

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"A" JAIPUR

डा० एस. सीतालक्ष्मी,न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 355/JPR/2022
निर्धारणवर्ष/AssessmentYear : 2013-14

Harsh Agarwal 421, Harsh Villa, Tonk Road, Jaipur.	बनाम Vs.	ACIT, Central Circle-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AHLPA 7505 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri Manish Agarwal (C.A)
राजस्व की ओरसे / Revenue by: Ms. James Kurian (CIT)

सुनवाई की तारीख / Date of Hearing : 01/03/2023
उदघोषणा की तारीख / Date of Pronouncement: 13/04/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the Learned Commissioner of Income Tax (Appeals)-4, Jaipur [herein after referred to as "CIT(A)"] for the assessment year 2013-14 dated 22.03.2022, which in turn arises from the order passed by the ACIT, Central Circle-1, Jaipur passed under Section 143(3) r.w.s. 153B((1)(b) of the Income Tax Act, 1961 (in short 'the Act') dated 31.03.2015.

2. At the outset of hearing, the Bench observed that there is delay of 112 days in filing the appeal by the assessee for which the Id. AR of the assessee filed an application for condonation of delay with following prayers:-

“In the aforesaid context, it is humbly submitted that, in this case, order dated 07.04.2022 was passed by Ld. CIT (A) 4, Jaipur, which stood served upon assessee on 07.04.2022 Accordingly, appeal against such order was supposed to have been filed on or before 06.06.2022 before the Hon'ble Income Tax Appellate Tribunal. However, the appeal got delayed by 105 days, as the appeal is being filed now for the reasons as explained below:

1. That, the impugned appellate order of Ld. CIT(A)-4, Jaipur was served upon assessee on 07.04.2022
2. That, assessee presently resides in Dubai and order received by counsel of assessee was handed over to the accountant of assessee to seek his approval if wished to prefer further appeal before Hon'ble ITAT;
3. That, the accountant kept the appellate order with him, however forgot to send the same back to counsel for preparation of appeal;
4. That, counsel of assessee was under the impression that assessee did not wish to file second appeal;
5. However, by the time, due date of filing appeal before Hon'ble ITAT had already expired.
6. Thus, it is submitted that the delay in filing the appeal is solely attributable to the circumstances beyond the control of assessee. Hence, the delay is absolutely inadvertent.
7. That, the assessee has always acted bonafide and the delay is of only 105 days.

In the circumstances of the matter it is humbly prayed to the Hon'ble Bench to please direct the condonation of delay which is merely of 105 days and to be kind enough to direct the listing of the appeal for disposal on the merits.

Your kindness would go a long way to depart effective justice to the ignorant litigants.”

3. During the course of hearing, the Id. DR fairly not objected to assessee's application for condonation of delay and prayed that Court may decide the issue as deem fit in the interest of justice.

4. We have heard the contention of the parties and perused the materials available on record. The prayer by the assessee for condonation of delay of 112 days has merit and we concur with the submission of the assessee. Thus the delay of 112 days in filing the appeal by the assessee is condoned in view of the decision of Hon'ble Supreme Court in the case of Collector, land Acquisition vs. Mst. Katiji and Others, 167 ITR 471 (SC) as the assessee is prevented by sufficient cause.

5. The assessee has marched the present appeal on the following ground of appeals:

" 1. On the facts and in the circumstances of the case the Ld. CIT (A) has grossly erred in confirming addition of Rs. 51,26,562/- made by Id.AO by alleging the same as unexplained expenses incurred towards construction of house and office without appreciating the submissions made and evidence adduced, thus addition so made deserves to be deleted.

1.1 That the Ld. CIT(A) has further erred in ignoring the fact that the assessee had duly recorded the expenditure incurred towards construction of house and office in the regular books of accounts and further included a sum of Rs. 25.00 towards additional unexplained expenditure incurred for the construction based on seized material resulting into total recorded declared expenditure on the

construction at Rs. 1,22,23,666/- therefore further addition made by Ld. AO at Rs. 51,26,562/- deserves to be deleted.

1.2 That, Id. CIT(A) has further erred in confirming addition of Rs.51,26,562/- by solely replying upon the findings of Id.AO and by brushing aside the request of assessee regarding reference to Departmental Valuer for Correct valuation of property. Appellant prays that addition so made deserves to be deleted.

2. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming addition of Rs.45,000/- as unaccounted expenditure made by Id.AO, solely relying upon the statements recorded during search, arbitrarily.

2.1 That, Id.CIT (A) has further erred in confirming the addition, by ignoring the submission made and evidences adduced which prove that expenditure of Rs.45,000/- was taken care of by excess surrender made on account of investment in construction (out of Rs.25,00,000/-). Appellant prays that addition so made and confirmed without bringing any independent material on record to substantiate the same, amounts to double addition and deserves to be deleted.

3. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming addition of Rs.70,000/- as unaccounted expenditure made by Id.AO, solely relying upon the statements recorded during search, arbitrarily.

3.1. That, Id.CIT (A) has further erred in confirming the addition, by ignoring the submission made and evidences adduced which prove that expenditure of Rs.70,000/- was taken care of by excess surrender made on account of investment in construction (out of Rs.25,00,000/-). Appellant prays that addition so made and confirmed without bringing any independent material on record to substantiate the same, amounts to double addition and deserves to be deleted.

4. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

6. The brief facts of the case are that the assessee derives his income from salary, speculation business and interest. A search and seizure action u/s 132(1) of IT Act was carried out on 23.01.2013 at the various premises of Harsh Group, the assessee being a member of the group, was also covered. Various assets/books of account and documents were found and seized as per annexure prepared during the course of search. Pursuant to this, AO issued a notice u/s 142(1)

of the Act to the assessee, in compliance of which, the assessee filed his return of income on 29.09.2013 declaring a total income at Rs. 8,18,21,340/-. Finally, the AO completed the assessment u/s 143(3) r.w.s.153B(1)(b) on 31.03.2015 at the total income of Rs. 9,31,21,370/- by making various additions.

