Bansal made addition on account of alleged unaccounted cash investment made towards booking of plot situated at C K Greens, Burhanpur in the Assessment Year 2015-16 and accordingly, we are of the opinion that there was no rationale for taxing the amount of sale proceeds in the hands of the assessee since cost of investment made in such plot had been taxed in the hands of Shri Rahul Bansal and as a corollary, the assessee could not have sold the plot which was never purchased by him. Looking to the totality of the facts involved in the present case, we are in agreement with the contentions

of the Ld. Counsel that the assessee did not make any investment towards purchase of plot in C K Greens, Burhanpur and consequently, there arises no occasion for fallaciously presuming that the assessee might have sold the plot in C K Greens, Burhanpur and earned profit thereon.

29. Thus, considering the entire aspect of the matter, we are of the considered opinion that there was no justification for making addition of Rs. 56,05,000/- to the total income of the assessee on account of alleged investment made in cash in C K Greens, Burhanpur and profit calculated thereon on sale of such investment by treating it as unexplained/ undisclosed investment under section 69B of the Act. Hence, we do not find any infirmity in the findings of the Ld. CIT(A) and accordingly, the deletion of addition of Rs. 56,05,000/- made by the Ld. CIT(A) is just and proper so as to warrant no interference. Hence, Ground No. 3 of the appeal preferred by Revenue is found to be devoid of any merits and, thus, dismissed.

Ground No. 4:-

30. The Revenue through this ground of appeal has challenged the deletion of addition of Rs. 1,07,000/- made by the Ld. AO on account of alleged amount of cash receipt by treating it as unexplained/ undisclosed investment under section 69A of the Act.

31. The Ld. AO on the basis of Page No. 6 of BS-05 found and seized during the course of search from the residential premises of the assessee observed that the assessee received an amount of Rs. 1,07,000/- in cash from Shri Ashwini Gupta. The Ld. AO thereafter referred to the statement of the assessee recorded

during the course of search wherein the assessee stated that the said amount was not recorded in his books of accounts. Accordingly, the Ld. AO made addition of Rs. 1,07,000/- to the total income of the assessee on account of alleged amount of cash receipt by treating it as unexplained/ undisclosed investment under section 69A of the Act. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) deleted the addition of Rs. 1,07,000/- made by the Ld. AO. Hence, the instant appeal has been filed before us by the Revenue.

32. The Ld. Counsel submitted at the outset that the Ld. AO did not propose addition of Rs. 1,07,000/- in the show cause notice issued during the course of assessment proceedings thereby depriving the assessee of an effective opportunity to explain the correct nature of transaction contained therein. The Ld. Counsel further submitted that the amount of Rs. 1,07,000/- was received by the assessee against sale of plot executed through him in Phase II of Pranam City and that the amount received was handed over to the owner of Pranam City and no commission was received by the assessee in the said deal. Alternatively, the Ld. Counsel also submitted that even if the assessee received advance of Rs. 1,07,000/- in cash from Shri Ashwini Gupta in respect of sale of plot; then too, the amount of advance received by the assessee could not have been taxed as his income only when the sale deed would have been subsequently executed. Accordingly, the Ld. Counsel submitted that there was no justification for making addition to the total income of the assessee on account of alleged amount of cash receipt.

33. The Ld. DR supported the findings of the Ld. AO.

34. We have heard the respective parties and perused the relevant material available on record. The Revenue is aggrieved with the findings of Ld. CIT(A) in deleting the addition of Rs. 1,07,000/- made on account of alleged amount of cash receipt. We find that the Ld. CIT(A) while allowing the appeal preferred by the assessee observed as follows:

“4.6. **Ground No. 4 for A.Y. 2018-19:-** *Through this ground of appeal the appellant has challenged the addition made by the AO amounting to Rs: 1,07,000/- on account of unexplained/undisclosed investment u/s 69A of the I.T. Act, 1961 and charging of tax liability at higher rate as per amended provision of section 115BBE of the Act. During the course of appellate proceeding, it was explained by the appellant that the said amount of Rs 1,07,000/- was received against the sale of Plot in Phase II of Pranam City. It was explained by the appellant that the said amount was handed over to the owner of the Pranam City and no commission was received by him. It was also contended that for a moment it is presumed that the said amount was received against the sale of plot at Pranam City, in that case also the income is due as on the date of registry and not at the time of advance. The appellant also referred Para 10.1 on inner Page No 43 of the assessment order wherein the assessing officer himself stated that the said amount was received by the appellant against the Booking of Plot No 356 in Pranam City Phase II. Since, the said amount was received on account of booking of Plot No 356 which was handed over to the owner of Pranam City and therefore there was no justification for adding the booking amount to the total income of the appellant. Considering the overall facts of the case and submission as filed by the appellant, the amount as received by the appellant was on account of booking of Plot No 356 in Pranam City Phase II, the amount was on account of advance booking which in any case not to be treated as income. In case of sale of plot, income is to be taxed when actual sale registry was executed. The assessing officer not bring on records any documents which justify that actual sale was executed by the appellant and therefore there was no reason for adding the booking amount to the income of the appellant. The addition made by the assessing authority of Rs 1,07,000/- is therefore not justified. Therefore, the addition made by the AO amounting to Rs 1,07,000/- on account of unexplained/ undisclosed investment u/s 69A is **Deleted**. Therefore, the appeal on this ground is **Allowed**.*

Since the additions as made by the assessing officer on account of unexplained income u/s 69A of the I.T. Act, 1961 have already been deleted on merit. Therefore, the charging of tax liability as per amended provisions of section 115BBE on these grounds is academic in nature and having no impact on the fate of these grounds.”

35. The above findings of the Ld. CIT(A) have not been controverted by the Ld. DR. The facts discussed above squarely reveal that the assessee received advance amount of Rs. 1,07,000/- against sale of plot executed through him in Phase II of Pranam City and such amount was stated by the assessee to have been handed over to the owner of Pranam City. We further observe that even if the amount of advance received by the assessee ought to have been taxed in his

hands, such amount of advance could have been taxed only in the year in which sale registry was executed. However, the Ld. AO has failed to bring on record any material to show that actual sale of plot was made by the assessee and that too during the year under consideration. In absence of such findings, we are unable to accept the contentions of the Ld. AO and accordingly, we are in agreement with the findings of the Ld. CIT(A) having no rationale for making addition to the total income of the assessee on account of alleged amount of cash receipt. The order of the Ld. CIT(A) is, therefore, upheld. This ground of appeal preferred by the Revenue is, thus, dismissed.

36. In the result, appeal filed by the Revenue is dismissed.

This Order pronounced on 15/03/2023

(MADHUMITA ROY)
JUDICIAL MEMBER

Indore; Dated 15/03/2023

S. K. Sinha, Sr. PS

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्येषित/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, अहमदाबाद / DR, ITAT, Indore
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

(Sr.PS)
ITAT, Indore