

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

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठौड़ कमलेशजयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 1279/JP/2019
निर्धारणवर्ष/AssessmentYear: 2009-10.

Shri Kailash Chand Gehlot, 457, Ajmer Road, Rajni Vihar, Heerapura Power House, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 5(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. ACSPG 2298 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No. 08/JP/2020
निर्धारणवर्ष/AssessmentYear: 2009-10.

Shri Suresh Kumar Chawla C/o MahendraGargieya & Associates Advocates & Tax Consultants, 537-539, 5 th Floor, Mahima's Trinity Near Jyoti Rao Phule College, New Sanganer Road, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 6(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. ABHPC 0176 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No. 27/JP/2019
निर्धारणवर्ष/AssessmentYear: 2009-10.

Shri Bhagwati Prasad Sharma R/o Village & Post: Rashidpur, The. Mahuwa, Distt. Dausa.	बनाम Vs.	Income Tax Officer, Ward Dausa,
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AURPS 2589 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकरअपील सं./ITA No. 1123/JP/2018
निर्धारणवर्ष/AssessmentYear: 2009-10.

Shri Arvind Kumar Sengwa E-302, Shastri Nagar, Ajmer.	बनाम Vs.	Income Tax Officer, Ward 2(1), Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AEEPS 0329 C		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकरअपील सं./ITA No. 471/JP/2018
निर्धारणवर्ष/AssessmentYear: 2009-10.

Shri Shrinivas Tripathi S/o Sh. Chandra Narayan P.N. 469A/1, Rahasoo Sunder Nagar, In front of Regional college, Pushkar Road, Ajmer.	बनाम Vs.	Income Tax Officer, Ward 2(3), Ajmer.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AAAPT 9940 L		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकरअपील सं./ITA No. 22/JP/2021
निर्धारणवर्ष/AssessmentYear: 2009-10.

Smt. Asha Sharma 50, Patel Nagar, Hawa Sadak, 22 Godam, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 2(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. DFVPS 3130 E		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकरअपील सं./ITA No. 1345/JP/2019
निर्धारणवर्ष/AssessmentYear: 2009-10.

Smt. Saroj Dhaka C-19, Hari Nagar, Shastri Nagar, Jaipur.	बनाम Vs.	Income Tax Officer, Ward 6(3), Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No. AFFPD 8359 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से / Assessee by : Shri Mahendra Gargieya, Advocate
Shri Devang Gargieya, Advocate
Shri Anil Kaushik, CA
Shri Dheeraj Borad, CA
Shri M.L. Borad, CA
Shri R.N. Sharma, Advocate
Shri Ashish Sharma, CA
Shri K.L. Moolchandani, ITP

राजस्व की ओर से / Revenue by : Shri S. Najmi, CIT
Shri A.S. Nehra (Addl.CIT)
Shri Monisha Choudhary, JCIT

सुनवाई की तारीख / Date of Hearing : 07/12/2022
उदघोषणा की तारीख / Date of Pronouncement: 6 /03/2023

आदेश / ORDER

PER BENCH :

These seven appeals by the different assessee are directed against the separate orders of Id. CIT (A), passed under section 250 of the IT Act for the assessment year 2009-10. Identical grounds have been raised in all these appeals. Therefore, we decide all these appeals by this combined order for the sake of convenience. We first take up the appeal in ITA No. 1279/JP/2019 as lead case and the decision arrived at will be applicable for other appeals also. The grounds raised by the assessee are as under :-

ITA NO. 1279/JP/2019 :

1. The impugned order u/s 147/143(3) dated 28.09.2016 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.
2. The Id. CIT (A) erred in law as well as on the facts of the case in confirming the addition made by the AO of Rs. 6,32,500/- as unexplained investment. The addition so made and confirmed by the CIT (A), being

totally contrary to the provisions of law and facts of the case, kindly be delete in full.

3. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234B of the Act and as also. The appellant totally denies its liability of charging of interest. The interest so charged, being contrary to the provisions of law and facts, kindly be deleted in full.
4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

ITA NO. 08/JP/2020 :

1. The impugned addition made in the order u/s 143(3)/148 of the Act dated 24.12.2016 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be deleted.
 - 1.2 The very action taken u/s 147 r/w 148 of the Act is bad in law without jurisdiction and being void ab-initio, the same kindly be quashed. Consequently, the impugned assessment framed u/s 143(3)/148 of the Act dated 24.12.2016 also kindly be quashed.
2. Rs. 4,66,660/-: The Id. CIT (A) erred in law as well as on the facts of the case in confirming addition made u/s 69B of the Act at Rs. 4,66,660/- as undisclosed investment in purchasing plot no. 83 in Revenue Residency colony from Shri Madan Mohan Gupta. The addition so made, being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.
3. Rs. 61,333/-: The Id. CIT (A) erred in law as well as on the facts of the case in confirming the part rejection of claimed agricultural income upto Rs. 61,333/- (which is of 2/3rd of the declared agricultural income of Rs. 90,000/-) and in assessing the same as income from other sources. The addition so made, being totally contrary to the provisions of law and facts of the case, kindly be deleted in full.
4. The Id. AO further erred in law as well as on the facts of the case in charging interest u/s 234A, 234B & 234C of the Act. The appellant totally denies its liability of charging and withdrawal of any such interest. The interest so charged/withdrawn, being contrary to the provisions of law and facts, kindly be deleted in full.
5. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing.

ITA NO. 27/JP/2019 :

1. On the facts and in the circumstances of the case, the learned CIT (A) has factually and legally erred in dismissing the ground challenging the initiation of re-assessment proceedings without appreciating the facts of the case in right perspective ignoring the detailed submissions offered before the Id. CIT (A) and also before the Id. AO. Thus dismissing this ground is not justifiable.
2. On the facts and in the circumstances of the case, the learned CIT (A) has erred in confirming the addition of Rs. 5,83,320/- dealing grounds No. 2 to 5 raised before him without appreciating the facts of the case in right perspective and also ignoring the detailed and exhaustive submissions offered on this point. Thus, the addition so made by the Id. AO and confirmed by the CIT (A) deserves to be deleted.
3. The appellant craves to add, amend or withdraw any of the ground of appeal either before or at the time of hearing of appeal.

ITA NO. 1123/JP/2018 :

1. That the re-assessment proceedings are ab-initio void, illegal and contrary to the facts available on record.
2. That the re-assessment order dated 13.12.2016 is per se illegal, arbitrary and runs counter to the facts on record and therefore deserves to be annulled.
3. That the Commissioner of Income-tax (Appeals) has grossly erred in upholding the addition of Rs. 4,66,660/- on account of alleged unexplained investment by application of provisions of section 69B on the basis of presumptions made on solitary evidence of exparte statements of Madan Mohan Gupta.
4. That the rough notings/entries made in the diary cannot be made basis for addition in absence of corroborative evidence proving the genuineness of the transaction.
5. That the Humble assessee craves leave of this Tribunal to add to, amend, alter and or delete all or any of the grounds of appeal.

Additional Ground:

That the notice dated 30.3.2016 issued under section 148 is ab-initio void, illegal, invalid and contrary to the provisions of the Income-tax Act, 1961.

ITA NO. 471/JP/2018 :

1. The Id. CIT (A) has erred in not adjudicating the issue relating to initiation of proceeding u/s 148, which ought to have been first decided, before proceeding to decide the case on merits.
2. The Id. CIT (A) has erred in law and on facts in confirming the addition of Rs. 4,00,000/- u/s 69 made by AO ignoring all the evidence and argument put forth by simply relying on the statement of a third party.
3. The Id. CIT (A) has erred in law and on facts in upholding the additions made by the AO, by not passing a speaking order on any of the grounds of appeal filed before him.
4. The Id. AO erred in law as well as on the facts of the case in charging of interest u/s 234B, 234C & 234D as consequential in nature. The appellant totally denies its liability of charging of any such interest. Hence the interest so charged, being contrary to the provisions of law and facts, may kindly be deleted in full.
5. The appellant prays your honors indulgence to add, amend or alter all or any of the grounds of the appeal on or before the date of hearing.

ITA NO. 22/JP/2021 :

1. That on the facts and in law the impugned order as well as relevant assessment order are not maintainable and liable to be cancelled.
2. That the learned CIT (Appeals) failed to appreciate that both, the re-assessment proceedings initiated by issue of notice u/s 148 and consequential assessment order passed u/s 144/147 are unjustified, untenable and liable to be cancelled.

3. That the learned CIT (Appeals) grossly erred in confirming the addition of Rs. 6,30,000/- made by the AO u/s 68 by treating the alleged investment of Rs. 6,30,000/- (the correct amount of investment in purchase of a plot of land is only Rs. 2,30,000/-) as made out of undisclosed source, which confirmation of addition of Rs. 6,30,000/- is most arbitrary, unjust, untenable and bad in fact and in law and in the alternative excessive w.r.t. facts and circumstances of the case.
4. That the learned CIT (Appeals) failed to appreciate that the learned AO does not have an iota of evidence towards proof of alleged on money payment of Rs. 4,00,000/- to the seller Madan Mohan Gupta besides apparent sales consideration of Rs. 1,150 per square yard for purchase of plot of land in revenue residency measuring 2000 square yards.
5. That the learned CIT (Appeals) failed to note that addition u/s 68 made by the AO is unjust and against law because addition u/s 68 could be made where the assessee maintains regular books of accounts but the fact remains in this case is that no regular books of accounts are maintained by the assessee nor is she required to maintain any books of accounts because her income is from agriculture and not from any business activity.
6. That the impugned order is not a speaking order and as such it is liable to be cancelled.

ITA NO. 1345/JP/2019 :

1. Under the facts & circumstance of the case, the order passed u/s 147 is illegal & bad in law.
2. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 8,00,000/- u/s 69 of IT Act made by AO on account of unexplained investment in land by adopting the value of plot allotted to the assessee at Rs. 3,150/- per sq. yd. as against the actual value of Rs. 1,150/- per sq. yd. paid by the assessee without bringing any material on record that assessee has made any such payment. He has further erred in confirming the addition made by AO on the basis of certain alleged document found from Shri Madan Mohan Gupta and his statement without providing such document to

the assessee and opportunity to cross examine him even when specifically sought for.

3. The Id. CIT (A) has erred in confirming the addition of Rs. 8,00,000/- without appreciating facts and various evidence available on record including lease deed, payment receipt, possession letter etc. The order passed appears to be predetermined order without considering the materials and evidences provided, which is not tenable in law and needs to be quashed.
4. The issue is already covered having been decided by the various Hon'ble benches of the ITAT, Jaipur/Jodhpur (ITA No. 1273/JP/2018, ITA No. 1273/JP/2018, ITA No. 1310/JP/2018, ITA No. 1320/JP/2018, all decided by the Hon'ble Jaipur bench by a consolidated order dated on 25.3.2019 and ITA No. 276/Jodh/2018, ITA No. 418/Jodh/2018, ITA No. 483/Jodh/2018, ITA No. 470/Jodh/2018 decided by the Hon'ble Jodhpur Bench by consolidated order dated 9.05.2019 in favour of the appellants assessee and against the revenue.
5. The assessee craves to amend, alter and modify any of the grounds of appeal.

ITA NO. 1279/JP/2019 :

2. The brief facts of the case are that the assessee filed his original return of income for assessment year 2009-10 declaring total income of Rs. 2,12,700/- under section 139(1) of the I.T. Act, 1961 on 30.07.2009. Subsequently, a search and seizure operation under section 132 of the IT Act was conducted at the residential and office premises of Shri Madan Mohan Gupta on 23.05.2013 by the Investigation Wing of the Income Tax Department, Jaipur. During the course of search and seizure operation on Shri Madan Mohan Gupta, various incriminating papers/documents were found and seized from the various premises covered in search action. During the year under consideration in the reasons recorded it is

alleged that on the basis of information received from Pr. CIT, (Central), Jaipur, there was an escapement of income in this case. The reasons are as under :-

“A Search and seizure action u/s 132 of the Income-Tax Act, 1961 (“ the act”) was conducted on the residential and office premises of Sh Madan Mohan Gupta on 23-05-2013 who had been working as a deed-writer. During the course of search several incriminating papers/documents were found and seized from the various premises covered in search.

On being confronted with the incriminating documents / papers so found and seized, Sh. Madan Mohan Gupta, admitted and surrendered undisclosed income. The seized documents reflect that, the assessee Sh. Kailash Chandra Gehlot had purchased one plot (Plot No. 134) measuring 200 Sq. Yard in the residential project “Revenue Residency” (NiziKhatedar Residential Scheme) at Village-PeeplaBharatsingh, (Jaisinghpura-Muhana Road), Bhankrota, Tehsil Sanganer, Jaipur developed by Sh. Madan Mohan Gupta in F.Y. 2008-09 (relevant to A.Y. 2009-10). The name of the assessee Sh. Kailash Chandra Gehlot is appearing at S.No. 134 in the seized register Annexure-AS (Unique ACCOUNT BOOK register) Exhibit-3 seized from the office premises of Shri Madan Mohan Gupta.

Shri Madan Mohan Gupta has accepted and honoured on-money receipt on sale of plots in ‘Revenue Residency’ scheme, which is Rs. 2000/- per Sq. Yd. as per seized paper. Meaning thereby, the assessee, Sh. Kailash Chandra Gehlot has paid on money of Rs. 4,00,000/- to Shri Madan Mohan Gupta in FY 2008-09 (AY 2009-10) to purchase Plot no. 134 in ‘Revenue Residency’ scheme at Village PeeplaBharatsingh, Bhankrota, Tehsil- Sanganer, Jaipur. The assessee made an investment of Rs.2,32,500/- (that is purchase cost of plot no. 134, Revenue Residency) and he paid on money of Rs.4,00,000/- to Sh. Madan Mohan Gupta for the alleged property purchased.

As per return uploaded from the AST System, the source of purchase of plot at ‘Revenue Residency’ not verifiable. Hence, there was reason to believe that income amounting to Rs. 6,32,500/- had remained undisclosed and had escaped assessment.”

The AO noted that on the basis of information alleging escapement of income, notice u/s 148 was issued on 30.03.2016. Thereafter notices u/s 143(2) and notice u/s 142(1) issued on 23.06.2016, the counsel of the assessee attended the proceedings and filed copy of ITR, Computation, Bank Statement, Possession letter and other relevant papers of the plot purchased vide letter dated 01.09.2016 and also

explained that the investment in the purchase of the plot was only of Rs.2,32,500/- out of his past accumulated savings from the salary and the assessee has not paid over and above the amount mentioned in the Registered Deed. However, the AO rejecting the contention of the assessee stating that when Rs.2,32,500/- is accepted to have been paid by the assessee then there is no reason as to why the payment of Rs.4,00,000/- would not have been paid. He further alleged that the assessee has failed to explain the source of Rs.2,32,500/- and hence he rejected all the objections raised and finally added total amount of Rs. 6,32,500/- u/s 69 on account of unexplained investment in the purchase of plot. The Ld. CIT(A) confirmed the initiation of proceedings u/s 147 and also confirmed the entire addition summarily.

Now the assessee has come in appeal before the Tribunal.

In Ground no. 1 the assessee has challenged confirming the order of the AO and validity of reopening of the case of the assessee under section 147 / 148 of the IT Act.

3. Before us, the Id. Counsel for the assessee has challenged the reopening on the ground that when the reopening is based on the seized material, then the only course available with the AO is to initiate the proceedings under section 153C read with section 153A of the IT Act and not under section 147/148 of the Act. The Id. Counsel has reiterated the submissions as made before the Id. CIT (A) and further submitted as under :-

“ **1.1** At the outset it is submitted that the **very issuance of the impugned notice u/s 148 of the Act, was completely without jurisdiction** in as much as a valid and legal course for the Id. AO was to have invoked Sec. 153C and not Sec. 147/148.

1.2 For better appreciation, the relevant provisions being reproduced here under verbatim:

"S.153C. (1) *Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that,—*

*(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, **belongs to; or***

*(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, **relates to,***

*a person other than the person referred to in section 153A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that **Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person [for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and] for the relevant assessment year or years referred to in sub-section (1) of section 153A :***

***Provided** that in case of such other person, the reference to the date of initiation of the search under section 132"*

1.3 S. 153C starts with a non obstante clause and therefore, is of overriding in nature. S. 153C overrides S. 139, 147, 148, 149, 151 and 153 of the Act. Accordingly, notice u/s 153A shall be issued in the case of a person searched, whereas notice u/s 153C has to be issued in the case of 3rd person (other than the person searched) provided the seized material belonged to or seized papers or any information contained therein related to a 3rd person. Since S. 153C of the Act starts with a non-obstante clause, on the satisfaction of the above condition/s, there is no scope of invoking of S. 148 of the Act in such a case.

Hence, **the AO is left with no discretion or choice to invoke the provisions of S. 147/148** of the Act. If the case falls in the preview of

specific provisions of S. 153C of the Act, the AO cannot resort to invoke the provisions of S. 147/148 of the Act. The action of the AO to initiate the proceedings u/s 147/148 of the Act vitiates the entire reassessment proceedings and the re-assessment order, once, the AO is satisfied that the documents seized, belongs to a third persons (i.e. other than the searched person, which, in the present case is the appellant), the Id. AO shall proceed against such other person(s) and shall issue notice u/s 153C of the Act.

1.4 Coming to the facts of the present case, in the reasons recorded u/s 148, there is a reference of some information received as a result of a search & seizure action carried out u/s 132(1) in the case of one Sh. Madan Mohan Gupta (searched person), wherein some papers/register were seized, allegedly containing the name of the appellant, reflecting some undisclosed income belonging to the appellant (3rd Person). The **AO specifically stated** that:

*"...The name of assessee **Sh. Kailash Chandra Gehlot is appearing at S.No. 134** in the seized register Annexure AS (Unique ACCOUNT BOOK register) Exhibit-3 seized from the office premises of Shri Madan Mohan Gupta...."*

Further **referring to the statement of Sh. Gupta recorded u/s 132(4), the Id. AO alleged that the appellant paid own money** towards the purchase of the plot no. 134 measuring 200 square yards in the "Revenue Residency" during the year under consideration.

1.5 From the admitted facts, the legal position and submissions, it is clear that the notice to the assessee in this case, **could be issued only u/s 153A r/w S. 153C** of the Act by the jurisdictional AO, and the impugned reassessment proceedings initiated u/s 147 were illegal and void in as much as the **Assessing Officer did not follow the mandatory procedure**

laid down u/s 153C. Therefore, the impugned notice issued u/s 148 and reassessment proceedings deserves to be quashed.

1.6. Supporting case law:

1.6.1 The above proposition of law is **fully and directly covered by various decisions** in the cases of ACIT v/s **Rajendra Kumar Jain** in ITA No. 293, 408, 294 & 295/JP/2017 dated 28.03.2018 followed in the cases of **Navrattan Kothari, Jaipur vs ACIT** vide order dated 13.12.2017 in ITA no. 425/JP/2017 Para No.(**DPB 1-44**), wherein also, exactly similar controversy w.r.y Shri Madan Mohan Gupta`s search was involved.

1.6.2 Also kindly refer: **ITO vs. Arum Kumar Kapoor 140 TTJ 249 (Asr.)**, **G.Koteswara Rao vs. DCIT 67 taxmann.com 159 (Vizag.)**

2. Reason to believe and not reason to suspect:

2.1. It is submitted that even under the amended law the bedrock condition or words, which continue right since inception till date, are "*reason to believe*" and not "*reason to suspect*". The word "*believe*" has to be understood in contradistinction of suspicion or opinion. Belief indicates something concrete or reliable. Kindly refer **Gangasharan & Sons Pvt. Ltd. v/s ITO & Anr. (1981) 130 ITR 1 (SC)** and **ITO v/s Lakhmani Mewal Das (1976) 103 ITR 437 (SC)**.

Further, the **belief must be of an honest and reasonable person based upon reasonable grounds**. The officer may act on direct or circumstantial evidence, but his/her belief must not be based on mere suspicion, gossip or rumor. The Id. AO would be acting without jurisdiction if the reason for his/her belief that the conditions are satisfied does not exist or is not material or relevant to the belief required by the provision of law. The Court can always examine this aspect though the declaration or sufficiency of the reasons for the belief cannot be investigated by the Court **Sheo Nath Singh v/s AAC (1971) 82 ITR 147 (SC)**.

2.2 Third party information not a good basis: The law is well settled that any admission/allegation made by the third party cannot ipso facto be applied blindly in the case of the assessee. The **third party making an entry in its accounts and other papers to suit his own convenience upon whom the assessee has got no control** over his actions/in actions. Unless it is established that the assessee has also made some entries in his handwriting in the paper/s seized at the place and/or prepared by third party or unless such evidences is further corroborated by some other evidence found from the place of the assessee, the assessee cannot be held liable and even no prima facie belief as to the escapement can be formed by a reasonable person in as much as permitting the AO to proceed u/s 147 will tantamount to permit him to make roving enquiries. **Admittedly, there was no search carried out in the case of the assessee and no evidence has been brought on record** showing the assessee suppressing the purchase consideration.

Admittedly, the seized register (Annexure AS exhibit 3) relied upon by the AO was prepared by Shri Gupta in his own handwriting and the assessee neither made any entry nor signed and there is **nothing found written in the handwriting of the assessee** in any other document/s seized from Shri Gupta including the register.

Even statement of Shri Gupta were recorded at the back of the assessee, remaining uncrossed by the assessee in absence of opportunity.

2.3 Applying the ratio, on the facts of the present case, at the outset, it is submitted that the assessee purchased a plot no. 134 in a Residential Scheme namely "Revenue Residency" (Nizi Khatedar Residential Scheme) for a consideration of Rs.2,32,500/- which is **duly evidenced by the official receipt no. 11 (PB 1) dated 22.06.2008 issued by the Seller and supported by the Possession Letter dated 22.06.2008 (PB 2) which is in accordance with the prevailing DLC rates.**

2.4. The papers / information relied upon is based on a search conducted at the premises of a third party but **not at the place of the assessee**. Further, admittedly no material was found showing that the assessee itself was indulged in on money payment / undisclosed payment towards the purchase of the subjected property except merely referring to the statement of the seller. Thus, the impugned **reasons are based upon a third party information that too unreliable and misinterpreted**.

Supporting case laws:

2.5.1 Kindly refer **S.P. Agarwalla Alias Sukhdeo Prasad Agarwalla v/s ITO (1983) 140 ITR 1010 (Kol HC)** held that no direct nexus or live link between confessional statement of P and formation of the belief of the ITO that income of appellant has escaped assessment - In the absence of a direct nexus or live link, such confessional statement will not constitute a relevant material justifying the reopening of assessment.

2.5.2In **Kothari Metals v/s ITO (2015) 377 ITR 581/ 140 DTR 150 (Karn HC)** held that the statement of some other person which was recorded was the basis of reassessment and the assessee was asked to explain it but the statement was itself not furnished to the assessee.

2.5.3. In **CIT v/s Kamdhenu Steel & Alloys Ltd. (2014) 68 DTR 38/361 ITR 220 (Delhi HC)** held that notice issued after the expiry of four years from the end of the relevant assessment year by the AO **merely acting mechanically on the information supplied by the Investigation wing** about the accommodation entries provided by the assessee to certain entities without applying his own mind was led to be not justified.

2.5.4. Also kindly refer **Pr. CIT v/s Meenakshi Overseas (P.) Ltd. (2017) 154 ITR 100 (Del) followed in Pr. CIT v/s RMG Ply (2017) 156 DTR 79 (Del)**

In addition to above submission, the Id. Counsel has further submitted as under:

1.7 There apart, this Hon'ble bench in the case of M/s. Kalyan Buildmart Pvt. Ltd. Vs. ACIT (ITA No. 152 & 153/JP/2018), wherein the relevant

discussion starts from para 9 internal pg. 14, following decision in the case of Navratan Kothari vs. ACIT finally held as under:

"Following the earlier decision of this Tribunal, we hold that the reopening under section 147/148 of the Act is not valid when the proper course of action was only to initiate the proceedings under section 153C/153A of the Act."

When challenged by the Revenue, the **Hon'ble Rajasthan High Court affirmed the same in case of PCIT Vs. Kalyan Buildmart (P.) Ltd. [2021] 127 Taxmann.Com 280 (Raj.) (II DPB 72-74)**. Before the Hon'ble Rajasthan High Court, the revenue was aggrieved by the orders of the ITAT on two grounds: Firstly, on account of the quashing of the reassessment order under section 147/148 (as aforesaid) and Secondly, on account of upholding the order of the CIT(A) which had directed cancellation of the assessment made on protective basis and its correctness. Taking note of the decision in cases of Madan Mohan Gupta and Navratan Kothari in para 2 thereafter, in para 3 the Hon'ble High Court took note of the fact that assessee's appeal with respect to reopening of assessment was allowed by Id. CIT(A) holding reassessment notice as invalid and further observed that *The ITAT in its elaborate order discussed the validity of reassessment notice and upheld the order of the CIT(A)*. Notably, the ITAT did not deal with other grounds of appeal once they had already upheld the CIT(A) order in quashing the reassessment notice. The Hon'ble court thereafter, in para 4 *considered the grounds of appeal urged by the revenue in support of the present appeal u/s 260A* and finally in para 5 & 6 the Hon'ble Court was of the opinion that no substantial question of law arose and hence the appeal of the revenue was dismissed on both the issues.

1.8 There may be some contrary decisions however, the Rule of Precedence mandates that on all the subordinate authorities, the decision

of the Jurisdictional High Court is binding and despite contrary view, the AO/ Appellate Authorities are bound to follow the Rajasthan High Court Decision. Moreover, even otherwise the said decisions are distinguishable being based on the peculiar facts available on those cases.

1.9 A similar view has been taken in CIT Vs Sunil Kumar Jain (2014) 42 Taxmann.com 376 (Chhattisgarh) in the context of S. 158BC v/s S. 148.

1.10 In any case, **view favorable to assessee** must be adopted as held in Vegetable Products 88 ITR 192 (SC).

(To be read in relation to GOA 1- Proceeding u/s 147 invalid being without jurisdiction after para 2.5.4 of our earlier w.s. dt 31.08.2021)

(To be read in relation GOA 2 - Addition of Rs.6,32,500/- u/s 69 of the Act after para 4 of our earlier w.s. dt 31.08.2021)

3. Further submitted that it is wrong to say that the appellant made a purchase of plot from MMG whereas he was allotted the plot by Rajasthan Tehsildar Seva Parishad hence, he made no payment of On Money to MMG as wrongly alleged. Further the seized register nowhere shows that the assessee made payment of own money to MMG or even to the Parishad. In the statement of MMG recorded u/s 132(4) or u/s 131, he never admitted having received On Money from the appellant. Even mere confessional statement made by the assessee are not sufficient to bind unless corroborated by some evidence whereas here is a case of alleged admission made by the third party (though it is not so). In absence of any specific admission made by third person there can't be any question of invoking of S.69/69A.

Hence, the proceedings u/s 147 of the Act deserves to be quashed.”

4. On the other hand, the Id. D/R vehemently supported the orders of the Revenue authorities. The Id. D/R also based on the decision of Hon'ble Gujarat High Court in the case of Shri Vijaybhai N. Chandrani vs. ACIT, 231 CTR 474 (Guj.) supported the action of the AO initiating proceeding under section 148 of the Act. The fact of the case of the Revenue in that case and in this case being similar the action of AO in issuing notice under section 147/148 is correct.

5. We have considered the rival submissions as well as relevant material on record. During the previous year relevant to assessment year under consideration the assessee purchased a plot no. 134 situated at Revenue Residency Scheme at village Peepla Bharat Singh, Bhankrota, Tehsil Sanganer, Jaipur for total consideration of Rs. 2,32,500/- vide Receipt dated 22.06.2008 issued by Shri Madan Mohan Gupta, Revenue Residency and Allotment Letter from JDA along with Registered Deed issued by Sub Registrar, Jaipur-VII dated 18.02.2009 as per copies of documents placed on paper book. Subsequently, a search and seizure operation under section 132 of the IT Act, 1961 was conducted on Shri Madan Mohan Gupta on 23-05-2013 by the Investigation Wing, Jaipur of the Income Tax Department. During the course of search and seizure operation on Shri Madan Mohan Gupta, a register Annexure-AS (Unique Account Book register) Exhibit-3 along with some incriminating documents were found and seized. During the course of search and seizure action, statement of Shri Madan Mohan Gupta was recorded, who had explained the various documents found and seized during the search operation. The AO reopened the case of the assessee and initiated proceedings after requisite approval and notice under section 148 was issued on 30.03.2016, which was duly

served upon the assessee. Consequently the AO while initiating proceedings recorded following reasons :-

“A Search and seizure action u/s 132 of the Income-Tax Act, 1961 (“ the act”) was conducted on the residential and office premises of Sh Madan Mohan Gupta on 23-05-2013 who had been working as a deed-writer. During the course of search several incriminating papers/documents were found and seized from the various premises covered in search.

On being confronted with the incriminating documents / papers so found and seized, Sh. Madan Mohan Gupta, admitted and surrendered undisclosed income. The seized documents reflect that, the assessee Sh. Kailash Chandra Gehlot had purchased one plot (Plot No. 134) measuring 200 Sq. Yard in the residential project “Revenue Residency” (NiziKhatedar Residential Scheme) at Village-Peepla Bharatsingh, (Jaisinghpura-Muhana Road), Bhankrota, Tehsil Sanganer, Jaipur developed by Sh. Madan Mohan Gupta in F.Y. 2008-09 (relevant to A.Y. 2009-10). The name of the assessee Sh. Kailash Chandra Gehlot is appearing at S.No. 134 in the seized register Annexure-AS (Unique ACCOUNT BOOK register) Exhibit-3 seized from the office premises of Shri Madan Mohan Gupta.

Shri Madan Mohan Gupta has accepted and honoured on-money receipt on sale of plots in ‘Revenue Residency’ scheme, which is Rs. 2000/- per Sq. Yd. as per seized paper. Meaning thereby, the assessee, Sh. Kailash Chandra Gehlot has paid on money of Rs. 4,00,000/- to Shri Madan Mohan Gupta in FY 2008-09 (AY 2009-10) to purchase Plot no. 134 in ‘Revenue Residency’ scheme at Village Peepla Bharatsingh, Bhankrota, Tehsil- Sanganer, Jaipur. The assessee made an investment of Rs.2,32,500/- (that is purchase cost of plot no. 134, Revenue Residency) and he paid on money of Rs.4,00,000/- to Sh. Madan Mohan Gupta for the alleged property purchased.

As per return uploaded from the AST System, the source of purchase of plot at ‘Revenue Residency’ not verifiable. Hence, there was reason to believe that income amounting to Rs. 6,32,500/- had remained undisclosed and had escaped assessment.”

Thus the Assessing Officer has proceeded on the premises that the assessee has purchased the property by paying ‘on money’ amounting to Rs. 4,00,000/- to Shri Madan Mohan Gupta in assessment year 2009-10 to purchase Plot no. 134 in Revenue Residence Scheme at village Peepla Bharat Singh, Bhankrota, Tehsil Sanganer, Jaipur whereas the impugned plot was actually purchased for a

consideration of Rs. 6,32,500/- as per register seized along with incriminating documents found in possession of Shri Madan Mohan Gupta. The register found from the possession of Shri Madan Mohan Gupta allegedly contained dealings in respect of certain properties purchased by the assessee. The details recorded in the seized register found from the possession of Shri Madan Mohan Gupta allegedly revealed the purchase value of the plot at Rs. 6,32,500/-. The statement of Shri Madan Mohan Gupta was recorded by Investigation Wing in which he has explained the transactions of land purchased by the assessee. The assessee has denied having purchased the plot at Rs. 6,32,500/- other than amount of Rs. 2,32,500/- mentioned in the Receipt dated 22.06.2008 issued by Shri Madan Mohan Gupta, Revenue Residency and Allotment Letter from JDA along with Registered Deed issued by Sub Registrar, Jaipur-VII dated 18.02.2009. The Assessing Officer after reopening the case of the assessee has assessed the income of the assessee at Rs. 8,45,200/- by making an addition of Rs. 6,32,500/- on account of difference of purchase price of the plot. Therefore, in the search and seizure proceedings and in the subsequent investigation what was detected by the Department is the seized material containing the transaction of plot of land purchased by the assessee and the seller of the plot Shri Madan Mohan Gupta, Revenue Residency Scheme. Even Shri Madan Mohan Gupta has surrendered the related 'on money' income during the search and accordingly filed his after search Income Tax Return. Based on these facts, the AO has assumed payment of 'on money' on the basis of notings in the Register seized from the residence of Shri Madan Mohan Gupta coupled with the disclosure made by Shri Madan Mohan Gupta. Further, in the statement of Shri Madan Mohan Gupta he has explained the nature of transactions recorded in the seized material regarding

the purchase of plot of land by the assessee. The department then also conducted further inquiry by recording statements of the assessee and specifically asked the question regarding the consideration paid in respect of the land purchased by him. Thus the addition made by the AO is based on the material found from Shri Madan Mohan Gupta wherein he has also accepted the receipt of "on money". Even the Receipt for cheque money and Allotment letter issued to the assessee is signed by Shri Madan Mohan Gupta. When the seized material found from Shri Madan Mohan Gupta as well as other material gathered during post search inquiry has established direct evidence supported by the disclosure of Shri Madan Mohan Gupta for payment of 'on money' then on purchase of land by the assessee payment of on money cannot be denied. Thus based on these finding of facts, now we come to the issue whether considering the facts of the case notice is issued to assessee under section 147 is correct or not?. On this issue, we have gone through the decision of Hon'ble Gujarat High Court in the case of Vijaybhai N. Chandrani vs. ACIT, (2010) 231 CTR 474 (Guj.) dealing with the controversy. The relevant finding and the decision in para 11 to 15 are as under :-

" 11. The controversy in issue pertains to the interpretation of the provisions of s. 153C the Act which reads thus:

"153C. Assessment of income of any other person - Notwithstanding anything contained in s. 139, s. 147, s. 148, s. 149, s. 151 and s. 153, where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in s. 153A, then the books of account or documents or assets seized

or requisitioned shall be handed over to the AO having jurisdiction over such other person and that AO shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person in accordance with the provisions of s. 153A.”

12. On a plain reading of the aforesaid provisions it is apparent that ss. 153A, 153B and 153C lay down a scheme for assessment in case of search and requisition. Sec. 153A deals with procedure for issuance of notice and assessment or reassessment in case of the person where a search is initiated under s. 132 or books of account, other documents or assets are requisitioned under s. 132A after the 31st day of May, 2003, Sec. 153B lays down the time-limit for completion of assessment under s. 153A. Sec. 153C which is similarly worded to s. 158BD of the Act, provides that where the AO is satisfied that any money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in s. 153A he shall proceed against each such other person and issue such other person notice and assess or reassess income of such other person. However, there is a distinction between the two provisions in as much as under s. 153C notice can be issued only where the money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned belong to such other person, whereas under s. 158BD if the AO is satisfied that any undisclosed income belongs to any person, other than the person with respect to whom search was made under s. 132 or whose books of account or other documents or assets were requisitioned under s. 132A, he shall proceed against such other person under s. 158BC.

13. Thus a condition precedent for issuing notice under s, 153C and assessing or reassessing income of such other person, is that the

money, bullion, jewellery or other valuable article or thing or books of account or documents seized or requisitioned should belong to such person. If the said requirement is not satisfied, resort cannot be had to the provisions of s. 153C of the Act.

14. Examining the facts of the present case in the light of the aforesaid statutory scheme. it is an admitted position as emerging from the record of the case, that the documents in question, namely the three loose papers recovered during the search proceedings do not belong to the petitioner. It may be that there is a reference to the petitioner in as much as his name is reflected in the list under the heading 'Samutkarsh members details' and certain details are given under different columns against the name of the petitioner along with other members, however, it is nobody's case that the said documents belong to the petitioner. It is not even the case of Revenue that the said three documents are in the handwriting of the petitioner. In the circumstances, when the condition precedent for issuance of notice is not fulfilled any action taken under s. 153C of the Act stands vitiated.

15. For the foregoing reasons, the petition succeeds and is accordingly allowed. The impugned notices dt. 7th Oct, 2009 issued by the respondent under s. 153C of the Act are hereby quashed and set aside. Rule is made absolute accordingly with no order as to costs."

Since in this case there is no direct material related or pertained to the assessee but the information and disclosure based on the incriminating documents suggest that information came to the knowledge of the AO based on the incriminating documents revealed during the search. Therefore, we are of the view that in this case considering the peculiar circumstances, notice is correctly issued under section 148/147 of the IT Act and we are of the view that there is no direct evidence for

issue of notice u/s. 153C of the Act in this case and the condition as prescribed u/s.

153C is reiterated here in below for the sake of convenience :

"Section 153C. (1) Notwithstanding anything contained in section 139, section 147, section 148, section 149, section 151 and section 153, where the Assessing Officer is satisfied that, -

(a) any money, bullion, jewellery or other valuable article or thing seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to a person other than the person referred to in section 153A.

Since, the condition precedent of issue of notice is not fulfilled for issue of notice u/s. 153C of the Act, we hold that there is no option for the AO to initiate the proceedings u/s. 147/148 of the Act. Therefore, the ground no. 1 raised by the assessee is dismissed.

Ground No. 2.

6. In respect of Ground No. 2, the Id. A/R of the assessee appearing before us has submitted as under :-

"The Id. Lower Authorities failed to appreciate the evidence of investment of Rs. 2,32,500/- despite of providing the evidences of the source through detailed submissions filed before CIT(A), which are strongly relied upon and being reproduced hereunder :

"Source of the declared purchase consideration fully explained and established: It is very surprising that the AO made this addition alleging lack of explaining source of payment to the declared purchase consideration. The facts are not denied that the assessee is a Sub Registrar / Tehsildar, who is an officer of the Gazetted Rank of the State Government and needless to say

that he must be withdrawing a handsome amount of Salary and other perks. In addition to the various other facilities of free house, free medical and conveyance facilities etc. He has been in the service for last 36 years. He filed the ROI this year Le. in A.Y. 2009-10 at Rs. 2,12,700/- having substantial salary more than Rs.3,00,000/-(ie. Rs.3,12,696/-in A. Y. 2009-10, Rs. 2,11,369/-in A. Y. 2008- 09 and Rs. 1,87,618/- in A. Y. 2007-08. Considering his Cadre and tenure of service, the preponderance of probabilities lies in favour of the assessee that he must have saved substantially more than Rs. 2,32,500/- from his salary. Moreover, if the savings from misc. receipts on difference occasions / festivals, of Rs. 1,00,000/- only is considered, the assessee was able to save more than around Rs. 10 lakhs cash in hand.

Therefore, the AO is not justified in not considering source of the declared purchase consideration of meagre Rs. 2,32,500/- out of past savings of the assessee. The principle of human probabilities and surrounding circumstances, on the contrary strongly support the case of the assessee. Therefore, the entire impugned addition deserves a complete deletion."

Hence the impugned addition deserves to be deleted in full.

2. No opportunity of cross examination though relied:

2.1. It is an admitted fact that the AO had strongly relied upon the statements of Madan Mohan Gupta during assessment at his place to which the appellant was not a party. Unfortunately, despite using the same against the assessee, the assessee was never confronted and even the statements of such person were not fully reproduced in the impugned order, what to talk of giving an opportunity of cross examination.

3. Supporting Case law:

3.1 A useful reference can be made to State of Kerala v/s K.T. Shaduli Grocery dealers, etc. AIR 1977 SC 1627, held that "It can hardly be disputed that cross- examination is one of the most efficacious methods of establishing truth and exposing falsehood. Here, it was not disputed on behalf of the

Revenue that the assessee in both cases applied to the Sales-tax Officer for summoning Hazi Usaman Kutty and other wholesale dealers for cross-examination but his application was turned down by the Sales-tax Office. This act of the Sales-tax Office in refusing to summon Hazi Usaman Kutty and other wholesale dealer for cross-examination by the assessee clearly constituted infraction of the right conferred on the assessee by the second part of the proviso and that vitiated the orders of assessment made against the assessee. Also kindly ref. Murarka Properties Ltd. v/s B.L. Murarka, 1 SCC 109 (SC) and R.S. Nayak v/s AR Antulay AIR 1986 (SC) 2045.

3.2 In Andaman Timber Industries vs CIT (2015) 127 DTR 241(SC), it was held that:

“ 5. We have heard Mr. Kavin Gulati, learned senior counsel appearing for the assessee, and Mr. K. Radhakrishnan, learned senior counsel who appeared for the Revenue.

6. According to us, not allowing the assessee to cross-examine the witnesses by the Adjudicating Authority though the statements of those witnesses were made the basis of the impugned order is a serious flaw which makes the order nullity inasmuch as: amounted to violation of principles of natural justice because of which the assessee was adversely affected. It is to be borne in mind that the order of the Commissioner was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statements and wanted to cross-examine, the Adjudicating Authority did not grant this opportunity to the assessee. It would be pertinent to note that in the impugned order passed by the Adjudicating Authority he has specifically mentioned that such an opportunity was sought by the assessee. However, no such opportunity was granted and the aforesaid plea is not even dealt with by the Adjudicating Authority. As far as the Tribunal is concerned, we find that rejection of this plea is totally untenable. The Tribunal has simply stated that cross-examination of the said dealers could not have brought out any material which would not be in possession of the assessee themselves to explain as to why their ex-factory prices remain static. It was not for the Tribunal to have guess work as to for

what purposes the assessee wanted to cross-examine those dealers and what extraction the assessee wanted from them.

7. As mentioned above, the assessee had contested the truthfulness of the statements of these two witnesses and wanted to discredit their testimony for which purpose it wanted to avail the opportunity of cross-examination.

That apart, the Adjudicating Authority simply relied upon the price list as maintained at the depot to determine the price for the purpose of levy of excise duty. Whether the goods were, in fact, sold to the said dealers/witnesses at the price which is mentioned in the price list itself could be the subject matter of cross-examination. Therefore, it was not for the Adjudicating Authority to presuppose as to what could be the subject matter of the cross-examination and make the remarks as mentioned above. We may also point out that on an earlier occasion when the matter came before this Court in Civil Appeal No. 2216 of 2000, order dated 17.03.2005 was passed remitting the case back to the Tribunal with the directions to decide the appeal on merits giving its reasons for accepting or rejecting the submissions.

8. In view the above, we are of the opinion that if the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action, as the statement of the aforesaid two witnesses was the only basis of issuing the Show Cause Notice."

3.3. In *Century Investment & International Trading Pvt. Ltd. v/s ITO 133 TTJ 803 (Del)*, it was held that assessment completed without opportunity to the assessee cross examining the creditors relied upon by the Revenue for making addition, was not justified. Although in that case the assessment was set-aside however, we derive support that such opportunity was a must.

3.4 Further the Hon'ble ITAT Jaipur has deleted similar additions in various cases following the case of *Andaman Timber (Supra)*.

3.5 In the case of *Sunita Dhadda*, the Hon'ble Rajasthan High Court has taken similar view, which has now been affirmed by Hon'ble Apex Court also in the case of *CIT vs. Sunita Dhadda* and SLP no. 9432/2018 of the revenue was

rejected vide order dated 28.03.2018. In this case the Hon'ble Rajasthan High Court has considered several decisions on this aspect.

4. Covered Issue: On identical facts, the Hon'ble ITAT Jodhpur, has quashed the assessment made in the case of Shri Deva Ram Suthar Vs. ITO in ITA No. 342/Jodh/2018 vide order dated 27.12.2018 following the decisions of Andaman Timber Industries vs CIT (supra), Ashish International (Mum HC) in ITA No. 4299/Mum/2009 dated 22.02.2011 and H.R. Mehta Vs. ACIT (Mum HC) in ITA No. 58/Mum/2001 dated 30.06.2016.

Hence the impugned addition deserves to be deleted in full.”

7. The Id. D/R supported the findings given in the orders of authorities below and heavily relied upon those findings.

8. We have heard the rival submissions and perused the material available on record. As regards the facts found from the seized material, it is evidently clear that the receipt of the cheque money is accepted by Shri Madan Mohan Gupta. Even the possession of the land is given by Shri Madan Mohan Gupta bearing dated 22nd June, 2008. The receipt of the money was also given by Shri Madan Mohan Gupta dated 22.06.2008 amounting to Rs. 2,32,500/-. Not only that, based on these incriminating documents Shri Madan Mohan Gupta accepted the transaction of “on money” and has offered the tax in his after search disclosure and return. Therefore, we do not find any reason of accepting the contention of the assessee that he has not paid any ‘on money’ for purchase this property. As regards the opportunity for cross examination, the Id. A/R did not demonstrate before us any request made so far before the lower authorities and even the Id. CIT (A) has categorically dealt this aspect in his order and we do not find any infirmity in his finding also. Therefore,

based on these set of facts that the assessee is expressly shown as purchaser of the plot based on the Receipt, possession letter and incriminating documents based on which even the seller has disclosed the 'on money' payment. There is no reason or any material based on which we accede to the request of the assessee that he has not paid any 'on money'. Even the assessee has not filed any other document specifically controverting these finding of fact of the lower authorities and, therefore, in the light of these facts and circumstances of the case, we do not find any merit in the grounds taken by the assessee and, therefore, the addition is sustained. The ground of the assessee is dismissed.

9. Ground No. 3 is consequential in nature.

10. Ground No. 4 is general.

**ITA NOS. 08/JP/2020, 27/JP/2019, 1123/JP/2018,
471/JP/2018, 22/JP/2021 & 1345/JP/2019 FOR
ASSESSMENT YEAR : 2009-10.**

11. The issues arise in all the above appeals are identical to issues raised in the appeal in ITA No. 1279/JP/2019 for the assessment year 2009-10 in the case of Shri Kailash Chandra Gehlot. The facts involved in all these cases are same and revolve around the search and seizure action conducted at the residential and office premises in of Shri Madan Mohan Gupta on 23.05.2013. We have decided the appeal in ITA No. 1279/JP/2019 wherein we have allowed the proceedings for reopening of the assessee's case. Since the facts involved in all these appeals are exactly similar, therefore, the decision arrived at in ITA No. 1279/JP/2019 are squarely applicable in

these cases also. Thus following the view taken in ITA No. 1279/JP/2019, we allow the reopening of the case of the present assesseees.

12. In the result, the appeals of the assesseees are dismissed.

Order pronounced in the open court on 6/03/2023.

Sd/-

(राठौड़ कमलेशजयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 6/03/2023.

Das/

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Kailash Chand Gehlot, Shri Suresh Kumar Chawla, Shri Bhagwati Pd. Sharma, Shri Arvind Kumar Sengwa, Shri Shrinivas Tripathi, Smt. Asha Sharma & Smt. Saroj Dhaka.
2. प्रत्यर्थी / The Respondent- The ITO Ward 5(3), Jaipur, ITO Ward 6(3), Jaipur, ITO Dausa, ITO Ward 2(1), Ajmer. ITO Ward 2(3), Ajmer. ITO Ward 2(3), Jaipur.
3. आयकरआयुक्त / CIT, Jaipur/Ajmer.
4. आयकरआयुक्त / CIT(A), Jaipur/ Ajmer.
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्डफाईल / Guard File {ITA No. 1279/JP/2019}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar

