

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.51/Asr/2020: A.Y.: 2014-15**

**I.T.A. No.53/Asr/2020: A.Y.: 2016-17**

Sh. Bhavnor Singh Bedi, 331, New Jawahar Nagar, Jalandhar. [PAN: BBXPS5975D]  <b>(Appellant)</b>	<b>Vs.</b>	ACIT, Central Circle-2, Jalandhar.  <b>(Respondent)</b>
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**I.T.A. Nos. 87 to 88/Asr/2020  
Assessment Years: 2016-17 to 2017-18**

DCIT, Central Circle-1, Jalandhar.  <b>(Appellant)</b>	<b>Vs.</b>	Sh. Bhavnor Singh Bedi, 331, New Jawahar Nagar, Jalandhar. [PAN: BBXPS5975D] <b>(Respondent)</b>
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**I.T.A. Nos. 89 to 90/Asr/2020  
Assessment Years: 2016-17 to 2017-18**

DCIT, Central Circle-1, Jalandhar.  <b>(Appellant)</b>	<b>Vs.</b>	Sh. Jatinder Singh Bedi, 331, New Jawahar Nagar, Jalandhar. [PAN: AASPB0646B] <b>(Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Ashray Sarna, CA</b>
<b>Respondent by</b>	<b>Sh. Balwinder Kaur, CIT. DR</b>

<b>Date of Hearing</b>	<b>15.03.2023</b>
<b>Date of Pronouncement</b>	<b>11.04.2023</b>

## **ORDER**

### **Per:Bench:**

Batch of appeal of two assesseees and the revenue were filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the ‘CIT (A)’] order passed u/s 250 (6) of the Income Tax Act 1961, [in brevity the Act] for A.Y. 2014-15, 2016-17 to 2017-18. The impugned order was emanated from the order of the Id. ACIT, Central Circle-II, Jalandhar(in brevity the AO) order passed u/s 153A/143(3) of the Act.

2. At the outset, two appeals are filed by the assesses and four appeals by the revenue. In all the appeals the issues are common related to ITA No. 87 to 90/Asr/2020 which are challenged by the revenue. The **ITA No. 89/Asr/2020** is taken as a lead case. **ITA No. 51/Asr/2020** and **ITA No. 53/Asr/2020** are duly challenged by the assesseees which are adjudicated separately in this order. Accordingly, for convenience we are passing a common order for all six appeals.

### **ITA No. 89/Asr/2020**

3. The revenue has taken following grounds:

*“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing relief of Rs. 2,87,50,000/- by*

*ignoring the facts collaborated by evidence seized during search which clearly demonstrated the real transaction by way of “agreement to sell”.*

*2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) failed to appreciate that the “agreement to sell” was actually executed by making payment of Rs.50 lac each on 25.09.2015 and 28.12.2015 out of the assessee’s bank account and even possession of the property was handed over in Dec, 2015 to the Society managed by the assessee and his son.*

*3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) while allowing relief has failed to appreciate the fact that even if the “agreement to sell” was unsigned, the conduct of the two transacting parties were as per the documented terms in the said agreement.*

*4. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing relief by ignoring the fact that even name of the impugned property was changed from GNA-IIMT to M/s Pyramid E-serviecs (a brand name of the assessee) in Dec, 2015 itself, confirming that the lease agreement was only a contrivance and a colourable device and a sham transaction and the lease money paid was actually instalment payment as sale consideration.*

*5. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the surrounding circumstances of*

*the transactions which clearly show that lease agreement and its related transaction were made only to protect the interest of assessee indicating clearly dubious nature of the transactions to support the alleged lease agreement.*

*6. The Appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.”*

4. Brief facts of the case are that both the assesseees are in relation son and father filed the original return u/s 139. Search and seizure was conducted u/s 132 at the premises of the assessee on 08.09.2016. The assessee declared Rs.7.50 crore during search and paid the tax accordingly. The addition was made on basis of the unsigned draft agreement to sell, merely on a plain paper in which the amounts were duly cut and trimmed dated 25.09.2015 between M/s Amar Singh charitable trust and the assessee, Mr. Bhavnoor Singh Bedi in respect of property measuring two and half acre i.e. 20 kanal in village Mehat. On basis of these documents the addition was made by the AO for A.Y. 2016-17 and 2017-18. The issue was agitated before the ld. CIT(A). The ld. CIT(A) dismissed the observation of the ld.AO and upheld the grounds of the assessee. Being aggrieved the revenue filed an appeal before us.

4.1. Related to ITA No. 51 and 53/Asr/2020 the additions are made u/s 69A amount of Rs 40 lakh & Rs.1.45 crore and also Rs 12 lakh on account of

investment in property. The assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved assessee filed an appeal before us.

**ITA No. 89/Asr/2020 for AY 2016-17**

5. The ld. CIT DR vehemently argued and fully relied on the order of the ld. AO.

6. During hearing, the ld. DR ld. Counsel for the assessee filed written submissions which are kept in the record. The ld. Counsel first argued that the entire addition was made on basis of the unsigned draft agreement and the amounts were also cut and trimmed. Finally during search a signed lease deed executed in stamp paper dated 25.09.2015 between M/s Amar Singh charitable trust and the assessee Mr. Bhavnoor Singh Bedi in respect of property measuring two and half acre i.,e. 20 kanal was taken as lease. The ld. counsel fully relied on the order of the ld. CIT(A), page-17 which is extracted as below:

*“The facts of the case, the basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has argued that while making addition u/s 69B, the AO ignored the fact that the 'Draft Agreement to Sell' is not*

*signed by any party. It was also argued that the land still stands in the name of S. Amar Singh Educational Charitable Trust and the same is leased to Baba Shri Chand Educational Society and the society is paying lease rent after deducting TDS. It was submitted that the documents seized during the course of search, was an unsigned, draft agreement to sell, on plain paper in which amounts were cut/trimmed in respect of property measuring 2% acre. It is also submitted that a duly signed 'Lease Deed' executed on stamp paper, making it a valid contract dated 25.09.2015 was also seized. The AR has given the chronology of events and argued that S. Amar Singh Educational Charitable Trust authorized Sh. Gurdeep Singh to find a suitable buyer and in pursuance to that, Sh. Gurdeep Singh approached the assessee and gave a proposal for purchase of GNA Institute including the land, building and furniture for consideration of Rs. 17.10 crore, but this proposal was rejected by the assessee. It is claimed that after the rejection of proposal, Sh. Gurdeep Singh came up with a new proposal as per which initially the institute would be run by the assessee and afterwards, the same shall be purchased by the assessee on or before 15.06.2017, so separate agreement to sell stating the above facts was executed. As per the AR, no sale deed was executed on or before 15.06.2017 and therefore this agreement stood terminated as per Clause 4 of the said agreement to sell. The security deposit of Rs. 1 crore was paid through cheque during the Financial Year ending 31.03.2016 possession of the property was to be with S.*

*Amar Singh Educational Charitable Trust and the assessee only got a license to enter as lessee. The lease rent is being paid till date and the lease security is also reflected in the balance sheet of M/s. Baba Shri Chand Educational Society. As per the AR, it is thus evident that the draft agreement to sell was neither agreed upon, nor acted upon by the parties mentioned therein and the property under reference was taken on lease and is still under lease. A part was transferred and registration of 3 Kanal 10 Marla was executed on 18.05.2018 for Rs.42 lacs and the balance property including the building & others are still in possession & power of M/s. S. Amar Singh Educational Charitable Trust. The electricity bill of the institute is still in the name of GNA-IMT which, as per the AR, justifies the claims of the assessee that the property is still in the name of M/s. S. Amar Singh Educational Charitable Trust and assessee has not purchased the said property. The AR has given comments on the different contentions of the AO and submitted that payments have been made as per 'actual agreement to sell' and not as per the 'draft agreement to sell' and no details of payment as stated in the draft agreement matches the actual payments made by the assessee. As per the AR, the addition has been made on assumption & presumption basis without any corroborative evidence which could substantiate the contentions of alleged 'draft agreement to sell'. As per the AR, till date lease rent is being paid by the assessee and TDS has been deducted. As per the AR, the lease agreement states the 'Agreement to Sell' and does not mention 'Draft*

*Agreement to Sell' as interpreted by the AO. Regarding the expenses, the AR mentioned that renovation was done for the reason that the assessee has taken property on lease to run the institution and for the same one has to spend money and as per the AR, all the expenses incurred on the renovation have been duly accounted and disclosed by the assessee. As per the AR, the AO has not given any reason how the lease deed was doubtful and not genuine because it is signed by all the parties and terms are followed till date, lease rent is reflected in Profit & Loss account and security deposits in the Balance Sheet and the bank statements shows these payments. It was further stated that as no sale deed was executed on or before 15.06.2017, therefore the agreement to sell was terminated and again resolution was passed by S. Amar Singh Educational Charitable Trust authorizing Sh. Gurdeep Singh to find a suitable buyer for the property. It is also argued that during the assessment proceedings, all the information as called by the AO was filed and the evidences with supporting documents were filed and as per the AR, the AO was not right in observing that the assessee failed to furnish any documentary evidence in support of his contention. The AR argued that the assessee did not purchase this property which is still on rent and relied upon certain case laws in support of the submission that addition made by the AO u/s 69B was based upon mere presumption without bringing any evidence in support.*



*The submissions of the AR have been carefully considered. No other evidence corroborating the payment in cash by the assessee has been found during the course of search. Neither any evidence has been collected and brought on record during the course of assessment proceedings by the AO which could substantiate payment of alleged cash amount recorded in the draft agreement to sell. Even the details of alleged payments through cheque amounting to Rs. 25 lacs have not been brought on record and from the accounts of the assessee, it is claimed by the AR that no such payments of Rs. 25 lacs through cheque have been made. The AO has also not been able to bring on record that any payments of Rs. 25 lacs by cheques were ever made by the assessee. Therefore there is merit in the arguments of the AR and no tax liability can be created against the assessee on the basis of an unsigned, undated, draft agreement to sell having cutting & scribbling at various places and specially when there is no evidence to show that this agreement was actually acted upon. None of the party mentioned in the document has claimed that this was ever executed. On the face of the document itself, it is mentioned that it is a 'draft' and unless there is proof that the amount mentioned therein was paid, one cannot come to the conclusion that the price mentioned in the draft deed was the actual sale consideration. The assessee has been subjected to search but no documentary evidence of payment of cash by the assessee have been found in the course of search and therefore no addition can be sustained only on the basis of an unsigned, undated,*

*draft agreement which was not executed. The property is still in the possession of S. Amar Singh Educational Charitable Trust and given on lease for which lease rent is being received from time to time. Therefore, in the absence of proof regarding cash payments by the assessee, the addition made by the AO is not found sustainable and hence deleted.*

*Accordingly this ground of appeal is allowed.”*

7. We heard the rival submission & perused the documents available on record. The entire addition was based on the documents which has no evidential value. The assessee primarily decided to purchase the property but later on changed the decision and has taken the property on lease. Copy of the lease deed dated 23.09.2015 is annexed in **APB page nos. 13 to 29**. The lease rent was paid and the TDS was deducted at source. Only 2 kanal property was purchased in later from the party by the assessee. The copy of sale deed dated 21.05.2018 is annexed in **APB pages 39 to 44**. The copy of the financial statement duly filed related to Baba Shrichand Educational Society which is depicted that the amount debited against lease from the M/s Amar Singh Educational Charitable Trust, represented by Mr Gurdeep Singh. Copy of the balance sheet of society, Baba Shrichand Educational Society is annexed in **APB pages 51 to 52**. The ld. AO had not able to correlate

any such payments which are mentioned in the assessment orders. The property is still in the possession of M/s Amar Singh Educational Charitable Trust.

8.1 We find that there is no infirmity in the order of the Id. CIT(A), so, the ground of the revenue is dismissed. In the result, the grounds of the revenue 1 to 5 are dismissed. Ground No. 6 is general in nature. ITA 89/Asr/2020 is *mutatis mutandis* applicable to ITA Nos. 87,88 & 90/Asr/2020 and follow accordingly.

8.2. In the result, appeal of the revenue **ITA Nos. 87 to 90/Asr/2020** are dismissed.

**ITA No. 51/Asr/2020 for AY 2014-15**

9. This appeal was challenged by the assessee, Sh Bhavnoor Singh Bedi. The Id. counsel in argument placed that the assessee purchased a new property amount of Rs.95 lacs and 12 lacs was paid stamp duty in cash. So, the total amount was paid to Rs. 1.07 crore for purchase of the property. During argument the Id. Counsel specifically mentioned that the addition of Rs.12 lac was for payment of stamp duty in cash is not part of incriminating documents and will not be assessed u/s 153A of the Act. The Id. Counsel relied on the order of the coordinate bench in the case of **Gaurav Narula ITA No. 619 and 434/Asr/2018 order dated 20.01.2022 and the Anurag Mittal ITA No. 135 & 136/Asr/2018 order dated 06.11.2019.**

10. The ld. CIT DR vehemently argued and relied on the order of revenue authorities.

11. We heard the rival submission and relied on the documents available in the record. In factual matrix it is correct that the addition Rs.12 lac for payment of stamp duty is not part of the incriminating documents and will not be come under purview of section 153A of the Act. We relied on the order of ITAT-Amritsar Bench in the case of Gaurav Narula, *supra*. So, the addition amount of Rs. 12,00,000/- is quashed.

11.1. The assessee has not pressed any other ground related to this appeal. So, the addition amount of Rs.12 lac is quashed. In the result, the appeal of the assessee is allowed.

11.2. In the result, appeal of the assessee **ITA No 51/Asr/2020** is allowed.

**ITA No. 53/Asr/2010 for AY 2016-17**

12. In this appeal the assessee filed against the order of the ld. CIT(A) and has taken the following grounds which is extracted as below:

*“1. That the order passed by the Hon’ble CIT(A) dated 16.12.2019 is against the law and facts of the case.*

*2. That having regard to the facts and circumstances of the case, Hon’ble CIT(A) has erred in law and on facts in confirming the action of Ld.*

*Assessing Officer has erred in law and on facts in assuming jurisdiction and framing the impugned assessment order u/s 153A/143(3) of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.*

*3. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer erred in law in making addition of Rs. 40,00,000/- on account of alleged unexplained investment u/s 69A of the Act, without considering the facts of the case and submissions of the assessee and without observing the principles of natural justice.*

*4. That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing Officer erred in law in making addition of Rs. 1,45,00,000/- on account of investment in property purely on assumption basis and without considering the facts of the case and submissions of the assessee and without observing the principles of natural justice*

*5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

12.1 The ld. Counsel in argument placed that the assessing officer made addition of Rs. 40 lac u/s 69A related to loan with the party and also Rs.1.45 crore was

added related to investment in the property. The Id. counsel further argued that the entire addition of the loan amount was based on an unsigned, hand-written documents which have no evidential value. In this issue the Id. Counsel also filed an addition ground but the ground was not pressed during hearing. The Id. Counsel, during course of assessment proceeding duly represented the seized diary with documentary evidence but the Id. AO ignoring all the facts simply relied on the diary and made addition without considering any corroborative evidence which would be substantiated actual fact and the detailed mentioned in the diary. The Id. Counsel further relied on the order of the **Best Film Corporation vs. DCIT, ITA No. 327/Asr/2017 order dated 09.10.2019**. The relevant para is extracted as below:

*“In our view, the confirmation from the second party was the best source to find out the exact figure which the assessee has received and which in the instant case the second party has replied by the sending email and there is nothing on record that the Assessing Officer has ever tried to summon the second party in order to confirm the veracity of transaction and/or e-mail. No doubt legal agreement has its own value and the legal actions depends upon the agreement/MOU, however, there is no bar to side line and/or amend and/or novation of agreement by way of written or otherwise orally for reaching to the*

*just conclusion of the ultimate object(s) of the agreement, which in the instant case appears to be held orally. Even there is nothing on record to suggest that the assessee has received any other amount except Rs.70,72,478/- out of Rs. 1,08,00,000/- and therefore, we are unable to find any substantive material to sustain the addition of Rs.37,27,522/-, consequently the addition under challenge is liable to be deleted, hence stands deleted.”*

13. The ld. CIT DR vehemently argued and fully relied on the order of the revenue authorities. The ld. DR invited our attention in order of CIT(A) para 4.3 page no. 18 which is reproduced as below:

*“4.3 Ground of Appeal No. 3 relates to addition of Rs. 40,00,000/- on account of :ash loan. The AO has mentioned that 'page no. 1-6 of Annexure A-2 [MR-8]' is a receipt in the name of the assessee in respect of cheque of Rs. 40 lacs against which , the cash of an equal amount was given to Sh. Prem Pal Singh. The page no. 9 of the same annexure annexure is a slip acknowledging the receipt of cash in lieu of cheque also the same and its mode of acceptance/repayment. The reply of the*

*assessee that amount of Rs. 40 lacs was given through cheque and also received through cheque and that there was no cash transaction, was not found correct by the AO since the assessee failed to link the*

*said debit/credit entries. As per the AO, in view of the facts, it was apparent that the cash of Rs. 40 lacs had changed hands in lieu of cheques mentioned in the seized receipt. As per the AO, the simple account of this incidence was that a sum of Rs. 40 lacs cash loan was given by the assessee to Sh. Prem Pal Singh and as security a cheque of equal amount was taken from him and on return of said cash loan, the cheque was returned to him as recorded in the seized receipts. Accordingly, an addition of Rs. 40 lacs was made as unexplained investment within the meaning of Section 69A on account of cash advanced to Sh. Prem Pal Singh and chargeable to tax u/s 115BBE of the Income Tax Act, 1961.*

*The facts of the case, basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that the amount mentioned in the documents was received by the father of the assessee and the same was en-cashed in the proprietary concern and returned back out of same firm. The AR mentioned that the ledger account is enclosed but no such ledger account has been filed. Since, the addition has been made on the basis of the documents seized during the search indicating the cash loan by the assessee, the source of which has not been explained, hence under the facts & circumstances of the case, the addition made by the AO is upheld. Accordingly, this ground of appeal is dismissed.*



*The AO is advised to pass on the information to the concerned Addl./Joint Commissioner of Income Tax of Sh. Prem Pal Singh for taking action, for violation of Section 269SS & 269T for accepting & repaying the loan in cash exceeding the prescribed limit.”*

14. We heard the rival submission and relied on the documents available in the record. Related to loan amount of Rs.40 lacs, the ld. counsel pointed out that the addition was made for unexplained investment u/s 69A. Whereas the ld. CIT(A) has directed for violation of section 269SS and 269T for accepting and repaying the loan in cash exceeding the prescribed limit against Mr Prem Pal Singh. Both the provisions cannot run together. We find that there is no merit in the order of the revenue. There, no statement was recorded from Sh. Prem Pal Singh in relation of the transaction of loan. The documents are already denied by the ld. Counsel on which thereliance wasmade for addition. We find no merit in addition Rs.40 lacs with the total income of the assessee. So, the addition is quashed.

14.1 Related to the investment in property Rs.1.45 crore. The assessee submitted the details of payment on basis of “Half Proposal” but purchased of 5 acre of land from Sh. Kewal Singh and 3 acre 13 marla from Sh. Narinder Singh, the detail of payment is extracted as below:

*“Regarding Rs. 95.00 Lacs mentioned at Page 18 of Annexure A-10: As mentioned above, it was a “Rough Proposal” to purchase 5 Acres of land from Sh. Kewal Singh and 3 Acre-13 Marlas from Sh. Narinder Singh. Subsequently thereto the following registered sale deeds were executed.*

<i>Date</i>	<i>Area</i>	<i>Amount</i>
<b>KEWAL SINGH</b>		
<i>16.06.2015</i>	<i>8K</i>	<i>Rs. 15.00 Lacs</i>
<i>07.01.2016</i>	<i>8K</i>	<i>Rs. 15.00 Lacs</i>
<i>18.09.2017</i>	<i>SK</i>	<i>Ps. 11.12 Lacs</i>
<i>18.09.2017</i>	<i>16K</i>	<i>Rs.22.24 Lacs</i>
	<i>Total: A</i>	<i>Rs. 63.36 Lacs</i>
<b>NARINDER SINGH</b>		
<i>22.06.2015</i>	<i>8K</i>	<i>Rs. / 5.00 Lacs</i>
<i>20.10.2016</i>	<i>8K</i>	<i>Rs. 12.35 Lacs</i>
<i>25.04.2017</i>	<i>SK-13M</i>	<i>Rs. 13.80 Lacs</i>
	<i>Total: 13</i>	<i>Rs. 41.15 Lacs</i>
	<i>Total (A+B)</i>	<i>Rs. 104.51 Lacs</i>

15. The Id. Counsel argued that the above table substantiate the fact that the assessee had proposed to purchase land from two parties, Mr. Narinder Singh and Mr. Kewal Singh for approximately Rs. 95 lakh. The assessee is strongly relied on the the affidavit of Mr Narinder Singh. The Id. Counsel placed that there is no cross verification was done with Mr. Kewal Singh. The Id. Counsel placed that no cash was paid to any of the parties. The reliance was placed on the affidavit of Mr. N.Singh. The Id. Counsel relied on the order of ITAT-Amritsar Bench in the case of Smt. Suman Shabarwal vs. ACIT, ITA Nos. 627-629/Asr/2019 date of pronouncement 20.02.2023. Relevant paragraph no-16 is extracted as below:-

*“16. Thus, without substantiating the content of the noting in the diary, the value adopted by way of decoding by the authorities below based on assumption, presumption and guess work is illegal and against the law. Since, the diary jottings have not been corroborated from any relevant material documentary evidence and hence, the jottings in the diary by no stretch of imagination can be accepted as an evidence or conclusive proof of ‘renovation expenditure in multiple of 00/100 by the assessee for the purpose of presumption u/s 292C of the Act against the assessee.’”*

We fully relied on the order of Coordinate Bench. The addition can not be done on basis of any assumption or any guess work. The Id. CIT-Dr was not able to place any contrary judgment against the submission of assessee. We find that the addition is not proper against the assessee. So, the addition of Rs.1.45 crore is liable to be quashed.

16. In the result, the appeal of the assessee is for ground nos. 3 and 4 are allowed. Ground No. 1 and 5 are general in nature. Ground No. 2 is not pressed.

16.1. In the result, appeal of the assessee **ITA No 53/Asr/2020** is allowed

**ITA No. 88/Asr/2020 for AY 2017-18**

17. This appeal is filed by the revenue in ground nos. 1 to 5 are already covered with the ITA No. 89/Asr/2020 and mutatis mutandis applicable for ITA No. 88/Asr/2020, ground nos. 1 to 5 and follows accordingly. Only the ground no. 6 the challenge which is extracted as below:

*“6. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in allowing relief of Rs. 38,70,065/- on account of expenditure on construction of college building by ignoring the facts that the assessee had made surrender on account of construction of house which was clearly mentioned in the surrender letter and the seized documents clearly show that expenditure is incurred on civil work in the college.*

*7. The appellant craves leave to add or amend the grounds of appeal on or before is heard and disposed off.”*

18. The Id. CIT DR fully relied on the order of the revenue authorities accordingly.

19. The Id. Counsel submitted a paper book which is kept in the record. In argument the Id. Counsel placed that addition of Rs. 38,07,065/- made by the revenue on account of unexplained expenditure on construction. It is stated that during course of search several documents were found and seized. During course of assessment proceeding the assessee was asked to explain the nature of expenses

as mentioned in **page nos. 37 to 170 of Annexure (A-6 (MR 8))**, in response to which the assessee filed his submission ignoring which the Id. AO had made the addition. The Id. counsel placed that the assessee submitted details documents before the Id. CIT(A) and the Id. CIT(A) has observed the following point which is extracted as below:

*“4.5 Ground of Appeal No. 5 relates to addition of Rs. 38,07,065/-. The AO has mentioned that the documents seized at 'Annexure A-6 [MR-8], pages 37 to 170' are loose papers containing the details of expenses of paint & tile of the college and page no. 170 is having the updated account of expenses on civil work of the college aggregating to Rs. 38,98,366/-. Regarding these, the assessee stated that the expense is also part of construction of house for which the surrender has been made and the minor expenses are related to the college. The AO observed that however, it is clearly mentioned in the updated account on page no. 170 that only a sum of Rs. 81,301/- of Bill no. 3 is for residence. Hence the remaining amount of Rs. 38,07,065/- was held to be unexplained expenditure u/s 69C of the Income Tax Act, 1961 and added to the income of the assessee.*

*The facts of the case, basis of addition made by the AO and the arguments of the AR during the course of appellate proceedings have been considered. The AR has submitted that the assessee has already made disclosure of Rs. 2.48 crore on account of construction carried*

*out by the assessee and paid tax on the same. As per the AR, since disclosure on account of construction has already been made, so the addition made amounts to double addition. It is further submitted that several documents were found during the search and while computing the disclosure the assessee accounted for all the documents relating to the construction even it is for residential construction or college construction and after considering all the construction relating document, made the disclosure under this head. A perusal of order shows that the surrender letter has been reproduced by theAO whereby a total surrender of Rs. 2.50 crore was made out of which an amount of Rs. 1,75,00,000/- relates to construction. Under the facts & circumstances of the case, no further addition of Rs. 38,07,065/- was required to be made once the surrender on account of 'construction' has been accepted by the department at a figure higher than this amount. Therefore, the addition made by the AO is not found sustainable and hence deleted.”*

20. We heard the rival submission and relied on the documents available in the record. The assessee surrendered Rs.2.5 crore made out of which amount of Rs.1.75 crore relates to construction. Under these circumstances of the case Rs.38,07,065/- is related to out of the declared construction. The Id. CIT-DR has not brought any contrary fact against the submission of assessee. We find that

there is no infirmity in the order Id. CIT(A), accordingly, the appeal of the revenue bearing ground no. 6 is dismissed. Ground no. 7 is general in nature. Accordingly, the appeal of the revenue is dismissed.

20.1. In the result, ground no. 6 of appeal of the revenue, **ITA No 88/Asr/2020** is dismissed.

**ITA No. 90Asr/2020 for AY 2017-18**

21. This appeal is challenged by the revenue with following grounds most of the grounds are in common with others only ground no. 1 to 4 are extracted as below:

*“1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs. 5,67,04,000/- made u/s 69 of the I.T. Act, 1961 on account of unexplained cash deposits only on the ground that deposits are out of surrendered income.*

*2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) while allowing relief to the assessee ignored the fact that the surrender of income was on account of alleged sale/purchase of properties. Subsequently, this was explained as income disclosed u/s 132(4) on account of business of immigration & Visa consultancy. Despite opportunities to substantiate the huge generation of cash was never furnished before the AO.*

*3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has failed to appreciate the fact that generation of huge cash amounting to Rs.5,67,04,000/- during the period of two months prior to demonetization is impossible since the cash of Rs.1,85,26,000/-only found during the search..*

*4. Whether on the facts and in the circumstances of the case, the Ld.CIT(A) has while allowing relief of Rs.5,67,04,000/- ignored the provisions of section 69A of the I.T. Act, 1961 which are clearly applicable in the facts of the case.”*

22. The ld. CIT DR fully relied on the order of the ld. AO and argued accordingly.

23. The ld. Counsel for the assessee submitted the details documents and placed that the assessee already surrendered Rs.7.5 crore as undisclosed income over and above the regular income during search. The undisclosed income was included in the books of account of the assessee and its income out of cash available in the books of accounts of the assessee deposited in the bank accounts. The undisclosed income Rs.7.5 crore was included in the return of income of the assessee and taxes were duly paid. The addition Rs.5,67,04,000/- made by the ld. AO was lead to



double taxation in the hands of the assessee. The said deposit is already surrendered during search. The assessee submitted a chart which is annexed below:

- i. Cash deposited Rs.5,67,04,000/-.
- ii. Cash seized Rs.1,82,83,500/-

Total surrendered amount Rs.7,49,87,500/- = 7.5 crore.

The ld. Counsel fully relied on the order of the ld. CIT(A) page 20 of the order of the ld. CIT(A) is extracted as below:

*“The AR has submitted that the assessee surrendered Rs. 7.5 crore as undisclosed income over and above the regular income and the same was included in the return of income of the assessee and taxes were duly paid. It is further submitted that the undisclosed income surrendered for the year was included in the books of assessee by crediting the cash account and out of this cash available in the books of assessee, deposits were made in the bank accounts. As per the AR, the detail of surrender were Rs. 1,82,83,500/- as cash seized and Rs. 5,67,04,000/- as cash deposited (total equal to Rs. 7,49,87,500/-). The AR argued that the AO has not given the benefit of surrendered income to the assessee and if the action of the AO is accepted then it would mean that the assessee paid tax but no benefit of the surrendered income was allowed to him. As per the AR, the assessee passed the entry of surrendered amount in the cashbook and ultimately this surrendered income was deposited in the bank account*

*of the assessee. The AR filed a copy of the ITR, Audit Report, Balance Sheet, Profit & loss account, surrender letter and copy of cash accounts in the books of assessee out of which the cash was deposited. A perusal of the same shows that the assessee debited the cash account with Rs. 7,50,00,000/- on 08.09.2016 and accordingly the balance cash-in-hand has been increased by this amount (from Rs. 6,54,969/- to Rs. 7,56,54,969/-). Out of this, the cash seized on different dates have been reduced and the total seizure of Rs. 1,83,38,400/- has been taken to the Balance Sheet as cash seized by the Income Tax Department. There is merit in the argument of the AR that if the benefit of surrendered amount is not given to the assessee, then it will amount to double taxation of the same income. Under the facts & circumstances of the case, the assessee is entitled for benefit on account of surrendered made during the course of search and the addition made by the AO deserves to be deleted as the assessee has already paid tax on the surrendered income and has not taken benefit of the same anywhere else. Accordingly, this ground of appeal is allowed.”*

24. We heard the rival submission and relied on the documents available in the record. It is very clear from the order of the Id. CIT(A) that the assessee has deposited cash in the bank out of his surrendered income and the tax was paid accordingly. The copy of the ITR is duly annexed in **APB page 1 to 3**, copy of

surrendered letter u/s 132(4) of the Act providing the fact that assessee surrendered Rs.7.5 crores as its income, **APB page 17**.

25. We find no infirmity in the order of the Id. CIT(A), accordingly, the ground nos. 1 to 4 of the revenue is quashed. The ground nos. 5 to 9 of revenue are mutatis mutandis applicable against ITA No. 89/Asr/2020. The ground no. 10 of revenue is general in nature.

25.1. In the result, the appeal of the revenue, **ITA No 90/Asr/2020** is dismissed.

26. In the result, all the appeals of the revenue are dismissed, and both the appeals of the assesseees are allowed.

**Order pronounced in the open court on 11.04.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By Order