7. Aggrieved, from the said order of assessment the assessee has filed the appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“ Ground No. 3 & 3.1

(v) I have considered the facts of the case and submissions of the appellant and the assessment order for the year under consideration. I find that the AO has made the addition of Rs. 51,26,562/- on account of unexplained investment made in the construction of the aforesaid properties after issuing a detailed show cause notice on each and every entry found in the aforesaid seized exhibit, has obtained the explanation of the appellant and thereafter has worked out the undisclosed expenses incurred on the construction of the office and residential premises of the appellant. I find that the AO has considered each and every objection of the appellant and thereafter has worked out the undisclosed investment of the appellant on the construction of the aforesaid properties at an amount of Rs.51,26,562/-. It is observed that the AO has elaborately discussed the final analysis of Annexure AS Exhibit 1 in the body of the assessment order. Therefore it cannot be said that the A.O. has made the addition without referring to any seized material and is without any basis. Further the contention of the appellant that the AO should have referred the issue to the departmental valuer, it is observed that no such request was made by the appellant before the A.O. and therefore such request at the appellant stage is not admissible more so when I find that

the A.O. has made the addition made on the basis of seized documents and after confronting the appellant on each point and taking his explanation. Further the A.O. has made the addition on the basis of loose papers seized during the course of search and therefore cannot be equated with the entries recorded in the books of accounts specifically when the appellant in his statement has admitted that these entries have not been recorded in the books of accounts. Therefore the contention of the appellant that he has recorded a sum of Rs. 48,98,863/- in the books of accounts towards construction of office and another sum of Rs. 48,24,803/- towards construction of residential house is not found acceptable. In view of the above discussion, the addition of Rs.51,26,562/- made by the AO on account of unexplained investment in the aforesaid properties is confirmed and the Ground of Appeal No. 3 & 3.1 are dismissed.

“Ground No. 4 & 5

(iii) I have considered the facts of the case and submissions of the appellant and it is observed that page no. 7 & 8 are in the handwriting of the appellant himself and during the course of search, the appellant in response to question no. 25 has admitted the amount of Rs. 45,000/- to be his unaccounted expenditure and Rs. 70,000/- to be his unaccounted cash advance which he has suo moto surrendered as his unaccounted income and offered the same for taxation. As regards the contention of the appellant that since sufficient income has already been declared by the appellant under the construction account other than the actual undisclosed expenditure on construction, therefore sustaining the addition of Rs. 45,000/- and Rs. 70,000/- would not serve any useful purpose is not found acceptable. It is observed that the appellant has surrendered an amount of Rs. 25,00,000/- under the head construction account as per the documents seized vide Exhibit-1 Annexure AS whereas the surrender of Rs. 45,000/- and Rs. 70,000/- is as per Exhibit-4 of Annexure AS and pertains to miscellaneous expenditure and unaccounted cash advance therefore the set off of the same against the surrendered amount of Rs. 25,00,000/- cannot be allowed. Further the appellant has considered and surrendered the above amounts separately in his statement recorded and no cogent evidences have been submitted by the appellant to defy the surrender made by him during the course of search. Accordingly, the addition of Rs. 45,000/- on account of miscellaneous expenses and of Rs. 70,000/- on account of unaccounted cash advance is confirmed and the Ground of Appeal No. 4 & 5 are treated as dismissed.”

8. As the assessee has not received the relief in full this appeal is filed by the assessee before this tribunal on the grounds as raised and reproduced here in above. To support the various grounds so raised by the assessee the Id. AR of the assessee relied upon the written submission filed by him and the same is reiterated here in below:-

“Brief facts of the case are that assessee is an individual deriving Income from Salary, Business and Other Sources. A search and seizure operation was carried out in the case of Harsh group on 23.01.2013 to which assessee is the key person. Return of income was filed on 29.09.2013 declaring total income at Rs. 8,18,21,340/- (**APB 1-4**), including a sum of Rs. 8,02,06,833/- being offered as additional income pertaining to year under appeal as admitted in the statement recorded u/s 132(4) during the course of search.

However, the Ld. AO has completed the assessment u/s 143(3) of Income Tax Act, 1961 at a total income of Rs.9,31,21,370/- after making various additions/disallowances. Against the assessment order assessee preferred an appeal before Id.CIT(A), who granted part relief and confirmed the following additions:

(i)	Unexplained expenses on Construction	Rs. 51,26,562/-
(ii)	Unaccounted Miscellaneous expenses	Rs. 45,000/-
(iii)	Unaccounted cash advance	Rs. <u>70,000/-</u>
		Rs.52,41,562/-

Assessee has presented this appeal before the hon'ble bench against the additions confirmed by Id.CIT(A). With this background, ground-wise submission is made as under:

Grounds of Appeal No. 1 to 1.2:

In these grounds of appeal, assessee has challenged the addition of Rs.51,26,562/- confirmed by Id.CIT(A), which was made by Id.AO by alleging the same as unexplained expenses incurred towards construction of house and office without appreciating the submission made and by considering the duplicate entries in arbitrary manner.

In this regard, at the outset it is submitted that addition was made by Id.AO on the basis of entries found noted in the loose papers seized during the course of search which were inventoried as Anx. A-1 pages 1 to 34 (**APB 60-92**) by alleging the

same unexplained expenses incurred towards construction of house and office premises and without appreciating the submissions that certain entries were duplicate and further ignoring the entries recorded in the books of accounts. Ld.CIT(A) also without appreciating these facts confirmed the addition solely relying upon findings of Id.AO.

In this regard, at the outset, chronology of events leading to addition is furnished for the sake of convenience:

- During the course of search, certain documents/papers, containing notings related to construction work, were found at the residential premises of assessee, which were seized as Annexure AS Exhibit-01 pages 1-34 (**APB 60-92**).
- On the basis of such papers, assessee admitted and surrendered an additional sum of Rs.25,00,000/- being the same as unexplained investment in the construction (reply to question No.22 of his statements recorded u/s 132(4) of the Act) (**APB 18-19**).
- Subsequently, during the course of assessment proceedings, after obtaining copy of such seized documents, such papers were verified with expenses recorded in books of accounts. During the course of assessment proceedings assessee submitted the details of the expenses found noted in these papers, according to which unrecorded construction expenses were worked out at Rs.18,98,205/- (**APB 59**) as against which total additional income of Rs. 25.00 lacs was declared in the return of income filed for the year under appeal (**APB 53**). The page-wise explanation was furnished before Ld. AO alongwith letter dated 06.11.2013 filed explaining the breakup of additional income offered.
- From such explanation filed by assessee, Ld. AO observed that assessee had not explained some of the entries, accordingly Ld.AO issued a show cause notice dated 05.03.2015 tabulating various entries, total of which was Rs.2,13,11,826/- (after allowing set off of Rs.25 lacs surrendered) and proposed to add the same as investment in construction expenses from unexplained sources.
- In response to such show cause notice, assessee filed a reply (**APB 48-49**) explaining discrepancies in certain amounts as well as repetitions of certain amounts, which was accepted by Id. AO and again show cause notice dated 20.03.2015 was issued whereby aforesaid sum of Rs.2,13,11,826/- was reduced to Rs.51,26,562/- and explanation was sought as to why the same should not be added to total income.
- In response to such show cause notice, assessee furnished a letter dated 23.03.2015, (**APB 45-47**), however Ld. AO did not accept the same and made addition of Rs.51,26,562/-.
- Addition so made by Id.AO was confirmed by Id.CIT(A) solely relying upon findings in assessment order.

Your honour would appreciate that a bare perusal of chronological events show that the Id. AO has acted in a very casual manner and in fact without bringing any material on record to show that which of the expenses recorded on relevant Annexure AS-1 were not recorded in books of accounts. Further, Ld. AO did not rebut the explanations submitted by assessee regarding certain entries appearing in the seized papers which are nothing but rough calculation or measurement. Your honours would further appreciate that if at all, Id. AO had any doubt about actual investment made in construction and that recorded in books of accounts, he had vital power of making reference to Valuation officer, however instead of making reference, Id. AO resorted to make addition in arbitrary manner.

At this juncture, kind attention of your honours is invited to page 16 para 9.9 of assessment order, where Ld. AO has made following observations:

“The submission of the assessee was carefully considered and discussed with the A/R of the assessee. The A/R objected on the consideration of the entries made on page no.31 of the Exhibit-01 of Annexure AS in lacs. So these entries recorded on page no.31 were decided to be taken in thousands as these entries are in coded figures. So, the total of entries recorded on page no.31 is taken as Rs.15,50,000/- in spite of taking the total of these entries as Rs.1,55,00,000/-. Further, the total of Rs.13,54,563/- as appearing at page no.30 is ignored due to reproduction and repetition. Apart from this another amount of Rs.8,75,151/- is also ignored due to repetition of this entry on page no.20 and on page no.6. Apart from this entry recorded on page no.29 is taken as Rs.26,250/- as against proposed amount of Rs.35,000/- hence reduced by Rs.8750/- (35000-26250).”

It is evident from above remarks of Id. AO that addition of Rs.2,13,11,826/- proposed to be made in original show cause notice was purely on arbitrary basis and which figure was modified after various discrepancies were brought to the notice of Id. AO.

In this scenario, it is submitted that Id. AO interpreted the documents as per his convenience and without pin pointing any specific instances / expenses which were recorded in books of accounts. Your honours would appreciate that it is a settled principle of law that documents have to be interpreted as a whole and it is not permissible to AO to consider part of the document and ignore the rest. Reliance is placed on:

253 ITR 454 (Guj.) Glass Lines Equipments Co. Ltd. V/s CIT

Interpretation of documents - Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document.

22 TW 684Hissaria Brothers V/s ACIT (Jpr)

Held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it.

21 Tax World 213 Lal Chand Agarwal V/s ACIT (Jpr)

In no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair.

As submitted above, that after obtaining copies of seized documents, when assessee tallied the same with expenses recorded in books, construction expenses of Rs. 18,98,205/- only were found to be not recorded, as against which assessee had already offered a sum of Rs. 25,00,000/- in return of income filed. However, Ld. AO without providing any cogent reason for not accepting the explanation of assessee, disregarded the submission filed by assessee.

It would not be out of place to mention here that Ld. AO has not doubted the profit declared by assessee and thus financial results of assessee are accepted as declared. In other words, Ld. AO has resorted to make addition on account of unexplained expenditure in construction activity without rejecting the construction account as appearing in the books of accounts. Your honour would appreciate that if at all as per Ld. AO's version, it is accepted that certain expenditures have not been recorded in books of accounts, the proper course of action available with Assessing Officer was, to reject the books by invoking provisions of section 145(3) of the Act, and referred the matter for valuation before the District Valuation Officer, which was not done by Ld. AO in the instant case. Since the books of accounts have been accepted, the expenditure towards construction recorded therein deserves to be accepted.

138 TTJ 116 ITO vs. NiteshMaheshwari (Jp 'B')

Income from undisclosed sources – Addition – Cost of construction vis-a-vis reference to DVO – without rejecting books of account or without pointing out any defects in the books of account, the reference made to the DVO was not justified and no addition could be made on the basis of higher value adopted by DVO.

150 TTJ 57 Prithavi Raj Bohra VS. ITO (JD)(UO)

Income from undisclosed sources – Addition under s. 69B – Cost of contraction of building vis-à-vis reference to DVO under s. 142A – AO having not rejected assessee's books of accounts before referring the matter to the DVO under s. 142A, no addition could be made on the basis of the report given by the DVO.

On merits of the case, it is submitted that during the year under consideration, construction work of new office premise of assessee situated at Harsh Tower, Triveni Nagar, Jaipur as well as of residence of assessee situated at 421, Harsh Villa, Mahaveer Nagar, Jaipur was going on simultaneously. Since assessee is the

key person and was looking after entire construction activity and keeping record of expenses, which included actual expenses as well as estimations obtained from parties, measurements taken and certain rough calculations, which fact was duly mentioned in page-wise explanation of loose papers Ann. AS-1 filed before Ld. AO (**APB 59-95**). In the said explanation, it was submitted that total amount found noted was of Rs. 18,98,205/- against which the Id.AO has worked the figure at RS. 2,13,11,826/-. Assessee vide reply dt. 5.3.2015 (**APB 48-49**) has pointed out various defects in the said working of the Id. AO therefore, after considering the same, the proposed addition was reduced to Rs. 51,26,562/-. Thereafter assessee vide reply dt. 23.3.2015 (**APB 45-47**) has claimed that certain expenses were recorded in the books of accounts which claimed was rejected solely for the reason that in the statements recorded during the search proceedings assessee has categorically stated that all these expenditures were not recorded in the books of accounts. It was further submitted that assessee had already recorded a sum of Rs.48,98,863/- in books of accounts towards construction of Harsh Tower and a sum of Rs.48,24,803/- towards construction of residential house besides this, assessee also offered a sum of Rs.25,00,000/- towards unrecorded investment in construction expenses. Accordingly, assessee has already declared total cost at Rs.1,22,23,666/- on the construction of house and office therefore no further addition is required to be made. Further from the perusal of the seized papers i.e. Page Nos. 30 & 31 (**APB 64-65**), it is evident that certain payments were made in cash in preceding assessment years i.e. in A.Y. 2011-12 for which no addition could be made in the year under appeal.

Since the addition was made without in any manner holding the construction account maintained by the assessee in the regular course as defective nor it is a case where assessee had retracted from the admission made during the course of search therefore the action of Id. AO in making addition by estimating the figure of expenses as per his convenience is totally unwarranted. It is further submitted that statements u/s 132(4) were recorded in charged atmosphere and without examination of relevant documents thoroughly. It is only after conclusion of search, on receipt of seized material, assessee worked out actual construction expenses and came to know that part of these expenses were recorded in the regular books of accounts and the actual unrecorded construction expenses were less than additional income surrendered during the course of search. Therefore no further addition is required to be made on this account.

Without prejudice to above, it is submitted that a reconciliation statement is prepared by taking the entries as read by Id. AO in the assessment order at page 13-14 after reducing the duplicate entries under the title "**as per the assessee**" and figures taken by the Id.AO under the title "**as per AO**" and the difference of Rs. 52,79,963/- is worked out. The chart is reproduced hereinbelow for ready reference.

Page	APB	As Per	As Per	Diff. to be	Remark
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No.		Assessee	AO	Reduced	
1	92	13,650.00	13,650.00	-	
2	91	15,690.00	15,690.00	-	
3	90	10,558.00	10,558.00	-	
4&5	89	55,834.00	66,392.00	10,558.00	Covered in page 3 (APB 90)
6	88	8,75,151.00	8,75,151.00	-	
7	87	68,000.00	68,000.00	-	
8	86	79,625.70	79,625.70	-	
9	85	40,842.00	40,842.00	-	
10 & Back side	84	2,12,348.00	8,28,788.00	6,16,440.00	Duplicate entries and front side details are included in back side
11	83	5,405.00	5,405.00	-	
12	82	7,500.00	7,500.00	-	
13	81	1,639.00	1,639.00	-	
14 & Back side	80	94,505.00	94,505.00	-	
15 & Back side	79	75,625.00	75,625.00	-	
16	78	4,790.00	4,790.00	-	
17	77	51,000.00	51,000.00	-	
18	76	1,00,000.00	1,79,625.00	79,625.00	Paid through cheque

19	75	35,089.00	35,089.00	-	
20	74	-	8,71,951.00	8,71,951.00	Merged with Page 6 (APB 88)
22&22	72-73	-	-	-	
23	71	95,000.00	95,000.00	-	
24	70	9,250.00	9,250.00	-	
25 & 26	69	67,425.00	69,830.00	2,405.00	Rough calculation
27	68	6,720.00	6,720.00	-	
28	67	2,686.00	2,686.00	-	
29	66	26,250.00	35,000.00	8,750.00	Bill itself is of reduced amount
30	65	13,54,563.00	30,40,452.00	16,85,889.00	Duplicate entries and also pertained to FY. 2011-12 i.e. previous year
31	64	3,31,155.00	19,71,000.00	16,39,845.00	Duplicate entries and estimations
32	63	6,81,000.00	10,45,500.00	3,64,500.00	Duplicate entries of page 30
		43,21,300.70	96,01,263.70	52,79,963.00	

From the perusal of the chart above, it is evident that if we considered the figures taken by Id. AO has correct at Rs. 96,01,263.70, after reducing the duplicate and multiplications, the actual amount incurred was worked out Rs. 43,21,300.70. If the amount of Rs. 43,21,300.70 is taken as the total amount found noted in these papers as incurred on the constructions of the both the properties, deductions on account of unexplained investment offered at Rs. 25.00 lacs is to be reduced and the balance figure of Rs. 18,21,300.70 is further deserves to be reduced by the amount of Rs. 13,54,563/- as found noted on Page 30 (**APB 65**) pertaining to the F.Y. 2011-12 relevant to A.Y. 2012-13 and not in the year under appeal. Thus

there remained a difference of Rs. 4,66,737.30 which is nothing but part of the expenses found noted in the regular books of accounts. In this regard, your kind attention is invited to the page No. 18 (**APB 76**) wherein as against total amount of Rs. 1,79,625.70, it is clearly written that Rs. 79,625.70 was paid through cheque and balance Rs. 1.00 lac in cash, therefore, it cannot be said the entire expense found noted in these papers are not recorded in the regular books of accounts

In the circumstances it is humbly prayed that additions so made and sustained on account of alleged undisclosed investment in construction by the assessee is based on wrong appreciation of the papers and by taking the entries on multiple occasions and therefore the same deserves to be deleted.

Grounds of Appeal No.2 to 3.1:

In grounds of appeal no. 2 to 2.1 and 3 & 3.1, assessee has challenged the action of Id.CIT(A) in confirming the addition of Rs.45,000/- and Rs.70,000/- on account of unaccounted expenditure and unaccounted cash advance respectively made by Id.AO, solely relying upon the statements recorded during search.

In this regard, it is submitted that during the course of search, statements of assessee were recorded u/s 132(4), wherein at question No.25, (**APB 20-22**), assessee accepted to have incurred expenses of Rs.45,000/-, and receipt of Rs. 70,000/- which were not recorded in books of accounts. Id. AO, on the observation that said amount was not shown in return of income filed u/s 153A, made addition of the same. Id.CIT(A) also confirmed the same as such.

With regard to the addition of Rs. 45,000/- made on the basis of page No. 7 of Annexure 'AS-4' (**APB 94**), it is submitted that in the said paper it is written that Rs. 45,000/- were given to Shri Vipul on account of advance given for expenses and nowhere it is mentioned that the expense does not include the construction expense. Since assessee has already offered a sum of Rs. 25 lacs on account of construction of both the premises and at page 32 (**APB 62**) many entries were written which are more than Rs. 45,000/-, thus it cannot be said that this amount is separate then the expenses noted in those papers. Before Id. AO, this claim was made which was rejected without controverting the claim of the assessee. It is thus submitted that the addition so made deserves to be deleted.

With regard to the addition of Rs. 70,000/- made on the basis of page 8 of Exhibit AS-4 (**APB 95**), it is submitted that the said paper it is written that advance received from Abhay on 14.01.2013. Since the assessee has already offered a sum of Rs. 25 lacs as unexplained investment in construction of properties, therefore, it was claimed that the telescoping of this receipt should be given against the expenditure so claimed which was neither allowed by Id. AO nor by Id. CIT(A) solely for the reason that the same was offered in the statements recorded during the course of search u/s 132(4).

It is further submitted that when assessee has already declared additional income to the tune of Rs.8,02,06,833/-, no useful purpose would be served by not paying tax on a meagre sum of Rs.1,15,000/-. However, Id. CIT(A) confirmed the same solely on the observation that assessee could not bring any evidence to defy the surrender made during search. In this regard, it is submitted that statements u/s 132(4) were recorded in charged atmosphere and without examination of relevant documents thoroughly. It is only after conclusion of search, on receipt of seized material, assessee worked out actual construction expenses and came to know that actual unrecorded construction expenses were less than additional income surrendered during the course of search, therefore unutilized income was set off towards sum of Rs.45,000/- and Rs.70,000/- and no separate income was offered in return of Income on this count. It is therefore requested that sums of Rs.45,000/- and Rs.70,000/- have already been offered for taxation, thus no further addition on this account is called for. Appellant prays that addition so confirmed by Id.CIT(A) deserves to be deleted.”

9. The Id. AR of the assessee relied upon the following decision also :-

- ACIT vs. M/s Sanjay Bairathi Gems Ltd. in ITA No. 157/JP/2017 dated 08.08.2017.
- Shilpa Dyeing & Printing Mills Pvt. Ltd. 219 taxman 279 (HC Gujarat).
- CIT vs. Chensing Ventures in Tax case (Appeal) No. 356 of 2007 dated 09.04.2007 (Madras High Court).

10. In addition to the above written submission and relied upon judgment the Id. AR of the assessee submitted that ground no. 1, 1.1,1.2 related to the addition of Rs. 51,26,562/- sustained by the Id. CIT(A). The impugned addition is based on the page 1 to 34 of Annexure AS Exhibit 1 found. In the statement recorded during the search the relevant question and answer no. 22 deals with this annexure. The relevant details were explained to Id. AO also. The relevant explained annexure is placed at page 50 of the assessee

paper book and the same is also extracted for the sake of convenience here in below:-

Harsh Agarwal
421, Harsh Villa, Adarsh Block, Mahaveer Nagar-1, Jaipur
Annexure AS EXHIBIT-1 Total Page 34

Page No.	Date	Particulars	Finacial Implication
1	27/10/2012	BILL OF CONSTRUCTION	13,650.00
2	02/10/2012	BILL OF CONSTRUCTION	15,690.00
3	26/06/2012	BILL OF CONSTRUCTION	10,558.00
5	NA	LEDGER OF HARSH AGARWAL IN BOOKS OF M/S. AGARWAL ENTERPRISES	66,392.00
6	17/08/2012	BILL OF CONSTRUCTION	8,75,151.00
7		ROUGH CALCULATION	
8	17/07/2012	BILL OF NATRAJ	79,625.00
9	NA	Estimation BILL OF CONSTRUCTION	40,842.00
10	06/03/2012	Estimation BILL OF CONSTRUCTION	1,51,048.00
10 BACKSIDE		Estimation BILL OF CONSTRUCTION	61,300.00
11		INVOICE BILL OF CFL light	2,670.00
12		ROUGH CALCULATION	7,500.00
13		INVOICE BILLS OF BULBS FOR HOME	1,639.00
14		CONSTRUCTION ESTIMATION	94,505.00
15		GENERAL CALCULATION	
16		GENERAL CALCULATION	4,590.00
17		EXPENSES CALCULATION OF FURNITURE WORK	51,000.00
18		CALCULATION OF EXPENDITURE	1,79,625.00
19		Marble Related Estimation	35,089.00
20 TO 22		Details of Expenses related to page 6	
23	22/08/2012	QUOTATION INVOICE	95,000.00
24		SAREE PURCHASE BILL	9,250.00
25 TO 26	23/08/2012	MARBLE MEASUREMENT	67,425.00
27	11/04/2012	BILL OF AGRWAL ENTERPRISES (COVERED IN PAGE 5)	6,720.00
28	14/05/2012	BILL OF AGRWAL ENTERPRISES (COVERED IN PAGE 5)	2,686.00
29	12/09/2012	SALES ORDER	26,250.00
30 TO 32 Including back side		MEASUREMENT & EXPENSES	NA
33		MEASUREMENT & TELEPHONE LIST	NA
34		PARTICULAR ADDRESS	NA

Relate to the construction expenses for which a sum of Rs. 25.00 lacs offered in the return of income filed for A.Y. 2013-14

The Id. AR of the assessee also submitted that while computing the addition the Id. AO has not given the credit of the money already

reflected in the books of account even though the same was brought to the notice of the Id. AO in the assessment proceeding while submitting the reply to the notice dated 20.03.2015 on 23.03.2015. This fact is mentioned in the assessment order page 17 & 18 while extracting the reply of the assessee. The relevant extract of the reply relied upon by the assessee is as under:-

“Further the assessee up to the date of construction had recorded a sum of Rs. 48,98,863/- in his books of accounts towards the amount spent on the construction on Harsh Tower; likewise a sum of Rs.48,24,803/- were recorded in respect to the residential house besides a sum of Rs. 25.00 lacs was further declared on account of undisclosed investment in the construction as was admitted in the statements recorded during the course of search thus the total amount spent on the construction of office and residential house come to Rs. 1,22,23,666/-. It is thus submitted that the expenditure incurred on the construction is duly recorded which included investment of Rs. 25 lacs therefore no further addition should be made on this score.”

While dealing with the issue the Id.CIT(A) has simply relied on the finding of the Id. AO and has not dealt with the submission made by the assessee. Even the contention of the assessee that some of the expenditure even does not pertain to the year under appeal and it

pertains to the earlier year and even on these aspect there is no finding in the order of the lower authorities. As regard the contention of the assessee that from these page major part is recorded in the books to support he has explained from page 18 of the impugned order (APB page 76) where in the expenditure is for Rs. 1,79,625.70/-. Out of these transaction Rs. 79,625.70 paid by cheque is not considered. Thus, when the assessee has already disclosed in the books expenditure for an amount of Rs. 1,22,23,666/- and the seized material talks less then this amount even though the assessee has disclosed 25 lac which is sufficient to cover the amount recorded in these papers and thus the separate addition for an amount of Rs. 51,26,562/- is not warranted. The assessee submitted the ledger account of the amount already reflected and there no controverting finding in the order of the AO as well as of the Id. CIT(A) on the contention of the assessee. Thus, no such evidence remained unexplained. Relying on the judgment the Id. AR of the assessee submitted that the seized material should be read as whole. Even none of the entries recorded disbelieved by the Id. AO or Id. CIT(A). Books of account has not been rejected on these aspects. Based on these aspects the Id. AR of the assessee

explained that no separate addition required based on these detailed facts already on record.

10.1 As regards the ground no. 2 & 2.1 for an amount of Rs. 45,000 sustained by the Id. CIT(A) the Id. AR of the assessee submitted that the addition covers the disclosure of Rs. 25 lac and Rs. 8 Cr. made and considering the detailed argument as here in above para 9 the same is required to be deleted.

10.2 As regards the ground no. 3 & 3.1 the Id. AR of the assessee that the paper relates to the amount received from Mr. Abhay as it is evident from the seized material (APB -95) telescoping of the amount should be given and the assessee has already made disclosure of Rs. 8 Cr and Rs. 25 lac which is accepted by the revenue.

11. Per contra, the Id. DR relied upon the orders of the lower authorities. He has vehemently relied upon the disclosure figure of Rs. 9,09,54,577/- which has not been adhered to by the assessee

and thus supported the addition so made by the Id. AO and sustained by the Id. CIT(A).

12. In the rejoinder the Id. AR of the assessee submitted that only the issue is related to the lumpsum disclosure of Rs. 50 lac which not based on any material. In the assessment proceeding complete reconciliation with that of the amount disclosed and the material found were submitted. As regards the addition sustained the submission made in the assessment proceeding were not disputed and the credit of the amount already reflected in not given.

13. We have heard the rival contention and perused material available on record. Apropos to the ground no. 1, 1.1 & 1.2 we have on perusal of the assessment order found that initially the Id. AO proposed the addition of Rs. 2,13,11,826/-. The assessee filed a detailed reply and based on that reply finally Id. AO has proposed addition of Rs. 51,26,562/- vide show cause notice dated 20.03.2015. Against this assessee again filed a detailed reply dated 23.03.2015. The relevant reply of the assessee and the finding of the

Id. AO on this aspect is reproduced here in below of the sake of brevity:-

“Addition on account of unexplained expenses on construction-

With regard to your proposed action of adding a sum of Rs. 51,26,562/- (over and above the surrender amount of Rs. 25 lacs) as unexplained expenses on the construction of office and house on the basis of certain entries found noted in the loose papers seized in terms of annexure AS exhibit 1, it is submitted that your goodself on the basis of these loose papers only has worked out the unexplained expenses on construction work at Rs. 51,26,562/- (over and above the surrender amount of Rs. 25 lacs in return by the assessee), whereas it has already been submitted that during the period constructio activity at the office situated at Harsh Tower, Triveni Nagar, Jaipur and at residence situated at 421, Harsh Villa, Mahaveer Nagar, Jaipur was simultaneously carried on and assessee being the key person, looked after the entire construction activity and had noted expenditure incurred on various heads at one place which are in the form of rough scribbling. Further the assessee up to the date of construction had recorded a sum of Rs. 48,98,863/ in his books of accounts towards the amount spent on construction on Harsh Tower, likewise a sum of Rs 48,24,803 were recorded in respect to the residential house besides, a sum of Rs. 25.00 lacs was further declared on account of undisclosed investment in the construction as was admitted in the statements recorded during the course of search thus the total amount spent on the construction of office and residential house comes to Rs. 1,22,23,666 It is thus submitted that the expenditure incurred on the construction is duly recorded which included the undisclosed investment of Rs. 25.00 lacs therefore no further addition should be made on this score. It is further submitted that during the course of search in the statements of the assessee recorded during the course of search wherein lump sum amount of Rs. 50 lacs was obtained from assessee without corroborating the same with the material available on record.

With the above, it is submitted that the assessee no further addition should be made on account of investment in the construction of office and residential premises."

9.13 The submission of the assessee has been carefully considered but the same has not been found tenable. The assessee has still not furnished any proper explanation regarding the entries written in the papers found at the residential premise of the assessee regarding construction and renovation expenses during the course of search. Therefore, the total of unexplained expenses of Rs.

51,26,562/- is hereby added to the total income of the assessee on account of unexplained expenses incurred for construction and renovation of the house (421, Harsh Villa, Mahaveer Nagar, Jaipur) as well as the office (at Triveni Nagar, Jaipur) of the assessee accordingly. Penalty proceedings u/s 271AAB r.w.s. 274 for this undisclosed income are being initiated separately.”

13.1 Against the in the first appeal the Id. CIT(A) has simply relied upon n the finding of the Id. AO and has not dealt with the contention of the assessee. The relevant finding of the Id. CIT(A) is also reiterated here in below:-

(v) I have considered the facts of the case and submissions of the appellant and the assessment order for the year under consideration. I find that the AO has made the addition of Rs. 51,26,562/- on account of unexplained investment made in the construction of the aforesaid properties after issuing a detailed show cause notice on each and every entry found in the aforesaid seized exhibit, has obtained the explanation of the appellant and thereafter has worked out the undisclosed expenses incurred on the construction of the office and residential premises of the appellant. I find that the AO has considered each and every objection of the appellant and thereafter has worked out the undisclosed investment of the appellant on the construction of the aforesaid properties at an amount of Rs.51,26,562/-. It is observed that the AO has elaborately discussed the final analysis of Annexure AS Exhibit 1 in the body of the assessment order. Therefore it cannot be said that the A.O. has made the addition without referring to any seized material and is without any basis. Further the contention of the appellant that the AO should have referred the issue to the departmental valuer, it is observed that no such request was made by the appellant before the A.O. and therefore such request at the appellant stage is not admissible more so when I find that the A.O. has made the addition made on the basis of seized documents and after confronting the appellant on each point and taking his explanation. Further the A.O. has made the addition on the basis of loose papers seized during the course of search and therefore cannot be equated with the entries recorded in the books of accounts specifically when the appellant in his statement has admitted that these entries have not been recorded in the books of accounts. Therefore the contention of the appellant that he has recorded a sum of Rs. 48,98,863/- in the books of accounts towards construction of office and another sum of Rs.

48,24,803/- towards construction of residential house is not found acceptable. In view of the above discussion, the addition of Rs.51,26,562/- made by the AO on account of unexplained investment in the aforesaid properties is confirmed and the Ground of Appeal No. 3 & 3.1 are dismissed.

13.2 We also found the sequence of the event leading to the addition disputed is that the in the search proceeding certain documents/papers containing noting's related to construction work, were found at the residential premises of assessee, which were seized as Annexure AS Exhibit-01 pages 1-34 (**APB 60-92**). On the basis of such papers, assessee admitted and surrendered an additional sum of Rs.25,00,000/- being the same as unexplained investment in the construction (reply to question No.22 of his statements recorded u/s 132(4) of the Act) (**APB 18-19**). Subsequently, during the course of assessment proceedings, after obtaining copy of such seized documents, such papers were verified with expenses recorded in books of accounts by the assessee and in the assessment proceedings assessee submitted the details of the expenses found noted in these papers, according to which unrecorded construction expenses were worked out at Rs.18,98,205/- (**APB 59**) as against which total additional income of Rs. 25.00 lacs was declared in the return of income filed for the year under appeal (**APB 53**). The page-wise

explanation was furnished before Ld. AO alongwith letter dated 06.11.2013 filed explaining the breakup of additional income offered. From such explanation filed by assessee, Ld. AO observed that assessee had not explained some of the entries, accordingly Ld. AO issued a show cause notice dated 05.03.2015 tabulating various entries, total of which was Rs.2,13,11,826/-(after allowing set off of Rs.25 lacs surrendered) and proposed to add the same as investment in construction expenses from unexplained sources. In response to such show cause notice, assessee filed a reply (**APB 48-49**) explaining discrepancies in certain amounts as well as repetitions of certain amounts, which was accepted by Id. AO and again show cause notice dated 20.03.2015 was issued whereby aforesaid sum of Rs.2,13,11,826/- was reduced to Rs.51,26,562/- and explanation was sought as to why the same should not be added to total income. In response to such show cause notice, assessee furnished a letter dated 23.03.2015, (**APB 45-47**), however Ld. AO did not accept the same and made addition of Rs.51,26,562/-. For this finding we have already extracted the version of the Id. AO and Id. CIT(A). Both the order does not deals as to why on what reasons the contention raised by the assessee is not accepted when the assessee has already offered and accepted a substantial amount of disclosure based on the evidence found on the

dispute is relates to the adhoc disclosure which is in fact not supported by any corroborative material. Even the Id. CIT(A) relied upon the findings of the Id. AO without dealing with the detailed submission of the assessee so as to the amount of disclosure made and the amount recorded on the impugned seized annexure. Thus, based on the facts as stated here in above it is very much clear that the Id. AO should have examined the contention of the assessee raised by their detailed reply made vide letter dated 23.03.2015. Before us, the Id. CIT DR also not controverted the averments made by the assessee before the lower authorities that the credit for the amount already recorded in the books why cannot be given when the assessee has already explained each page of the seized material and has reconciled with the amount of the disclosure made. Based on the facts on record we found that during the year under consideration, construction work of new office premise of assessee situated at Harsh Tower, Triveni Nagar, Jaipur as well as of residence of assessee situated at 421, Harsh Villa, Mahaveer Nagar, Jaipur was going on simultaneously. The assessee being key person and was looking after construction activity and keeping record of expenses, which included actual expenses as well as estimations obtained from parties, measurements taken and certain rough calculations, which fact was duly mentioned in page-wise

explanation of loose papers Ann. AS-1 filed before Ld. AO (**APB 59-95**). In the said explanation, it was submitted that total amount found noted was of Rs. 18,98,205/- against which the Id.AO has worked the figure at RS. 2,13,11,826/-. Assessee vide reply dt. 5.3.2015 (**APB 48-49**) has pointed out various defects in the said working of the Id. AO therefore, after considering the same, the proposed addition was reduced to Rs. 51,26,562/-. Thereafter assessee vide reply dt. 23.3.2015 (**APB 45-47**) has claimed that certain expenses were recorded in the books of accounts which claimed was rejected solely because in the statements recorded during the search proceedings assessee has categorically stated that all these expenditures were not recorded in the books of accounts. It was further submitted that assessee had already recorded a sum of Rs.48,98,863/- in books of accounts towards construction of Harsh Tower and a sum of Rs.48,24,803/- towards construction of residential house besides this, assessee also offered a sum of Rs.25,00,000/- towards unrecorded investment in construction expenses. Accordingly, assessee has already declared total cost at Rs.1,22,23,666/- on the construction of house and office. Further from the perusal of the seized papers i.e. Page Nos. 30 & 31 (**APB 64-65**), it is evident that certain payments were made in cash in preceding assessment years i.e. in A.Y. 2011-12 for which no

addition could be made in the year under appeal. The bench further observed that the addition was made without in any manner holding the construction account maintained by the assessee in the regular course as defective nor it is a case where assessee had retracted from the admission made during search. It is further submitted that statements u/s 132(4) were recorded in charged atmosphere and without examination of relevant documents thoroughly. It is only after conclusion of search, on receipt of seized material, assessee worked out actual construction expenses and came to know that part of these expenses was recorded in the regular books of accounts and the actual unrecorded construction expenses were less than additional income surrendered during the course of search which was lumpsum surrender amount. We have also persuaded the reconciliation statement prepared by the assessee taking the entries as read by Id. AO in the assessment order at page 13-14 after reducing the duplicate entries under the title "**as per the assessee**" and figures taken by the Id.AO under the title "**as per AO**" and the difference of Rs. 52,79,963/- is worked out. The chart is reproduced in the submission of the assessee and the same is not reproduced. From the perusal of the said chart it is evident that if we considered the figures taken by Id. AO as correct at Rs. 96,01,263.70, after reducing the duplicate and multiplications, the actual

amount incurred was worked out Rs. 43,21,300.70. If the amount of Rs. 43,21,300.70 is taken as the total amount found noted in these papers as incurred on the constructions of the both the properties, deductions on account of unexplained investment offered at Rs. 25.00 lacs is to be reduced and the balance figure of Rs. 18,21,300.70 is further deserves to be reduced by the amount of Rs. 13,54,563/- as found noted on Page 30 **(APB 65)** pertaining to the F.Y. 2011-12 relevant to A.Y. 2012-13 and not in the year under appeal. Thus, there remained a difference of Rs. 4,66,737.30 which is nothing but part of the expenses found noted in the regular books of accounts. We have also noted from page No. 18 of the seized annexure **(APB 76)** wherein as against total amount of Rs. 1,79,625.70, it is clearly written that Rs. 79,625.70 was paid through cheque and balance Rs. 1.00 lac in cash, therefore, it cannot be said the entire expense found noted in these papers are not recorded in the regular books of accounts. Considering these aspects as it is evident from the records seized that the seized material is to be read as whole and Id. AO is not allowed to read and consider a part of document as true being favorable to revenue. The revenue did not controvert the fact by bringing any material on record to show that which of the expenses recorded on relevant Annexure AS-1 were not recorded in books of accounts. Further,

Ld. AO did not rebut the explanations submitted by assessee regarding certain entries appearing in the seized papers which are nothing but rough calculation or measurement. When the Id. AO had any doubt about actual investment made in construction of the property and that recorded in books of accounts, he had vital power of referring to Valuation officer, instead made addition merely on the pretext that the assessee has not adhered to the lumpsum disclosure of Rs. 50 lac made in the search which was not supported by any evidence. It is also not case of the revenue that when the assessee has already adhered to all other disclosure specific related to the facts and evidence found and only the lumpsum amount not disclosed does give a right to make the addition merely the same is required to be made. We found from the assessment order that Id. AO proposed an addition of Rs.2,13,11,826/- in original show cause notice which he himself has reduced. Thus, it is evidently clear that Id. AO interpreted the documents as per his convenience and without pin pointing any specific instances / expenses which were recorded in books of accounts and as reconciled by the Id. AR of the assessee by way of a chart in his submission. Even the revenue before us did not controvert the detailed submission made by the Id. AR of the assessee. Thus, based on the settled principle of law that documents have to be interpreted as a whole and it is not permissible to

AO to consider part of the document and ignore the rest as it is held in the case laws referred by the Id. AR of the assessee. The Gujarat high court in the case of **Glass Lines Equipments Co. Ltd. V/s CIT 253 ITR 454 (Guj.)** held that Documents must be read as a whole. It is a well settled canon of interpretation that a document has to be read as a whole" it is not permissible to accept a part and ignore the rest of the document. In the case of the **Hissaria Brothers V/s ACIT (Jpr) 22 TW 684**the co ordinate bench held that the seized document has to be read in its entirety and the parties are not allowed to read only that part which is suitable to it. The similar finding is given in the case of **Lal Chand Agarwal V/s ACIT (Jpr) 21 Tax World 213**where in it is held that in no case AO can be allowed to consider a part of a particular document as true being favourable revenue and other part of the very document as false since that is favourable to assessee - Duality of the approach of AO is not fair. As it is not disputed that after obtaining copies of seized documents, when assessee tallied the same with expenses recorded in books, construction expenses of Rs. 18,98,205/- only were found to be not recorded, as against which assessee had already offered a sum of Rs. 25,00,000/- in return of income filed. However, Ld. AO without providing any cogent reason for not accepting the explanation of assessee, disregarded the submission filed by assessee and

even the Id. CIT(A) has simply relied upon the finding of the Id. AO without controverting the finding of the assessee. It is also not disputed that regular books of account maintained by the assessee has not been doubted. In other words, Id. AO has resorted to make addition on account of unexplained expenditure in construction activity without rejecting the construction account as appearing in the books of accounts. If at all as per Ld. AO's version, it is accepted that certain expenditures have not been recorded in books of accounts, the proper course of action available with Assessing Officer was, to reject the books by invoking provisions of section 145(3) of the Act, and referred the matter for valuation before the District Valuation Officer, which was not done by Id. AO in the instant case. Since the books of accounts have been accepted, the expenditure towards construction recorded therein deserves to be accepted when the assessee has already explained each page and vis a vis amount disclosed. Based on this observation we vacate the addition of Rs. 51,26,562/- and consequently grounds of appeal no. 1, 1.1 & 1.2 raised by the assessee is allowed.

14. Apropos to ground no. 2 & 2.1 for an amount of Rs. 45,000 sustained by the Id. CIT(A) we found that during the course of search,

statements of assessee were recorded u/s 132(4), wherein at question No.25, **(APB 20-22)**, assessee accepted to have incurred expenses of Rs.45,000/-. In the assessment Id. AO, based on the statement observed that said amount was not shown in return of income filed u/s 153A, made addition of the same of the same amount of Rs. 45,000/- The Id.CIT(A) also confirmed the view of the assessing officer without dealing with the submission of the assessee. Before us, the revenue did not controvert the fact that this amount relates to the expenses. It is also not controverted that this amount is not related to the construction work carried by the assessee and therefore, once we have accepted the plea of the assessee that he has already disclosed for the expenditure of construction a sum of Rs. 25 lac no separate addition is called for. Based on this observation the ground no. 2 and 2.1 raised by the assessee is allowed and we vacate the addition of Rs. 45,000/-

15. Apropos to the ground no. 3 & 3.1, for an addition of Rs. 70,000/- made based on page 8 of Exhibit AS -4 (APB -95) in the said paper it is written that advance received from Abhay on 14.01.2013. As it is not disputed that the assessee has already made disclosure of Rs. 8 Cr and odd and Rs. 25 lacon account construction expenditure which is

accepted by the revenue the telescoping of this receipt against the expenditure claimed was neither considered by the Id. AO or Id. CIT(A) by dealing as to why the plea of the assessee is not accepted but merely the same is made in the statement the lower authority made / sustained the addition merely on the reason that no separate income is separately offered. We note that when assessee has already declared additional income to the tune of Rs.8,02,06,833/-, no useful purpose would be served by not paying tax on a meagre sum of Rs.70,000/-. However, Id. CIT(A) confirmed the same solely on the observation that assessee could not bring any evidence to defy the surrender made during search. In this regard, it is submitted that statements u/s 132(4) were recorded in charged atmosphere and without examination of relevant documents thoroughly. It is only after conclusion of search, on receipt of seized material, assessee worked out actual construction expenses and came to know that actual unrecorded construction expenses were less than additional income surrendered during the course of search, therefore unutilized income was set off towards sum of Rs.70,000/- and no separate income was offered in return of Income on this count. As we hold that the revenue did not controverted the fact that amount relates to the construction work carried by the assessee and once we have accepted the

plea of the assessee that he has already disclosed for the expenditure of construction a sum of Rs. 25 lac no separate addition is called for. Based on this observation the ground no. 3 and 3.1 raised by the assessee is allowed and we vacate the addition of Rs. 70,000/-.

16. Ground no. 4 being general in nature does not require any adjudication.

In the result appeal of the assessee is allowed.

Order pronounced in the open court on 13/04/2023.

Sd/-
(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 13/04/2023

*Santosh

आदेश की प्रतिलिपिअग्रेहित / Copy of the order forwarded to:

1. The Appellant- Harsh Agarwal, Jaipur
2. प्रत्यर्धी / The Respondent- ACIT, Central Circle-1, Jaipur
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 355/JPR/2022)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar