

**THE INCOME TAX APPELLATE TRIBUNAL  
DELHIBENCH 'G', NEW DELHI**

**Before Sh. Saktijit Dey, Judicial Member**

**Dr. B. R. R. Kumar, Accountant Member**

**ITA No. 309/Del/2017 : Asstt. Year: 2007-08**

**ITA No. 310/Del/2017 : Asstt. Year: 2008-09**

**ITA No. 311/Del/2017 : Asstt. Year: 2009-10**

**ITA No. 312/Del/2017 : Asstt. Year: 2010-11**

**ITA No. 313/Del/2017 : Asstt. Year: 2011-12**

**ITA No. 314/Del/2017 : Asstt. Year: 2012-13**

ACIT, Central Circle-8, New Delhi	Vs.	Span India Pvt. Ltd., 220, Okhla Indl. Estate, Phase-III, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAACS0079A</b>		

**CO No. 11/Del/2022 : Asstt. Year: 2007-08**

**CO No. 12/Del/2022 : Asstt. Year: 2008-09**

**CO No. 13/Del/2022 : Asstt. Year: 2009-10**

**CO No. 14/Del/2022 : Asstt. Year: 2010-11**

**CO No. 15/Del/2022 : Asstt. Year: 2011-12**

**CO No. 16/Del/2022 : Asstt. Year: 2012-13**

Span India Pvt. Ltd., 220, Okhla Indl. Estate, Phase-III, New Delhi	Vs.	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAACS0079A</b>		

**Assessee by : Sh. M. P. Rastogi, Adv. &  
Sh. Deepak Malik, Adv.**

**Revenue by : Sh. H. K. Choudhary, CIT DR**

**ITA No. 788/Del/2017 : Asstt. Year: 2007-08**  
**ITA No. 789/Del/2017 : Asstt. Year: 2008-09**  
**ITA No. 790/Del/2017 : Asstt. Year: 2009-10**  
**ITA No. 791/Del/2017 : Asstt. Year: 2010-11**  
**ITA No. 792/Del/2017 : Asstt. Year: 2011-12**

ACIT, Central Circle-8, New Delhi	Vs.	M/s SEH Realtors Pvt. Ltd., F-88, Okhla Industrial Area, Phase-1, New Delhi-110020
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAGCS7537M</b>		

**CO No. 4/Del/2022 : Asstt. Year: 2007-08**  
**CO No. 5/Del/2022 : Asstt. Year: 2008-09**  
**CO No. 6/Del/2022 : Asstt. Year: 2009-10**  
**CO No. 7/Del/2022 : Asstt. Year: 2010-11**  
**CO No. 8/Del/2022 : Asstt. Year: 2011-12**

M/s SEH Realtors Pvt. Ltd., F-88, Okhla Industrial Area, Phase-1, New Delhi-110020	Vs.	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAGCS7537M</b>		

**Assessee by : Sh. M. P. Rastogi, Adv. &  
Sh. Deepak Malik, Adv.**  
**Revenue by : Sh. H. K. Choudhary, CIT DR**

**ITA No. 2686/Del/2017 : Asstt. Year: 2007-08**  
**ITA No. 2687/Del/2017 : Asstt. Year: 2008-09**  
**ITA No. 2688/Del/2017 : Asstt. Year: 2009-10**  
**ITA No. 2689/Del/2017 : Asstt. Year: 2010-11**  
**ITA No. 2690/Del/2017 : Asstt. Year: 2011-12**  
**ITA No. 2691/Del/2017 : Asstt. Year: 2012-13**  
**ITA No. 2692/Del/2017 : Asstt. Year: 2013-14**

ACIT, Central Circle-8, New Delhi	Vs.	M/s U. K. Paints India Pvt. Ltd., 19, DDA Commercial Complex, Kailash Colony Ext., Zamrudpur, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAACU0057C</b>		

**ITA No. 2376/Del/2017 : Asstt. Year: 2007-08**  
**ITA No. 2377/Del/2017 : Asstt. Year: 2008-09**  
**ITA No. 2378/Del/2017 : Asstt. Year: 2009-10**  
**ITA No. 2379/Del/2017 : Asstt. Year: 2010-11**  
**ITA No. 2380/Del/2017 : Asstt. Year: 2011-12**  
**ITA No. 2381/Del/2017 : Asstt. Year: 2012-13**  
**ITA No. 2382/Del/2017 : Asstt. Year: 2013-14**

M/s U. K. Paints India Pvt. Ltd., 19, DDA Commercial Complex, Kailash Colony Ext., Zamrudpur, New Delhi	Vs.	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AAACU0057C</b>		

**Assessee by : Sh. Pradeep Dinodia, CA &  
Sh. R. K. Kapoor, Adv.**  
**Revenue by : Sh. H. K. Choudhary, CIT DR**

**ITA No. 3583/Del/2017 : Asstt. Year: 2010-11**

ACIT, Central Circle-8, New Delhi	Vs.	M/s Scorpio Research & Consultants Pvt. Ltd., 19, DDA Commercial Complex, Kailash Colony Ext., New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABCS4720K</b>		

**CO No. 64/Del/2020 : Asstt. Year: 2010-11**

M/s Scorpio Research & Consultants Pvt. Ltd., 19, DDA Commercial Complex, Kailash Colony Ext., New Delhi	Vs.	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AABCS4720K</b>		

**Assessee by : Sh. Pradeep Dinodia, CA &  
Sh. R. K. Kapoor, Adv.**  
**Revenue by : Sh. H. K. Choudhary, CIT DR**

**ITA No. 3591/Del/2017 : Asstt. Year: 2006-07**  
**ITA No. 3592/Del/2017 : Asstt. Year: 2007-08**  
**ITA No. 3593/Del/2017 : Asstt. Year: 2008-09**  
**ITA No. 3594/Del/2017 : Asstt. Year: 2009-10**  
**ITA No. 3595/Del/2017 : Asstt. Year: 2010-11**  
**ITA No. 3596/Del/2017 : Asstt. Year: 2011-12**  
**ITA No. 3597/Del/2017 : Asstt. Year: 2012-13**  
**ITA No. 3598/Del/2017 : Asstt. Year: 2013-14**

ACIT, Central Circle-8, New Delhi	Vs.	M/s Vatika Ltd., 621-A, Devika Towers, 6, Nehru Place, New Delhi-110019
(APPELLANT)		(RESPONDENT)
<b>PAN No. AMHPB6460A</b>		

**ITA No. 3705/Del/2017 : Asstt. Year: 2006-07**  
**ITA No. 3706/Del/2017 : Asstt. Year: 2007-08**  
**ITA No. 3707/Del/2017 : Asstt. Year: 2008-09**  
**ITA No. 3708/Del/2017 : Asstt. Year: 2009-10**  
**ITA No. 3709/Del/2017 : Asstt. Year: 2010-11**  
**ITA No. 3710/Del/2017 : Asstt. Year: 2011-12**  
**ITA No. 3711/Del/2017 : Asstt. Year: 2012-13**  
**ITA No. 3712/Del/2017 : Asstt. Year: 2013-14**

M/s Vatika Ltd., 621-A, Devika Towers, 6, Nehru Place, New Delhi-110019	Vs.	ACIT, Central Circle-8, New Delhi
(APPELLANT)		(RESPONDENT)
<b>PAN No. AMHPB6460A</b>		

**Assessee by : Sh. C. S. Aggarwal, Sr. Adv.**  
**Revenue by : Sh. H. K. Choudhary, CIT DR**

<b>Date of Hearing: 20.01.2023</b>	<b>Date of Pronouncement: 20.04.2023</b>
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## **ORDER**

The present appeals and Cross Objections have been filed by assesseees and the Revenue against separate orders of Id. CIT(A)-24, New Delhi. The appeals deal with unaccounted interest payment by M/s Vatika Ltd. to M/s UK Paints, M/s Span India Pvt. Ltd., M/s SEH Realtors Pvt. Ltd. and M/s Scorpio Research & Consultants Pvt. Ltd. in case of Jaipur Project and NH8 Project. In addition, the other issues pertain to cash receipts, addition u/s 69A on account of cash received on booking of plots by M/s Vatika Ltd.

2. A search & survey operation was conducted by Investigation Wing in the case of Sh. K.S. Dhingra, Sh. G.S. Dhingra & others on 16.09.2011. On the basis of the seized documents, the revenue alleged that the assessee, M/s Vatika Ltd. has entered into a loan agreement with group entities of Dhingra group, Shahi Exports group and Span India group which has been camouflaged as sale-purchase of property transaction. A search and seizure u/s 132 and survey action u/s 133A were carried out on the premises of Vatika Group on 16.01.2013. During the search and survey operation, various incriminating documents pertaining to Vatika Group were alleged to have been found and seized.

3. The case of the assessee company was re-opened u/s 147/148 of the Income Tax Act, 1961 for the assessment year 2006-07 after recording of the reasons for reopening of assessment. Notice u/s 148 of the Income Tax Act, 1961 was issued to the assessee on 28.03.2013 after getting the prior

approval of Commissioner of Income Tax, Central-I, New Delhi vide office letter F. No. CIT(C)-1/2012-13/2316 dated 28.03.2013. In response to the notice u/s 148 of the Income Tax Act, 1961, the assessee company had filed a copy of its return of income for the assessment year 2006-07 on 08.04.2013. The assessee company had declared its total income of Rs.34,15,23,969/- for the assessment year 2006-07. In the present case, assessment was completed u/s 143(3) of the Income Tax Act, 1961 on 31.12.2008. The total income of the assessee company was assessed at Rs.34,70,03,060/- against the returned total income of Rs.34,15,23,969/-.

4. The documents pertain to loan transactions between the assessee and four lenders group and related to two projects namely, NH8 Deal and Jaipur Project.

5. During the F.Y. 2005-06 the four lenders group viz. Shahi Exports group, Span India group, Dhingra group, Harman Singh Dhingra group together with Smt. Heminder Kumari entered into a finance deal with Vatika Ltd. Each member of the consortium vide their companies entered into various separate Loan agreements with Vatika group in 2005/2006 in the following manner:

<b>Lender</b>	<b>Borrower</b>	<b>Date of execution</b>	<b>Pages No.</b>	<b>Annexure No.</b>	<b>Seized/impounded from premises</b>
U.K. Paints India Pvt. Ltd.	Vatika Landbase Pvt. Ltd.	13.09.2005	(1) 48 to 142 (2) 11 to 5	(1) A43 (2)A4	(1) Vatika Triangle (2) 19, DDA Commercial Complex, Zamrudpur, Kailash Colony, New Delhi on 16.09.2011
Sohan Singh Dhingra (HUF)	Vatika Landbase Pvt. Ltd.	31.03.2006	125 to 116	A41	Vatika Triangle, sushant Lok 1, M.G. Road, Gurgaon

U.K. Paints India Pvt. Ltd.	Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd.	31.03.2006	(1)107 to 99 (2)158 to 149 (3)48 to 10	(1) A41 (2) A43 (3) A4	(1 & 2) Vatika Triangle, sushant Lok 1, M.G. Road, Gurgaon. (3) 19 DDA Commercial Complex, Zamrudpur, Kailash Colony, New Delhi
Dhingra Group (Heminder Kumari & Herman Singh)	Vatika Landbase Pvt. Ltd., Wonder & Developers Pvt. Ltd.	31.03.2006	55 to 46	A41	Vatika Triangle, sushant Lok 1, M.G. Road, Gurgaon
Span India Pvt. Ltd.	Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd.	31.03.2006	35 to 30	A41	Vatika Triangle, sushant Lok 1, M.G. Road, Gurgaon

6. The salient feature of all the agreements is as under:

- The guarantor guarantees the repayment of the loan amount by the borrower under the terms of loan agreement.
- In the event of default of the borrower the guarantor guarantees the payment of loan and interest.
- The guarantor has furnished collateral security of immovable property towards guarantee.
- The lender and Sh. Anil Bhalla (promoter of the borrower group) then entered into personal guarantee agreement to secure the right of the lender and the obligations of the borrower assumed under the above mentioned loan agreement in the following manner.
- The guarantee is stipulated to be continuing guarantee which is enforceable even in case of death of the guarantor.

- The lender and the borrower then entered into an amendatory loan cum purchase agreement with the following terms.
- The period of loan is extended upto 31.12.2006 as mentioned above.
- The rate of interest to be charged is fixed @24% p.a. for the entire period of the loan, o New PDCs for loan and interest amounts have been given by the borrowers.
- A unilateral right has been given to the lender to opt for the purchase of residential plots.
- The above right to land in lieu of principal and accrued interest amounts has to be exercised in writing by the lender.
- In case the lender opts for land in lieu of principal and accrued interest amounts, the agreement will be deemed to be an agreement for sale and purchase of residential plots. In such a scenario the loan amount along with accrued interest thereon has to be adjusted towards the sale consideration.
- In case the borrower fails to obtain necessary permissions from the state authorities or the lender does not opt for purchase of plots, the amendatory loan cum purchase agreement will automatically extend upto 30.06.2007.

- As per clause 12 the borrower is under an obligation to buy-back the plots opted by the lender to purchase, at the sole option of the lender. The repurchase price has not been fixed and is to be paid by the borrower at the prevailing market rate.
- As per clause 13, the lender need not pay transfer charge on first transfer of the plots opted to be purchase by the lender.

7. During the Income Tax proceedings, the AO relied upon the statement of Sh. Navin Choudhary, CFO recorded on 16.01.2013 who confirmed that since the buyers are putting money into the project they have advantageous position of buy back clause mentioned in the agreement and the buy-back price was not determined as charging of interest @ 24% clause was available in the agreement. Based on this statement, the AO held that the prime intention of the lender in the above mentioned deal was to get the loan alongwith committed amount of interest, instead of plots.

8. Further, the Lender and the borrower group concerns entered into guarantee agreements dated 31.03.2006 to secure the rights of the lender and the obligations of the borrower assumed under the above mentioned amendatory loan cum purchase agreement. The salient features of the guarantee agreements are as under:

- *The guarantor guarantees the due performance of various obligations of the borrower (Vatika Ltd.) to the lender under*

*the loan agreement and the amendatory loan cum purchase agreement.*

- *In the event of default of the borrower the guarantor guarantees the payment of loan and interest.*
- *The guarantor has furnished collateral security of immovable property towards guarantee.*

9. Later, another agreement has been made on 31.12.2006 extending the loan-cum-purchase agreement. As per this agreement, the date of repayment of loan along with interest is, extended upto 30.06.2007 and post dated cheques for principal as well as interest amount have been replaced with fresh post dated cheques by the borrower. As per the seized material, all the lenders have extended their repayment period and agreements to that extent have been entered. Further, the date of repayment of loan along with interest is extended upto 30.06.2007 and then upto 31.12.2007. Similarly, the right of the lender to re-sell and the obligation of the borrower to re-purchase the above land which may be acquired by the lender is also extended upto 31.12.2008.

10. From the above events and based on the various agreements seized, the revenue concluded that the NH8 deal was closed in the month of April 2011 by means of re-purchase of plots 'sold' by Vatika group to the consortium and the assessee recorded the purchase of 39206 plots in the books of Vatika Ltd. in the respective years including F.Y. 2010-11. The revenue alleged that this deal has actually nothing to do with the allotment of plots, the real motive of the deal is the loan

and interest on it, which has been paid and received in a manner camouflaged as sale- purchase of property transaction.

11. The revenue has also relied on the statement of Sh. Navin Choudhary wherein he has admitted that the Jaipur deal was actually a loan transaction which was shown as sale-purchase of property transaction due to the fact that the lender got allotment of plots and NH8 deal, even the plots have not been allotted as per the agreement and hence held that this is a coloured transaction to evade payment of tax at higher rate. The revenue based on a letter dated 12.04.2010 from Vatika Ltd. addressed to Sohan Singh Dhingra (HUF), wherein it has been informed that Sohan Singh Dhingra HUF is being allotted 3410 sq. yards in the residential colony 'Vatika India Next' Gurgaon Haryana held that since in this letter reference has also been made to the original Loan cum Purchase agreement executed on 13.09.2005 between the parties, agreements for sale between the lenders was nothing but the repayment of loan along with interest being done by Vatika Ltd. in the guise of 'buy-back'. The revenue held that this 'buy-back' has been done by Vatika Ltd. group was just to conceal the real nature of the transaction that is "repayment of loan along with interest".

12. With regard to NH8 deal, the revenue relied on the E-mail dated 19.07.2008 from Sh. Anupam Nagalia to Sh. Ravi Chand which show that the NH8 deal between Vatika group and the consortium is regarded as loan/ICD by the Vatika group. The details of the loans, guarantors and the mortgage is as under:

S. No.	Name of the Party	Amount (Rs. Crs)	Guarantee	Land mortgage(Acres)
1	U K Paints	5.50	Buzz Estates	5.74
2	S E H Realtors	10.00	Wonder Developers	11.20
3	Span India	5.50	Buzz Estate	6.04
4	Sohan Dhingra	2.00	Wonder Developers	2.86
		23.00		25.84

13. The details of sale consideration by the lenders is as under:

'Intending Seller	Total Sale consideration (Amount)	Agreed date for payment of the entire sales consideration	Rate per sq. Yards (Amount)	Area (sq. yards)	Area where located
Span India Pvt. Ltd.	15,00,00,000/-	31.05.2011	16000/-	9375	Vatika India Next, Gurgaon
U.K. Paints India Pvt. Ltd	15,00,00,000/-	31.05.2011	16000/-	9375	Vatika India Next, Gurgaon
Sohan Singh Dhingra(HUF)	5,45,60,000/-	31.05.2011	16000/-	3410	Vatika India Next, Gurgaon
SEH Realtors Pvt. Ltd.	27,27,20,000/-	31.05.2011	16000/-	17045	Vatika India Next, Gurgaon

14. Following fund flow shows the flow of funds to the lenders from the borrower Vatika Ltd. through other concerns of the Vatika group:

DATE RECEIPT	AMOUNT	RECEIVING COMPANY	PAYING COMPANY LINCOLN	ULTIMATE SOURCE		
				DATE	AMOUNT	PAYING COMPANY
04.02.2011	9,09,12,000	SEH	LINCOLN	03.02.2011	9,09,12,000	Vatika Ltd.
07.02.2011	9,09,12,000	SEH	LINCOLN	07.02.2011	9,09,12,000	Vatika Ltd.
09.02.2011	9,09,12,000	SEH	LINCOLN	09.02.2011	9,09,12,000	Vatika Ltd.
14.02.2011	7,50,00,000	UKPI	LINCOLN	14.02.2011	7,50,00,000	Vatika Ltd.
21.02.2011	7,25,00,000	UKPI	LINCOLN	21.02.2011	7,25,00,000	Vatika Ltd.
24.02.2011	7,50,00,000	SPAN INDIA	LINCOLN	24.02.2011	10,50,00,000	Vatika Ltd.
24.02.2011	3,00,00,000	UKPI	LINCOLN			
08.03.2011	2,40,60,000	SOHAN SINGH	LINCOLN	08.03.2011	9,66,00,000	Vatika Ltd.
28.04.2011	25,00,000	SOHAN SINGH	LINCOLN	01.04.2011	15,00,000	Vatika Ltd.
28.04.2011	5,00,000	SOHAN SINGH	LINCOLN			
31.05.2011	1,00,00,000	UKPI	LINCOLN	31.05.2011	1,10,00,000	Vatika Ltd.
02.06.2011	1,50,00,000	SOHAN SINGH	LINCOLN	02.06.2011	1,50,00,000	Vatika Ltd.
06.06.2011	1,00,00,000	SPAN INDIA	LINCOLN	06.06.2011	1,00,00,000	

08.06.2011	1,00,00,000	SPAN INDIA	LINCOLN	08.06.2011	1,00,00,000	Vatika Ltd.
10.06.2011	1,00,00,000	SPAN INDIA	LINCOLN	10.06.2011	1,00,00,000	
14.06.2011	1,00,00,000	SPAN INDIA	LINCOLN	14.06.2011	1,00,00,000	
15.06.2011	1,00,00,000	SPAN INDIA	LINCOLN	15.06.2011	1,00,00,000	
<b>Total</b>	<b>62,72,96,000</b>				<b>69,93,36,000</b>	

15. From the above fund flow, revenue inferred that the funds deficit Vatika Ltd. provided requisite funds to M/s Lincoln Developers Pvt. Ltd. to 'purchase plots' form the Consortium. It was held that this establishes that this transaction is a colourable device adopted by the parties to camouflage the nature of the transaction as well as suppress the actual amounts paid/ received by citing market situation for reduced price.

16. To conclude, the revenue held that the interest expenditure incurred by the assessee in NH8 deal of Rs.3.42 Cr. be treated as unaccounted expenditure. The calculation given by the revenue is as under:

Principal amounts lent to Vatika Ltd. and computation of unaccounted interest paid:

S.No.	Lender	Date of loan	Total amount lent to Vatika Ltd. on 13.09.2005 @24% p.a interest	Total amount payable as on 31.3.2006 @ 24% p.a. interest compounded quarterly	Amount of unaccounted interest expenditure by Vatika group and unaccounted interest income of the lender for F.Y. 2005-06 relevant to A. Y. 2006-07
1.	U.K. Paints (India) Pvt. Ltd.	13.09.2005	55000000/-	62529417/-	7529417/-
2.	SEH Realtors Pvt. Ltd.	13.09.2005	100000000/-	113689850/-	13689850/-
3.	Span India Pvt. Ltd.	13.09.2005	55000000/-	62529417/-	7529417/-
4.	Sohan Singh Dhingra (HUF)	13.09.2005	20000000/-	22737970/-	2737970/-
5.	Heminder Kumari	13.09.2005	20000000/-	22737970/-	2737970/-
	<b>Total</b>		<b>250000000/-</b>		<b>34224625/-</b>

**Jaipur Deal**

17. During the F.Y. 2005-06 the four lenders group viz. Shahi Exports group, Span India group, Dhingra group, Harman Singh Dhingra group together entered into another finance deal with Vatika Ltd.

18. In this deal Rs.50 crores was advanced by the lender parties to Vatika Landbase Pvt. Ltd. in the F.Y. 2005-06 in the following manner:

S. No.	Name off the Company/Group	Amount
1	U.K. Paints Pvt. Ltd. (Dhingra group)	13,00,00,000/-
2	SEH Realtors Pvt. Ltd. (Shahi Exports group)	20,00,00,000/-
3	Advantage Fashions Pvt. Ltd. (Span India group)	15,00,00,000/-
4	Uttam Enterprises Pvt. Ltd. (Harman Singh Dhingra)	2,00,00,000/-
	<b>TOTAL</b>	<b>50,00,00,000</b>

19. The above parties executed 'agreements for sale' in which specific right was granted to the 'buyer(s)' that the 'plots' under sale may be re-sold by them to the 'seller' at a predetermined sales consideration. The agreements have been entered on 19.05.2005, 22.06.2005 and 11.06.2005

20. The above 'buyers paid following further amounts to Vatika Ltd. under the deal which is as under:

SI No	Name of the Company/Group	Date of Payment	Amount
1	U.K. Paints Pvt. Ltd. (Dhingra group)	25.04.2006	58,86,100/-
2	SEH Realtors Pvt. Ltd. (Shahi Exports group)	25.04.2006	85,82,900/-
3	Advantage Fashions Pvt. Ltd. (Span India group)	25.04.2006	37,72,300/-
4	Uttam Enterprises Pvt. Ltd. (Harman Singh Dhingra)	25.04.2006	4,35,700/-
	<b>TOTAL</b>		<b>1,86,77,000/-</b>

21. Salient features of the agreement is as under:

<b>'Buyer'</b>	<b>'Sale consideration' (Amount )</b>	<b>Sale price per sq. yards (Amount)</b>	<b>Date of re-sale to Vatika group</b>	<b>Re-sale price agreed per sq. yards ( )</b>
SEH Realtors Pvt. Ltd.	50,00,00,000/- (out of this 1.01 crores has been paid by the buyer)	3400/-	Within two years period from the date of this agreement/MoU	5100/-per sq. yards
U.K. Paints India Pvt. Ltd.	15,00,00,000/ -	3400/-	Within two years period from the date of this agreement/ MoU	5100/-per sq. yards
Adbantage Fashions Pvt. Ltd.	13,00,00,000/-	3400/-	Within two years period from the date of this agreement/ MoU	5100/-per sq. yards

- Sanskar Buildtech Pvt. Ltd. , Nakshatra Buildcon Pvt. Ltd. are the confirming parties
- Land under the so-called 'sale' was not identified and measured. (Refer paras under the preamble part "Whereas" and clause d & e of the agreement).
- Residential Plots agreed to be sold and purchased have not been developed as on date and even the requisite permission to develop and sell the plots have not been taken by the seller or the confirming parties.
- The price for the land was taken to be @ 3400 per sq. yards.
- The above rate of 3400 per sq. yard is stated to be escalation free and inclusive of external development charges, internal development charges and. the license fees.
- An option as given to the 'buyer' (lender group concern) to re-sell the 'plots/land to the 'seller' (Vatika group concern) at a predetermined price.
- The lender could sue the borrower for specific performance for its obligation to buy-back.
- The date for 're-sell' was kept within two years of 'sale'

- The 're-purchase' price was predetermined @ 5100/- per sq. yards.
- Corporate guarantees in the form of Collateral securities were given by the concerns of Vatika group to the concerns of Lender groups especially for the obligation of "buy-back".
- In the event the price of residential plots increases beyond 150% of the rate of Rs. 3400/- per sq. Yards. i.e. Rs. 5100/- parties hereby agree and confirm that purchase shall have all the rights to sell alienate and dispose off the residential plots as per its own free will.

22. The revenue held that the conditions of assured returns secured with personal guarantee, corporate guarantees, PDCs signify that the agreements are meant for earning of interest only. Further, the sale price of Rs.3400 and resale price Rs.5100/- within a two years period is only a device to camouflage of real nature of the loan transaction.

23. The revenue extracted list of ICDs given by U.K. Paints India Pvt. Ltd. which are as under:

<b>S. No.</b>	<b>Name of party</b>	<b>Amount (Rs.)</b>	<b>Period</b>		<b>Agmt. copy Available</b>	<b>Remarks</b>
1	Mera Baba Realty	2.33 Cr.	27.04.2009	26.10.2009	Yes	No Renewal as advised by Naveen Sir (otherwise Mr. Parmeshwaran to follow up)
2	Aerotel Communication	15 Lacs	01.01.2010	30.06.2010	Yes	Mr. K. S. Nair to provide the letter from the party

3	ORRIS Infrastructure 20.33 Cr.	20.33 Cr	01.12.2008	30.11.2009	Yes	No renewal as advised by Naveen Sir-----
4	Vatika Ltd. (Residential Plot (NH-8) 9375 sq. Yards)	Amendatory Loan cum Purchase Agreement valid upto 30 <sup>th</sup> June 2010			Yes	Decision for extn. To be taken
5	Gurpal singh	1,00,00,000.00	01.07.2010	30.09.2010	Yes	Sent for signature through Mr. K. S. Nair
6	Vatika Ltd. (Jaipur)	43,00,00,000.00		23.06.2010	Yes	Mr. Parmeshwaran handling (Agmt. draft sent to party by Mr. B. Parmeshwaran)
7	ORRIS Infrastructure	4,00,00,000.00	29.05.2010	31.07.2010	yes	Due for renewal

24. The revenue held that from the above document it can be seen that amount of Rs.43 Crores due from Vatika Ltd. as on 23.06.2010 has been categorized as ICD by the Dhingra group. It was further held that this Rs.43 Crores due from Vatika is in respect to Jaipur deal which clearly shows that this is accrued amount from Rs.13 Crores advanced by U.K. Paints India Pvt. Ltd. to Vatika Landbase Pvt. Ltd. The revenue held that this corroborates the finding that the amount advanced by Dhingra group to Vatika group were loan and that the plots agreed to be sold under the ostensible agreement for sale, were mere security for this loan. The revenue also relied on the statement of Sh. Navin Choudhary, CFO of the Dhingra Group that the amount advanced to M/s Vatika Ltd. is a loan.

25. Based on the seized material, the loan agreements, Jaipur plots buy-back deal, the revenue held that there has been

suppression of amounts and camouflaging of the transactions. For the sake of ready reference, the relevant part of the Assessment Order is reproduced as under:

*"Another document has been seized from Vatika Triangle during the course of search on 16.01.2013. This document page No. 79 to Annexure A12 (seized from Vatika Triangle, Sushant Lok-I, M.G. Road, Gurgaon) Copy of this document is placed as page 457 Annexure-II Part C. From this document it can be seen that this is a note dated 28.10.2010 prepared by Sh. Manmohan Mehra/ Sh. Anupam Nag alia for the perusal of Sh. Gautam Bhalla. The heading of this document 'Jaipur plots buy back deal' clearly shows that the note is regarding the buyback deal for Jaipur plots between the lender groups concerns and Vatika group. Further as per the note the agreement for sale entered by the lender groups with ESPO Developers Pvt. Ltd. has been entered into to perform the obligation of Vatika Ltd. to 'buy back' the plots at Vatika infotech City Jaipur. Further, the agreements and the letter are yet to be signed by Sh. Gautam Bhalla as on date of the note. It further states that the agreement and letter have finalized after several discussions with 'them' (apparently referring to the persons from lenders 'side).*

**From this note it is clear that:**

**Suppression of amounts:**

*The agreements for the buyback are pending to be signed by the parties as on date i.e. 28.10.2010. This shows the deal was not yet closed as on 28.10.2010. Therefore the email dated 24.05.2010 containing the excel sheet showing the liability of Vatika group to pay more than 176 crores to the lender groups, reflects the subsisting understanding between the parties which has been suppressed in the agreements made by them.*

### **Camouflaging of transaction**

*The agreements and letter have been finalized after several discussions with the lender groups. This corroborates the earlier email dated 13.10.2010 of Sh. Bala Parmeshwaran to Sh. Manmohan Mehra. In this email as discussion at pages 48&49 ante Sh. Bala Parmeshwaran had suggested that the agreements between the lender and ESPO should be drafted in a manner showing the slow down and the market situation for reduced prices.*

*These documentary and oral clearly establish that the lenders alongwith Vatika, the borrower have deliberately shown less consideration as payable and the agreements have been designed by them in a manner which conceals the true nature of the transaction.*

*Regarding the above Jaipur Deal statement of Sh. Harish Ahuja (Shahi Exports group) was also recorded on oath on 16.01.2013. relevant excerpt of his statement is reproduced below: -*

*"Q. 2 Did you (or your group) enter into any deal with M/s Vatika Group regarding land at Vatika Infotech City Jaipur? If yes, please produce a copy of all such agreements/addendums to these agreements and also any communications exchanged between these groups regarding these transactions.*

*Ans. Yes, we have entered in agreements for land at M/s Vatika Infotech City, Jaipur. We will provide the copies of the same in two days. Similar agreements were entered with M/s Span group and M/s Dhingra group with Vatika group.*

*Q.3 Please describe the Jaipur deal entered into between Shahi Group & Vatika group.*

*Ans. The agreement to purchase land was entered into May 2005, valuing Rs. 20 Crores. On April 2006 we paid Rs.85 lacs (approx.)(for PLC charges. On April 2010, we sold the same land to M/s Vatika on May 2010 for a total consideration of Rs.29,99,82,000/- (Rs. Twenty nine Crores, ninety nine lacs & Eighty two thousand).*

*Q.7 Please explain (point-wise) what are the similarities between agreements entered into by M/s Shahi Exports group, Span India group and Dhingra group as mentioned by you in response to question no. 2*

*Ans. The agreement entered with Vatika for similar land, similar location and same kind should be similar purchase price and sale price.*

*Q. 33 As per the 1st agreement to sell between M/s S E H Realtors Pvt. Ltd. and Vatika Realtors Pvt. Ltd. and Vatika Landbase Pvt. Ltd. entered in 2005 regarding sale and buy I back of land at Vatika Infotech city Jaipur, the seller was under an obligation to buy back land from the buyer. Further, agreement in 2007 and 2009 extended the date of repurchase of land by the seller. Explain why "Buy-back" was such an essential aspect/part of this Jaipur deal between the parties.*

*Ans. The developer generally assures a minimum return, when they may not have many buyer of their project. Since we were not sure about the Jaipur market, we agreed to invest with the "Buy-back" clause."*

*From the above statement of Sh. Harish Ahuja it is clear that:*

*They enter into similar deals together with Span India group and Dhingra group.*

*That the developer (Vatika Ltd.) assured a 'minimum return' which is tantamount to interest on the amounts advanced by them.*

*Further there is other evidence in the matter, which establish beyond any doubt that the above deal was actually a loan deal which was camouflaged as sale-purchase of property transaction by the parties concerned:*

*A document extracted from Annexure A-66 (hard disc) seized from Vatika Triangle, Sushant Lok-I, M.G. Road, Gurgaon during the course of search on 16.012013. Navigation path for extraction is H Drive:\User Left ADC & System Backup\legal\Vivek Mishra\Vivek\Indra Madam folder\Shahi Group.xls.*

*It can be seen from the above document that the 'Shahi Group' (Shahi Exports group, Span India group, Dhingra group and Harman Singh Dhingra group) have been referred to as "Lender\Purchaser" which shows that the essential nature of the transaction 'Jaipur' deal's loan transaction. Further corroborating the fact is the column of 'Rate of interest (if refundable)' made above, which snow that 25% a interest is payable by Vatika group to these groups on the advances made by them. This goes on the prove that the real understanding between the parties is the giving and taking of loan and its repayment along with interest @25%p.a.*

*"Another fact which is known from the above document is that the original agreement signed between Vatika Landbase Ltd. and S E H Realtors Pvt. Ltd. was for 50 crores but it was then modified for 20 crores.*

*Then there is another document which corroborates the above evidence and also establish that his deal was actually loan taken by Vatika group from the Consortium at a particular rate of interest. This document has been extracted from Annexure A-56 (hard disc) seized during the course of search at Vatika Triangle, Sushant Lok-I, M G Road, Gurgaon on 16.01.2013. The navigation path for its extraction is Drive\Vatika Landbase\Audit 2007-08\Scanned ICDs Agreement 01.04.07 to 31.03.08.xls.*

*From the heading of the above excel sheet which reads "Summary of inter Corporate Deposits for Jaipur Project" it is amply clear that the table on the above document is regarding loan raised by Vatika Ltd. for the Jaipur Project. When the table on this document is perused it is clear that this document is regarding the loan taken by Vatika Ltd. totaling 50 crores from the lender parties for its Jaipur Project during the F.Y. 200506@25% pa interest. Here it is noteworthy that:*

*All the details in columns "Name of the Lender" "Date of execution of documents", "Amount", "Details of collateral security provided (if any)", "Date of expiry of agreements", "collateral security" match exactly with the terms of the Jaipur deal as discussed above. This clearly shows that this document is above the Jaipur deal between Vatika and the lender parties.*

*The heading of this table mentioning the advance amounts totaling to 50 Crores from the lenders is stated to be inter Corporate Deposit (which means loans raised by a company from another company).*

*The companies of the Consortium are referred to as "Lender" (Column 2 of the above table.*

*Rate of interest has also been mentioned, which corroborates that the amounts advanced by these companies to Vatika Ltd. is loan at a particular rate of interest.*

*Rate of interest has been mentioned at 25% p.a without the condition 'if refundable' as mentioned in the document table discussed above at page no 127.*

*Last but not the least that the above transaction was camouflaged by using colorable devices is again proved from the fund flow of ESPO Developers Pvt. Ltd. Paper work was done by the parties. To show that due to 'cash crunch' or 'non-availability of funds' with Vatika Ltd. the transaction was done at a reduce price and that through another concern ESPO Developers Pvt. Ltd. However careful perusal of the fund flow of ESPO Developers Pvt. Ltd. shows that the funds for this 'buy back' were actually given by Vatika Ltd. only. The so called 'purchase' was shown through ESPO Developers Pvt. Ltd. just to layer the transaction and better camouflage the transaction.*

*From the ledger it can be seen that an amount of Rs.11,27,86,417/- was transferred by ESPO to M/s S E H Realtors Pvt. Ltd. (which is payment for 'repurchase' of Jaipur 'plots') on 19.05.2010. On the same day an amount of Rs.11,28,00,000/- was received in its books from M/s Famous Dwellers Pvt. Ltd. Now perusal of books of Famous Dwellers Pvt. Ltd. reveals that this amount of Rs.11,28,00,000/- was received in its books from M/s Vatika Ltd. on the same day.*

*It can be seen that M/s Vatika Ltd. is the actual source of 'buyback' done through ESPO Developers Pvt. Ltd. This really corroborates the finding that the above paper work is a mere sham and has been done to camouflage the transaction and suppress the real amounts involved in the deal.*

*Following fund flow shows the flow of funds to the lenders from the borrower Vatika Ltd. through other concern of the Vatika group:*

<i>Date of Receipt</i>	<i>Amount (Rs.)</i>	<i>Receiving Company</i>	<i>Paying Company</i>	<i>Immediate Source Date</i>	<i>Ultimate Source AMOUNT</i>	<i>PAYING COMPANY</i>	<i>DATE</i>	<i>AMOUNT (RS.)</i>	<i>PAYING COMPANY</i>
19.05.2010	11,27,86,417	SEH	ESPO	19.05.2010	11,28,00,000	FAMOUS DWELLERS	19.05.2010	11,28,00,000	VATIKA LTD.
11.06.2010	8,31,53,221	ADVANTAGE	VINCENT				11.06.2010	8,32,00,000	VATIKA LTD.
17.06.2010	6,42,81,361	SEH	ESPO	17.06.2010	6,40,00,000	ASPIRE	17.06.2010	6,40,00,000	VATIKA LTD.
23.06.2010	7,34,77,554	UKPI	ESPO	23.06.2010	7,35,00,000	ASPIRE	23.06.2010	7,35,00,000	VATIKA LTD.
24.06.2010	1,10,50,101	UTTAM	ESPO	23.06.2010	1,10,00,000	ASPIRE	23.06.2010	1,10,00,000	VATIKA LTD.
10.07.2010	9,13,54,635	ADVANTAGE	ESPO	08.07.2010	9,15,00,000	ASPIRE	8.07.2010	3,15,00,000	VATIKA LTD.
19.07.2010	12,16,85,729	SEH	ESPO	17.07.2010	12,20,00,000	ASPIRE	08.07.2010	6,00,00,000	VATIKA LTD.
23.07.2010	1,21,39,974	UTTAM	ESPO	23.07.2010	9,00,00,000	ASPIRE	16.07.2010	12,20,00,000	VATIKA LTD.
23.07.2010	8,07,24,655	UKPI	ESPO				23.07.2010	9,00,00,000	VATIKA LTD.
08.09.2010	12,28,493	SEH	ESPO	08.09.2010	9,97,00,000	ASPIRE			
08.09.2010	5,05,04,144	ADVANTAGE	ESPO				07.09.2010	9,97,00,000	VATIKA LTD.
08.09.2010	4,12,29,791	UKPI	ESPO						
08.09.2010	66,95,925	UTTAM	ESPO						
<b>TOTAL</b>	<b>75,03,12,000</b>				<b>66,45,00,000</b>			<b>74,77,00,000</b>	

**NOTE:**

*SEH -SEH Realtors Pvt. Ltd.*

*ADVANTAGE - Advantage Fashions Pvt. Ltd.*

*UKPI- U.K. Paints India Pvt. Ltd.*

*UTTAM-Uttam Enterprises Pvt. Ltd.*

*ESPO- ESPO Developers Pvt. Ltd.*

*VINCENT-Vincent Builders and Developers Pvt. Ltd.*

*FAMOUS-Famous Dwellers Pvt. Ltd.*

*ASPIRE-Aspire Promoters Pvt. Ltd.*

*VATIKA- Vatika Ltd.*

*It is abundantly clear from the above fund flow that out of Rs.75,03,12,000/- paid by ESPO and Vincent to the Consortium more than 99% of the fund was provided/sourced from Vatika Ltd. only. It is therefore amply clear that the so called cash/fund deficit Vatika Ltd only provided requisite funds to M/s ESPO Developers Pvt. Ltd. and M/s Vincent Builders and Developers Pvt. Ltd. to purchase*

*the plots from the Consortium. It is thus established that this transactions is thus a colourable device adopted by the parties to camouflage the nature of the transaction as well as suppress the actual amounts paid/ received by citing market situation for reduced price.*

*During the course of assessment proceedings, the agreements entered into by the lender groups with M/s Vatika Ltd were called for. The perusal of the agreements shows that all the parties of the lender group - M/s SEH Realtors Pvt. Ltd., M/s Advantage Fashions Pvt. Ltd., M/s UK Paints Pvt. Ltd. and M/s Uttam Enterprises Pvt. Ltd have entered into identical agreements with Ms Vatika Ltd. It is pertinent to mention that neither any plot buyers agreement has been entered into by M/s SEH Realtors Pvt. Ltd., M/s Advantage Fashions Pvt. Ltd., M/s UK Paints Pvt. Ltd., M/s Uttam Enterprises Pvt. Ltd with M/s Vatika Ltd nor the possession of the property has been handed over before the plots were sold to M/s Vatika Group. Further, the perusal of financial statements of M/s SEH Realtors Pvt. Ltd., M/s Advantage Fashions Pvt. Ltd., M/s UK Paints Pvt. Ltd. reveals that the advance has been shown as advance against purchase of property. This shows that no property has been acquired so the question of capital gains on the sale of property does not arise.*

*From the above discussion, it is clear that the transaction was actually a financing/loan arrangement which was camouflaged as sale/purchase transaction to pay tax at lower rates.*

**CONCLUSION:**

*From the documentary and oral evidence discussed above it is clearly established and corroborated that:*

*Shahi Exports group, Dhingra group, Span India group and Harman Singh Dhingra Group advanced the following loan amounts to M/s Vatika Landbase Pvt. Ltd. (Vatika Ltd.) in the F.Y.2005-06.*

<b>S. No.</b>	<b>Name of the company</b>	<b>Amount (Rs.)</b>
1	U. K. Paints India Pvt. Ltd.	13,00,00,000
2	S E H Realtors Pvt. Ltd.	20,00,00,000
3	Advantage Fashions Pvt.Ltd.	15,00,00,000
4	Uttam Enterprises Pvt. Ltd.	2,00,00,000
	<b>TOTAL</b>	<b>50,00,00,000</b>

*The above 'buyers paid following further amounts to Vatika Ltd. under the deal:*

<b>S. No.</b>	<b>Name of the company</b>	<b>Date of payment</b>	<b>Amount (Rs.)</b>
1	U. K. Paints India Pvt. Ltd.	25.04.2006	58,86,100
2	S E H Realtors Pvt. Ltd.	25.04.2006	85,82,900
3	Advantage Fashions Pvt. Ltd.	25.04.2006	37,72,300
4	Uttam Enterprises Pvt. Ltd.	25.04.2006	4,35,700
	<b>TOTAL</b>		<b>1,86,77, 000/-</b>

*The above transaction was however camouflaged as sale-purchase of property transaction wherein the lenders show the loans given by them as 'advance to purchase of property' and the borrower shown the transactions as sale of property.*

*The above said loan along with interest was repaid in the F.Y.2010-11 when the lenders and borrower declared to have received / paid the 're-purchase' consideration. The following was the repayment (considering the installment payment plan) as evidenced above:*

<b>S. No.</b>	<b>Name of the company</b>	<b>Amount (Rs.)</b>
1	S E H Realtors Pvt. Ltd.	71,08,32,530.59
2	Advantage Fashions Pvt. Ltd.	52,39,60,975.46
3	U. K. Paints India Pvt. Ltd.	46,29,93,139.71
4	Uttam Enterprises Pvt. Ltd.	6,96,28,351.48
	<b>TOTAL</b>	<b>1,76,74,14,997.24</b>

Therefore the following interest income accrued to the lenders:

S. No.	Lender	Loan Advanced (Rs.)	Total Amount received back (in Rs.)	Interest income (Rs.)
1	SEH Realtors Pvt. Ltd.	20,85,82,900	71,08,32,530.59	50,22,49,630.59
2	Advantage Fashions Pvt. Ltd.	15,37,72,300	52,39,60,975.46	37,01,88,675.46
3	U. K. Paints India Pvt. Ltd.	13,58,86,100	46,29,93,139.71	32,71,07,039.71
4	Uttam Enterprises Pvt. Ltd.	2,04,35,700	6,96,28,351.48	4,91,92,651.48
		<b>51,86,77,000</b>	<b>1,76,74,14,997.25</b>	<b>124,87,37,997.25</b>

Therefore total interest payout for Vatika Ltd. is Rs.124,87,37,997.25 during above F. Ys.

The lenders as well as borrower suppressed the actually amount of interest payable by the borrower and receivable by the lender upon repayment. Following are the amount of suppression:

S. NO.	Name of the company	Total amount receivable from Vatika Group (A)	Total Sales consideration declared in the return of income for the A.Y.2011-12 (B)	Undisclosed expenditure by Vatika Group and undisclosed income of the Lender Company [C=A-B]
1	SEH Realtors Pvt. Ltd.	71,08,32,530.59	29,99,82,000	41,08,50,530.59
2	Advantage Fashions Pvt. Ltd.	52,39,60,975.46	22,50,12,000	29,89,48,975.46
3	U. K. Paints India Pvt. Ltd.	46,29,93,139.71	19,54,32,000	26,75,61,139.71
4	Uttam Enterprises Pvt. Ltd.	6,96,28,351.48	2,98,86,000	3,97,42,351.00
	<b>TOTAL</b>	<b>1,76,74,14,997.25</b>	<b>75,03,12,000</b>	<b>101,71,02,996.76</b>

In view of the above, the total interest expenditure liability of M/s Vatika Ltd. in Jaipur deal during the Financial 2005-06 comes to Rs. 19.38 crores.

It is therefore clear that the assessee has not fully disclosed its interest expenditure in its books of accounts. An amount of Rs.22.80 crore (Rs.3.42 crore + Rs.19.38 crore) has been incurred by the M/s Vatika Ltd. as interest expenditure in these two deals during the financial year 2005-06 relevant to Assessment Year 2006-07 from out of books and thus remains unaccounted."

26. Thus holding the AO treated an amount of Rs.22.80 Cr. as "Unaccounted Interest Expenditure".

27. Aggrieved the assessee filed appeal before the Id. CIT(A).

28. The adjudication of the Id. CIT(A) on the issue of NH8 deal and Jaipur deal is as under:

### **NH8 Transactions**

29. The Id. CIT(A) considered the material details of the search conducted u/s 132 and survey executed u/s 133A and the seized/impounded material pertaining to U.K. Paints/Dhingra group, Shahi Group, Span Group and Vatika group and others. The Id. CIT(A) referred to the seized material, loan agreements, the extension of loan agreements, agreements with the guarantors, loan-cum-purchase agreements and material pertaining to buy-back agreements.

30. Before the Id. CIT(A), the assessee mainly argued that the AO did not dispute the advances received and the same has been reflected as advances against sale. It was argued that the AO misconstrued the agreements as agreements of loan.

31. Having heard the arguments, the Id. CIT(A) narrowed down to the issue:

- Whether, in totality, the agreements between the appellant and lenders constitute a loan agreement, which has been given the colour of a purchase and sale transaction or not?
- Whether the seized documents, being the agreements entered into by the lenders with Vatika Ltd. and Lincoln

Developers can be said to be incriminating materials discovered during the search or not?

32. The Id. CIT(A) on facts, has not disputed that the loan agreement with the five lenders was entered in the months May/June 2005 for a total loan amount of Rs.25 Cr. The Id. CIT(A) compiled the key features of all the agreements in a chronological order.

*"(i) It is entered into between Vatika Ltd. as the "Borrower", the "Lender", and Mark Buildtech P. Ltd & Omkareshwar Properties P. Ltd as "Confirming Parties". The "Confirming Parties" (which are wholly owned by the Vatika Group) are owners of certain tracts of land near NH-8 at Gurgaon, and have given the "Borrower" the rights to develop, sell and market the residential/commercial plots and flats on the said land in the name of "Vatika City".*

*(ii) The borrower was in the process of securing requisite sanctions for development of the land, which were expected to be received within 3 months.*

*(iii) Vatika Ltd. needs a loan to execute a project. Accordingly, the lender and Vatika Ltd. have entered into a "loan agreement" for various sums for a period of one year, with interest @100% p.a., as a mode of short-term finance.*

*(iv) In the event that the Borrower (Vatika Ltd.) is not able to obtain the requisite permissions by 14.02.2016, the loan would be repaid forthwith, along with interest @18% p.a. for the period 15.09.2005 to 14.02.2006.*

*(v) However, in case the said loan amount, along with interest @18% is not paid back by 14.02.2006, it would be assumed that the*

*borrower intends to avail of the loan for the full period of 5 months @100% interest.*

*(vi) The Borrower confirms that its Board of Directors has sanctioned this agreement.*

*(vii) To secure the repayment, the Borrower has handed over Post Dated Cheques (PDCs) to each lender towards repayment of principal and also PDCs towards interest computed @100%, with an assurance to honor the same.*

*(viii) To further secure the loan, the Borrower has handed over a Promissory Note also. Moreover, vide a separate "Guarantee agreement", certain other properties belonging to Mark Buildtech P. Ltd. (the "confirming party") were also set out as collateral security for ensuring performance by the Borrower.*

*(ix) Any subsequent agreement/understanding on the variation/modification/amendment to the loan agreement shall be only by way of a written document, which shall form part of this Loan agreement.*

*4.3.2.12 Subsequently, on 31.03.2006, the Borrower and the Lender entered into another agreement in pursuance of the Loan agreement. The agreement was called a "Amendatory loan-cum-purchase agreement", which carried the following provisions:*

*(i) The requisite development permissions having not been received on time by the Borrower, the parties agreed to extend the date of repayment of loan to 31.12.2006.*

*(ii) The rate of interest for the period upto 31.12.2006 was revised to 24% p.a. compounded quarterly, w.r.e.f. the date of original loan agreement.*

*(iii) The existing PDCs were replaced by fresh PDCs. The new interest PDCs dt.31.12.2006 for interest component was for a sum of interest @24% p.a.*

*(iv) At any time before 31.12.2006, the Lender had an absolute, unqualified and unilateral right to "opt for purchase" of residential plots in Vatika City, in lieu for repayment of the loan. In that event, the lender shall be allotted residential plots in Vatika City.*

*(v) In case the Lender "opts for purchase", the same shall be exercised only in writing, and in that event, the "Amendatory loan-cum-purchase agreement" shall be deemed to be an agreement to sell and purchase of the plots and the loan amount and accrued interest thereon shall be adjusted towards the Sale consideration.*

*(vi) In case the Lender does not opt to exercise its option to repurchase, the amendatory loan-cum-purchase agreement shall be extended to 30.06.2007, on the same conditions. In that case, the PDCs for principal and interest shall be replaced with the appropriate amounts and dates.*

*(vii) In case the lender opts for purchase, then the total area to be allotted to each lender was defined. No other payments towards Development charges, licence fee etc shall be payable. However, if the Lender opts for extra plots in preferential locations, it has to pay preferential location charges at the then applicable rates.*

*(viii) In the case of allotment of plots, the Borrower shall, at the option of the Lender, purchase back the plots at the then prevailing market rates.*

*4.3.2.13 Subsequently, vide a series of successive "Extension agreement(s) to the Mandatory Loan-cum-Purchase agreement dated 31.3.2006", the tenure of the Loan was repeatedly extended on the*

*same terms and conditions as the agreement dated 31.3.2006 and fresh PDCs for the principal and interest were submitted by the Borrower in lieu of the existing PDCs.*

*4.3.2.14 The lenders finally exercised their option to purchase, and were allotted the agreed plot area. For example UK Paints P. Ltd., one of the lenders was allotted an area of 9375 sq yards vide letter of Vatika Ltd. dated 12.04.2010 (i.e., A.Y. 2011-12), and the individual plots were allotted vide allotment letters dated 27.08.2010.*

*4.3.2.15 Subsequently, the lenders entered into an Agreement to Sell in the AY 2011-12 with another company of the Vatika Group, viz., Lincoln Developers P. Ltd., for sale of the allotted plots at a registered sale consideration of Rs. 16,000/- per square yard. The plots were never registered in the name of the lenders at any point of time."*

33. The Id. CIT(A) held that,

*"based on the recitals that the original agreements of May/June 2005 were undisputedly pure loan agreements. It was called a "Loan Agreement". The parties are called Lenders and Borrowers. Of course, the nomenclature is not determinative of the nature of an agreement. But the recital also show clearly that the amount was meant to be a loan agreement only, initially on interest of 100% p.a., which was later revised by mutual agreement to 24% p.a. (compounded quarterly). There is no indication therein of any purchase of the land. Thus the agreement was a loan transaction simpliciter."*

34. The relevant portion of the order of the Id. CIT(A) is as under:

*"4.3.2.17 The Loan agreement was subjected to an amendment on 31.03.2006. The crucial issue that requires examination is whether, as a result of this amendment, the nature of the transaction changed to a purchase agreement. The main clauses of this agreement have been discussed above at para 4.3.2.10 above. It can be seen at para number 1, at page 3 of this amendatory agreement dt. 31.3.2006 itself that the original agreement is amended to extend the periodicity of the loan to 31.12.2006. Even the rate of interest has been specifically revised to 24% pa (compounded quarterly). This clearly shows that the nature of the transaction continues to be a loan transaction. Of course, an additional amendatory clause has been inserted that the Lender has now been given a right to opt for purchase of plots. But is noteworthy that the new right only provides an option to purchase at a future date, and by itself does not bring about a conversion from a loan agreement to a purchase agreement. The Amendatory agreement specifically states that as and when the Lender opts for purchase, the same shall be separately communicated in writing, and the sale consideration shall be adjusted accordingly with the principal and accrued interest. In fact, the Amendatory agreement dated 31.03.2006 specifically states at para 4.2 that "if the lender opts for purchase", then the total area to be allotted to the Lender would be 9375 sq yards, thus establishing beyond doubt that the lender has not exercised the option to purchase. Moreover, the recitals at para 4.2 of the Amendatory agreement provide that in case the Lender does not exercise the option to purchase, the loan shall be extended for a further period as specified in the extension agreements. Thus the fact that the loan has been extended repeatedly, proves in each extension agreement, that the Lender had not exercised its option to convert the loan transaction to a purchase transaction. Also, the subsequent Extension agreements only change the date of tenure of the loan and*

*the amount of the PDCs. All other conditions of the Amendatory agreement continue in the Extension agreements.*

*It is only in the A.Y. 2011-12 that the plots have been allotted, unequivocally showing that the nature of the agreement continued as a loan transaction till the A.Y. 2010-11. It is only in the AY 2011-12, upon the exercise of option to purchase by the lender and plot allotment thereafter, that the agreement has stood converted to a purchase agreement. It is pertinent to note that the Amendatory agreement does not provide that opting for purchase will have retrospective effect; rather, the principal and accrued interest @24% p.a. (compounded quarterly) on the date of exercising of option will be adjusted towards the sale consideration as agreed. I am therefore of the firm view that the original loan amounts continued as a loan amount till the A.Y. 2010-11, and interest @ 24% p.a.(compounded quarterly) accrued in the hands of the lenders till (and including) the A.Y. 2010-11, as per terms of agreement, the loan amount plus accrued interest thereon was to be adjusted towards consideration payable.*

*4.3.2.18 I, therefore, agree with the conclusions of the A.O. that the transaction was a loan simpliciter till the date of allotment of plots, when admittedly the appellant gave constructive delivery of the plots (upon the lender exercising its right to purchase), and that this conclusion could be drawn only upon examination of the agreements unearthed during the Search and Seizure action. It is pertinent to note that the appellant, vide its letter to the A.O. dated 24.03.2015 (at para 5 therein), also admits that as a result of search conducted on the appellant on 16.01.2013, several agreements/deeds in respect of "sale and purchase" of land by UK Plants, Shahi group and Span group were found and seized from the appellant's premises. Accordingly, the addition is based on materials unearthed during the*

*search action on basis of which the assessment proceedings u/s 153A have been completed. Of course, the appellant also submits that various extension agreements, guarantee agreements etc entered into by the appellant subsequent to the main loan agreement have been mentioned in the assessment order, but not confronted to it. To my mind, even if this claim were to be true, this is an irrelevant consideration. The seized loan agreements constitute the primary evidence on basis of which the additions have emanated. The other documents mentioned by the A.O., are only supporting documents of the main evidence entered into consequentially, and no conclusion has been drawn by the A.O. solely on basis of these supporting documents, to the exclusion of the seized initial loan agreements. In any case, all these documents belong to the appellant in the first place, it being one of the parties to the transaction represented in the agreement. The appellant cannot claim that it was in the dark about these documents. Finally, each of these documents have been submitted by the appellant itself during appellate proceedings and it has been heard in detail. Therefore, this claim has to be rejected.*

*4.3.2.19 The A.O. has also considered the transaction with SEH Realtors P. Ltd., on the same footing as that of the appellant with UK Paints P. Ltd. Span India P. Ltd. and SS Dhingra (HUF). It is noticed that the A.O. has noted in the assessment Order that four parties viz., Sohan Singh Dhingra (HUF), UK Paints Pvt. Ltd., Heminder Kumari and SEH Realtors P Ltd. have entered into a transaction with Vatika Landbase Pvt. Ltd. through separate loan agreements. Even the dates of agreements are different. The A.O. has also mentioned in the assessment Order that these four parties have entered into separate, but identical agreements with Vatika. In fact, a reading of the assessment Orders in the case of the appellant, Span India, UK Paints P. Ltd, SEH Realtors P. Ltd. and Sohan Singh Dhingra (HUF), to the extent that it relates to the Gurgaon deal, shows that the A.O.*

*has employed an identical description of the agreement between each of these four parties with Vatika, and has arrived at an identical conclusion in each case. However, after going through the agreements entered into by SEH Realtors P. Ltd. with Vatika, I find that the description of the agreement by the A.O. for the transaction with SEH Realtors P Ltd is completely different from the recitals of actual document entered into by the appellant with the other parties. This is a very crucial issue, as it is the content of the agreement entered into between two parties that would throw light on the actual nature of the transaction intended between them. It would appear that the A.O. has relied upon the contract between UK Paints P. Ltd and Vatika, instead of the contract between SEH Realtors P Ltd. and Vatika. Be that as it may, it is then the duty of the CIT(A) to make up for the deficiencies in the assessment Order; in this case, to analyze the agreements between SEH Realtors P Ltd. and Vatika, and to see whether the seized material/statements relied upon by the A.O. provide a view in line with the conclusions drawn by the A.O.*

*4.3.2.20 In the appellant's case, it is seen that it entered into an agreement with SHE Realtors P Ltd. on 12.08.2005. This date is different from the dates of agreements entered into by the other parties with Vatika. The key features of this agreement are as follows:*

*(i) The first agreement between the parties dated 12.08.2005 is called a "LOAN-CUM-PURCHASE AGREEMENT". It is entered into between Vatika as the "Seller", SEH Realtors P Ltd. as the "Purchaser" and Mark Buildtech P. Ltd & Onkareshwar Properties P. Ltd as "Confirming Parties". The "Confirming Parties" ( which are wholly owned by the Vatika Group) are owners of certain tracts of land near NH-8 at Gurgaon, and have given the "seller" exclusive*

*rights to develop, sell and market the residential/commercial plots and flats on the said land in the name of "Vatika City", Gurgaon.*

*(ii) Detailed development plans for the project have been submitted for securing of sanctions, and that the requisite sanctions were expected to be received within 3-4 months.*

*(iii) Director, Town and Country Planning has determined the entitlement of fully developed land. These plots would be the exclusive right and privilege of the purchaser.*

*(iv) The "Seller" and the "Confirming Parties" were in need of finances of Rs.10 crores till 11.01.2006 to implement the project, and SEH Realtors P Ltd. has agreed to extend the amount with an option to purchase the said plots from the Sellers/Confirming Parties. The agreement provides that in the event of any delay in project implementation, SEH Realtors P Ltd. has an unfettered right to recall the amount with interest @18% p.a. or to extend the periodicity of the loan beyond 11.01.2006.*

*(v) The consideration paid by SEH Realtors P Ltd. excludes external development charges, internal development charges and the 6% development fee payable by the purchaser. The Seller undertakes that the construction drawings and designs of the proposed plots must conform to the laws and bye-laws of HUDA, and that the project area is free of all kinds of encumbrances.*

*(vi) There are two components of the agreement:*

- a. LOAN AGREEMENT Loan amount Rs. 10,00,00,000/-, bearing interest @18% p.a. for a period of 5 months from 12.08.2005 to 11.01.2006. To secure the loan, Vatika has provided post-dated cheques (PDCs) of Rs. 10,58,17,000/- (net of TDS on*

*interest). Demand Promissory Notes were also provided to secure the payment of the loan with interest, and*

- b. PURCHASE AGREEMENT : The sum of Rs. 10,00,00,000/- so given by SEH Realtors P. Ltd. has been paid as sale consideration for the sale of commercial / housing / residential/institutional/medical/entertainment plots being fully developed 4% of 193.6 sq. yds. of commercial plots, 20% of 968 s.yds of housing plots and 31% of 1500.40 sq. Yds. of residential plots exclusively to the appellant. It was agreed that the "seller" (the appellant) will grant, sell, transfer and convey these plots to the "purchaser" (SEH Realtors P Ltd.) not later than 11.08.2006. The Seller explicitly agreed that any reduction of the agreed area will constitute breach of contract. However, in the event of larger availability of developed land after completion of development, SEH Realtors P Ltd. undertook to pay additional sale consideration on a pro-rata basis.*
- c. The Seller (appellant) undertook to purchase back the plots, at the option of the purchaser, within a period of two years from the date of the agreement, at the prevailing market rates. In case the Seller fails to discharge this obligation, the purchaser (SEH Realtors P. Ltd.) had the right to seek specific performance of the same.*
- d. In the event of the Purchaser selling the plots to any third party, no transfer charges will be payable by SEH Realtors P Ltd. / the third party to the appellant.*
- e. In consideration of the payment made by SEH Realtors P. Ltd., the seller and the Confirming parties deposited all the deeds, documents, agreements, conveyance, mutual records etc evidencing the title of the land with the appellant.*

*f. In addition, the Seller offered as collateral security, a different tract of land admeasuring 11.43 acres having market value of Rs. 10,00,00,000/- to securitize the sum of Rs. 10,00,00,000/-. The collateral security so provided is listed at Schedule -1 to this agreement ( as seen in the Schedule-1, actually two tracts admeasuring a total of 12 acres, 2 kanal and 17 maria of land , equivalent to 12.35 acres, belonging to Mark Buildtech was placed as collateral Security).*

*g. In the event of default in handing over the plots by the agreed date of 12.01.2006, the seller agreed to pay back Rs. 10,00,00,000/- plus interest @ 24% p.a. beyond the date of 12.01.2006.*

*4.3.2.21 It transpires that the Seller could not fulfill its obligations to transfer the plots Amendatory Loan cum purchase Agreement' dated 31.03.2006, extended the period of the "loan" by another six months i.e. till 31.12.2006. The PDCs were replaced by another set of PDCs, of Rs.10,00,00,000/- towards principal and Rs. 2,96,28,377/- towards interest (net of TDS of Rs.85,72,212/-). An amendatory Guarantee agreement was also entered into on the same date, whereby the 12.35 acres of land belonging to Mark Buildtech P. Ltd. placed as collateral security, was replaced of land belonging to Wonder Developers P. Ltd. (another Vatika Group company).*

*4.3.2.22 Subsequently, the parties, vide an "Extension Agreement to the Amendatory Loan cum purchase Agreement' dated 31.03.2006, extended the period of the "loan" by another six months i.e., till 31.12.2006. The PDCs were replaced by another set of PDCs, of Rs.10,00,00,000/- towards principal and Rs.2,96,28,377/- towards interest (net of TDS of Rs.85,72,212/-). It has been specifically*

*provided for that all the other term and conditions of the original agreement would remain unchanged.*

*4.3.2.23 Thereafter, the parties have entered into successive Extension Agreements for six months each, each such agreement being similar in content about the terms and conditions as the first Extension agreement dated 31.3.2016. Only the figure in the PDC representing interest has changed. The last such extension agreement is dated 31.12.2008.*

*4.3.2.24 On 03.02.2011, the appellant has entered into an "Agreement to Sell" with Lincoln Developers P. Ltd. to sell these plots total admeasuring 17045 sq. yds. to the latter, for a total consideration of Rs.27,27,20,000/-, i.e. @Rs. 16000 per sq. yd., free of all encumbrances, and including EDC/IDC/municipal and other charges.*

*4.3.2.25 It can be seen from the discussion above, that the key agreement between the parties is the first agreement dt. 12.8.2005, called a "loan-cum-purchase" agreement. All subsequent agreements are merely extension agreements on the same lines, with one difference, viz. the replacement of PDCs representing interest on the sum of Rs.10,00,00,000/- the manifest agreement is called an "loan-cum-purchase agreement", indicating it is both a loan and a purchase agreement . However, the nomenclature given by the parties is not determinative of the nature of the agreement, nor does it actually resolve the issue, so we must proceed further. In the text of the agreement there are two agreements viz., (a) A loan agreement and (b) A purchase agreement. The gist of these two separate agreements have been discussed above. The consideration amount in question viz., Rs. 10 crores is the subject matter of both the agreements. The question therefore that arises is whether the*

*transaction is primarily a loan agreement or an agreement of purchase of property. Undoubtedly, the loan agreement comes earlier in the agreement than the purchase agreement.....*

*This clause forms part of the "loan agreement" portion of the document. It is abundantly clear that this clause sets out that the primacy of the agreement lies in the "purchase agreement". It is only when the appellant would choose not to exercise option of purchase the property that the agreement would acquire the colour of a loan transaction. No other clause to the contrary is provided, either specifically or by implication. The "purchase agreement" part of (Part B) of the agreement reads as a pure purchase agreement, and does not anywhere refer to the sum of Rs.10 crores as a loan; rather, it is referred to the "sale consideration". Undoubtedly, the consideration amount of Rs. 10 crores has been referred to as "loan" amount in the extension agreements (though not in the main agreement) but the extension agreements invariably mention that the extension is taking place on the same terms and conditions as instead of main agreement. Therefore, I am of the view that the mere mention of the word "loan" to describe the sum of Rs. 10 crores in the extension agreements is in the context of the "loan" part of the first agreement, which as we have seen, is only of a subsidiary and fall-back nature. In conclusion, I am of the view that the agreement per se has to be held as a purchase agreement as not as a loan agreement. It would also be seen that the entries in the balance sheet reflect the outcome of these agreements. Seizure of these agreements therefore does not automatically make them incriminating documents to be used against the appellant. What has to be seen is that whether any evidence related to the transaction between appellant and Vatika group has been seized, which would prove or even indicate that the transaction was not really a purchase transaction but one of loan, on which interest has been*

*received/receivable. The details of the assessment order have been discussed in the preceding paras of this order. To my mind, none of the other evidence referred to by the A.O., either individually or collectively, can be said to indicate that this specific transaction between SEH Realtors P. Ltd. and Vatika was actually a loan transaction. The fact that certain agreements between Vatika and other parties have been found in a folder called "ICD exceptions" in the computer of Vatika/U.K. Paints cannot be held against the appellant. Even otherwise, placing an agreement in a folder which is named in a particular way, does not detract from the true nature of the transaction as evidenced from the language of the agreement. On the contrary, the A.O. has referred to an inter-office memo dated 20.04.2011 issued by Sh. Manmohan Mehra, V.P. (Corporate Affairs) of Vatika group where it is clearly mentioned that the Vatika group is planning to repurchase the plots sold to the Shahi group (i.e. SEH Realtors P Ltd.). It also mentions therein that the purchase price by Lincoln Developers is Rs. 16,000/- per square yard and would be sold to Vatika Ltd. at the price of Rs. 22,000/- per square yard. There is yet another seized document extracted from the hard disc at Annexure A-75 from Vatika premises which particularly relates to SEH Realtors P. Ltd. Even in this inter-office memo seized during search, after the subject matter of the memo is a different transaction at Sector-86, NH-8, it is abundantly clear that "Old NH-8" (i.e. the subject matter of the present discussion) is a "re-purchase". The inter-office memo also refers to issue of allotment letters in respect of these plots relating of "Old NH-8" transaction, which constitutes independent contemporaneous evidence of internal discussions within the parties to the agreement, and which actually support the view that the transaction was one of purchase and not a loan transaction. I am therefore of the view, that the conclusion drawn by the A.O. on the appellant's transaction with SEH Realtors*

*P. Ltd. is erroneous. I therefore direct the A.O. to exclude the transaction with SEH Realtors P. Ltd., while computing unaccounted expenditure in the appellant's hands.*

*4.3.2.27 A connected question is whether as a consequence of the agreements, (other than with SEH Realtors Pvt. Ltd.) interest income should be held to have accrued in the hands of the appellant, year after year, as has been done by the A.O. The payment, nor debited any interest expenditure in each year, there is no case to make additions every year on account of deemed interest paid. I have evaluated the appellant's submission in the light of the seized material. The incriminating materials relied upon by the A.O. are the loan agreements and the extension agreements themselves, and therefore these documents have to be appreciated in their totality. It is seen from the agreements themselves no interest was actually paid till the allotment of plots. With each extension, the appellant provided revised PDCs in advance, for an increased interest amount (which, however, were not encashed). Even the ledger accounts of the lenders in the books of the appellant show that the interest amount is debited upon issue of the PDCs, but upon extension of the loan and non encashment, the entry has been reversed. The point here is that the act of making entries of interest also is corroborative evidence of the nature of the transaction as was understood between the parties in respect of the so-called NH8 Gurgaon transaction. Clearly, as per the extension agreements, no actual payment of interest took place of the various years. Yet the plots were allocated by the appellant to the lenders, without any other agreement overriding the terms of interest of the extension agreements. It can only be concluded that the terms of the extension agreement have been adhered to before the plots were allocated. In other words, accrued interest as per the agreement would have been paid before the plots were allotted. This interest payment is not reflected on the*

*books of the appellant. The only conclusion that can be drawn is that the appellant has paid the entire accrued interest till the date of allotment of plots to the lender, as agreed, but outside its books in cash. This constitutes unaccounted expenditure to be assessed u/s 69C of the Income Tax Act, 1961. In fact, there is no contemporaneous documentation found during search or adduced later by the appellant before the search team or the A.O. to show that the exhaustive terms of the earlier loan agreements and the repeated extensions and PDCs were explicitly overridden so as to free the appellant from its contractual obligations to pay interest to the lenders. The plots have been transferred in consequence of the agreement between the parties, and in the absence of any contemporaneous evidence to the contrary, it must be presumed that the plots were transferred as per the terms of agreement. However, this interest cannot be assessed in the appellant hands over the entire period AY 2006-07 to AY 2011-12, since the agreements themselves show that the interest was not actually paid in each year paid, but accumulated. The entire accrued interest upto 27.08.2010 shall be computed by the A.O. @ 24% p.a., compounded quarterly (as per terms of agreement) for the period starting from the date of receiving the loan till 27.08.2010 (i.e. the date of allotment of plots), shall be assessed in the assessment year 2011-12 only. To that extent, the taxable amount shifts from the A.Y. 2006-07, 2007-08, 2009-10 and 2010-11 to the AY 2011-12.*

*4.3.2.28 There is yet another way of looking at this transaction. Even assuming that the appellant has not actually paid this accrued interest as it claims, it would be seen that the agreements provided that the loan plus accrued interest would be utilized as the sale consideration. On the other hand, when the actual sale/transfer was reflected in the books of the appellant in the A.Y. 2011-12 (the allotment letters were issued in August 2010), the recorded sale was*

*for a much smaller consideration viz., the original loan amount. Thus, for example, in the case of loan amount of Rs.5.50 crores taken from UK Paints P. Ltd., the accrued interest amount alone on 30.06.2009 was Rs.7,80,94,128/- (as per the loan extension agreement dated 31.12.2008), whereas the plots were transferred to UK Paints P. Ltd. for a principal sum of Rs. 5.50 crores only. After the discovery of the loan agreements (whose authenticity the appellant does not deny) during the search, the appellant has not been able to explain with any conviction as to what compulsions resulted in the recorded sale consideration being so much less than the agreed sale consideration (principal plus accrued interest thereon). It is noteworthy that in the course of the earlier assessment proceedings u/s 143(3) for A.Y. 2006-07, the appellant had, while explaining its practice of issuing allotment letters, submitted that "the company used to receive the sale consideration in installments, in part payment. Unless and until the complete sale consideration, along with the other expenses are not received, by the company, the sale deed in respect of the said land is not executed in favour of the intending receiver. Similarly, the possession of the said land is being given to the intending purchaser only after the receipt of full sale consideration and incidental expenses". Thus it the event that the appellant has not actually paid the interest due, it has to be held that plots have been allotted in lieu of the original loan amount plus accrued interest thereon; in other words, the appellant has under-reported the sale consideration (by an amount equivalent to the accrued interest discussed at para 4.3.2.27 above) that accrued to it as a result of these agreements. This a real income, to be taxed under the specific provisions of Section 5 of the Income tax Act, 1961.*

*4.3.2.29 As discussed in para 4.3.2.25 above, the conclusion that is drawn is that the accrued interest has been paid in A.Y.2011-12.*

*Accordingly, the addition would have to be deleted for A.Y.2006-07 (and the assessed income would be correspondingly enhanced for A.Y. 2011-12. This enhancement matter is dealt with separately in my appellate order for A.Y. 2011-12). The A.O. is directed accordingly.”*

35. The Id. CIT(A) held that,

- The recitals of the original loan agreement were important in determining the nature of the transactions and since the agreement mentions the parties as lenders and borrowers, the interest needs to be paid.
- There was no indication of real purchase of land except on agreement.
- The continuance of agreements and the PDCs prove that these are loan transaction but not sale & purchase transaction.
- The option to purchase at a future date by itself does not convert the loan agreement into a purchase agreement.
- The frequent extension of the agreements gives a credence to the fact that these are loan agreement.
- The plots have been allotted in A.Y. 2011-12 and hence the unaccounted interest paid has also to be taxed in the A.Y. 2011-12.
- The loan transactions with SEH Realtors Pvt. Ltd. and the clauses thereof are different from the other agreements and hence the transactions with SEH Realtors Pvt. Ltd. can be treated as loan-cum-purchase agreement and hence no unaccounted interest can be charged on the loans received from SEH Realtors Pvt. Ltd.

- At the same time, the Id. CIT(A) has also held that there is no contemporaneous documentation found during search or adduced later by the appellant before the search team or the A.O. to show that the exhaustive terms of the earlier loan agreements and the repeated extensions and PDCs were explicitly overridden so as to free the appellant from its contractual obligations to pay interest to the lenders. The plots have been transferred in consequence of the agreement between the parties, and in the absence of any contemporaneous evidence to the contrary, it must be presumed that the plots were transferred as per the terms of agreement. This is a contradiction to what the Id. CIT(A) has been canvassing all through.

36. Holding thus, the Id. CIT(A) confirmed the order of the AO in determining the interest on the loans received by the assessee except from SHE Realtors Pvt. Ltd. pertaining to NH8 project.

### **Jaipur Project**

37. The total loan was Rs.50 Cr. from four parties including SEH Realtors Pvt. Ltd. The Id. CIT(A) deleted the "unaccounted interest payment" brought to tax by the Assessing Officer. The reasons given by the Id. CIT(A) while deleting the addition are as under:

- The parties executed documents of agreement to sale in respect of certain properties owned by Vatika at Jaipur. As per these agreements, a specific right was granted to

the buyers that the plots, which were subject matter of the sale agreement, may be sold back by them to Vatika at a pre-determined sale consideration.

- Additional payments of Rs.1,87,77,000/- was made by these parties for preferential plots allotted, as per existing agreement between the parties proves that the transactions were for purchase of plots but not a financial transactions in the nature of loan.
- The agreements for sale have been entered by these parties with Vatika the "seller", on various dates in the month of May and June, 2005. Sanskar Buildtech P. Ltd. and Nakshatra Buildcon P. Ltd., who are the owners of the property, were the "confirming parties" to these agreements.
- The parties made full and complete payments of the cost of the plots including preferential location charges.
- The assessee has the exclusive rights of development of these properties.
- Corporate guarantee agreements have also been entered into between parties. The Seller offered collateral security of immovable property which is distinct from the property which was the subject matter of the agreement.
- Construing the intention of the parties from the contents of a contractual document between the, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole.
- A harmonious reading of the agreements reveal that the intention was to purchase the plots but not loans as same

from the vary first agreement and the accounting treatment also proves the same.

- None of the evidences referred to by the A.O. either individually or collectively, can be said to indicate that the specific transaction between the buyer and the assessee was actually a loan transaction.

38. Aggrieved with the deletion made by the purported unaccounted interest payment in the case of Jaipur Project, the revenue filed appeal before us. Similarly, in the case of NH8 Project, the revenue filed appeal against the deletion of the unaccounted interest payment in the case of SEH Realtors Pvt. Ltd. and the lender groups namely, U. K. Paints Pvt. Ltd., Span India Pvt. Ltd, S.S. Dhingra (HUF) and Smt. Heminder Kumari and the assessee filed appeal against the confirmation of unaccounted interest payment.

39. The arguments in writing of the Id. DR is as under:

**"Sub: Written submission on merits in the above case - reg.**

**I. Addition on unaccounted interest on WHS Deal:-**

**Facts:-**

1. During the course of search action u/s 132 and survey action 133A on UK Paints/Dhingra Group, Shahi Group, Span Group and Vatika Group and others on 16.01.2013. Various documents pertaining to money advanced by U.K. Consortium of lender viz. UK Paints/Dhingra Group, Shahi Group, Span Group, Harman Singh Dhingra Group together with Smt. Harminder Kumari entered into a financial deal with Vatika Ltd.

2. *Brief description of seized documents relied by the Assessing Officer while making addition.*

i. *Initial separate loan agreement entered by various members of the consortium with Vatika Ltd. in 2005. One of such agreement is detailed as under: -*

<b>Lender</b>	<b>Borrower</b>	<b>Date of execution</b>	<b>Pages No.</b>	<b>Annexure No.</b>	<b>Seized/impounded from premises</b>
U.K. Paints India Pvt. Ltd.	Vatika Landbase Pvt. Ltd.	13.09.2005	(1) 48 to 142 (2) 11 to 5	(1) A43 (2) A4	(1) Vatika Triangle (2) 19, DDA Commercial Complex, Zamrudpur, Kailash Colony, New Delhi on 16.09.2011

ii. *Guarantee Agreement:*

*Lender and Borrower group concerns have simultaneously entered with a guarantee agreement to secure the right of lender of the such guarantee agreement is detailed as under:*

<b>Lender</b>	<b>Guarantor</b>	<b>Date of the agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
U.K. Paints India Pvt. Ltd.	Mark Buildtech Pvt. Ltd.	13.09.2005	141 to 134	A43	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon

iii. *Personal Guarantee agreement:-*

*Lender and Shri Anil Bhalla (promoter of Borrower group) entered simultaneously in a personal guarantee agreement to secure the right of the lender and obligation of the borrower. One of such agreement is detailed as under:-3*

<b>Lender</b>	<b>Date of the agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
U.K. Paints India Pvt. Ltd.	13.09.2005	137 to 133	A43	Vatika Triangle Sushant Lok-1, M.G. Road

iv. The lender and Borrower then entered subsequently into an amendatory loan cum purchase agreement dated 31.03.2006 where the borrower was given option to purchase of residential plot. Various such agreements are detailed as under:-

<b>Lender</b>	<b>Borrower</b>	<b>Date of the agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
Sohan Singh Dhingra (HUF)	Vatika Landbase Pvt. Ltd.	31.03.2006	125 to 116	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
U.K. Paints India Pvt. Ltd.	Vatika Landbase Pvt. Ltd. Buzz Estates Pvt. Ltd.	31.03.2006	(1) 107 to 99 (2) 158 to 149 (3) 48 to 10	(1) A41 (2) A43 (3) A4	(1 & 2) Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon (3) 19 DDA commercial complex, zamrudpur, Kailash Colony, New Delhi
Heminder Kumari	Vatika Landbase Pvt. Ltd., Wonder Developers Pvt. Ltd.	31.03.2006	55 to 46	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
Span India Pvt. Ltd.	Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd.	31.03.2006	35 to 30	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon

v. The lender and Borrower group concern entered into again guarantee agreement to secure right of lenders and obligations of the borrower assumed in amendatory loan cum purchase agreement. Such agreements are detailed as under:-

<b>Lender</b>	<b>Borrower</b>	<b>Date of the agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
Sohan Singh Dhingra (HUF)	Vatika Landbase Pvt. Ltd.	31.03.2006	136 to 132	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
U.K. Paints India Pvt. Ltd.	Buzz Estates Pvt. Ltd.	31.03.2006	(1) 92 to 88 (2) 131 to 125	(1) A41 (2) A43	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon

Heminder Kumari	Wonder Developers Pvt. Ltd.	31.03.2006	45 to 41	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
Span India Pvt. Ltd.	Buzz Estates Pvt. Ltd.	31.03.2006	28 to 23	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon

vi. Extension Agreement to amendatory loan cum purchase agreement by which the date of loan and interest payable is extended upto 30.06.2007. The details of such agreement are as under:-

<b>Lender</b>	<b>Borrower</b>	<b>Date of the agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
Sohan Singh Dhingra (HUF)	Vatika Landbase Pvt. Ltd. as confirming part	30.12.2006	130 to 128	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
U.K. Paints India Pvt. Ltd.	Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd. as confirming part	30.12.2006	86 to 84	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
Heminder Kumari	Vatika Landbase Pvt. Ltd., Wonder Developers as confirming part	30.12.2006	40 to 38	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon
Span India Pvt. Ltd.	Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd. as confirming part	30.12.2006	22 to 20	A41	Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon

vii. Subsequently the extension agreement was entered between the lender group namely SEH Realtors Pvt. Ltd., U.K. Paints India Pvt. Ltd., Span India Pvt. Ltd., Sohan Singh Dhingra (HUF), Harminder Kumari which is seized documents during Search conducted at 16.01.2013 page 127, 83, 37 and 19 of annexure A-41 (seized from Vatika Triangle, Sushant Lok, MG Road, Gurgaon) which extended the terms of repayment upto 30.03.2007.

viii. Lender and Borrowers concerns entered into another extension agreement which were seized from during the course of Search detailed as under:-

<b>Lender</b>	<b>Borrower</b>	<b>Date of the extension agreement</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
SEH Realtors Pvt. Ltd.	Vatika Ltd. and Wonder Developers Pvt. Ltd. as confirming party	29.06.2007	160 to 157	A41	Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon
Sohan Singh (HUF)	Vatika Ltd. and Wonder Developers Pvt. Ltd. as confirming party	30.06.2007	115 to 112	A41	Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon
U.K. Paints India Pvt. Ltd.	Vatika Ltd. Buzz Estates Pvt. Ltd. as confirming party	30.06.2007	80 to 77	A41	Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon
Span India Pvt. Ltd.	Vatika Ltd. Buzz Estates Pvt. Ltd. as confirming party	29.06.2007	17 to 14	A41	Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon

The following were some of the features of this extension agreement/MOU:

<b>Lender</b>	<b>Extended period of loan and the right of the lender group concern to exercise the option of purchasing the land, upto</b>	<b>Extended period of the right o the lender group concern to re-sell the land so purchased to the seller (borrower group)</b>
SEH Realtors Pvt. Ltd.	<b>31.12.2007</b>	<b>31.12.2008</b>
Sohan Singh Dhingra (HUF)	<b>31.12.2007</b>	<b>31.12.2008</b>
U.K. Paints India Pvt. Ltd.	<b>31.12.2007</b>	<b>31.12.2008</b>
Span India Pvt. Ltd.	<b>31.12.2007</b>	<b>31.12.2008</b>

Similar extension agreements between Lenders group members and Borrowers was found were found in physical form or in hard drive during the Search action conducted on Vatika Triangle, Sushant Lok, Gurgaon.

ix. Further, excel documents extracted from Hard Disk Seized from the Vatika Triangle, Sushant Lok, Gurgaon reveals that these extension is and loan agreement evidenced from navigation path where H:\user\leftADC & System Backup\legal\vivek\legal\shahi group\Gurgaon Loan Agreement Extension\KD extension\30.06.2007\corrected interest calculation 31.07.2007 xls.

x. The part of property of Vatika Group which was allotted to various lender group was repurchased by the group concern M/s Lincoln Developers Pvt. Ltd. of Vatika Group. Details of agreement of sale seized during the Search is tabulated as under:-

<b>'Intending Seller'</b>	<b>'Intending Buyer'</b>	<b>Date of the agreement to sell</b>	<b>Page No.</b>	<b>Annexure No.</b>	<b>Seized from</b>
Span India Pvt. Ltd.	Lincoln Developers Pvt. Ltd.	03.02.2011	74 to 71	A12	Vatika Triangle, Sushant lok-1, MG Road, Gurgaon
U.K. Paints India Pvt. Ltd.	Lincoln Developers Pvt. Ltd.	03.02.2011	(1) 70 to 67 (2) 103 to 100	(1) A2 (2) A30	(1) Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon (2) 19, DDA Commercial Complex, kailash colony, zamrudpur, New Delhi
Sohan Singh Dhingra (HUF)	Lincoln Developers Pvt. Ltd.	03.02.2011	(1) 66 to 63 (2) 63 to 60	(1) A12 (2) A5	(1) Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon (2) 85 Golf Links, New Delhi
SEH Realtors Pvt. Ltd.	Lincoln Developers Pvt. Ltd.	03.02.2011	62 to 59	A12	(1) Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon

The fund flow was analyzed which showed that the fund used in repurchase the property from lender in the name of M/s Lincoln Developers Pvt. Ltd. is the fund of Validate tabulated as under:-

Date of receipt	Amount	Receiving Company	Paying Company Lincoln	Ultimate Source		
				Date	Amount	Paying Company
04.02.2011	9,09,12,000	SEH	Lincoln	03.02.2011	9,09,12,000	Vatika Ltd.
07.02.2011	9,09,12,000	SEH	Lincoln	07.02.2011	9,09,12,000	Vatika Ltd.
09.02.2011	9,09,12,000	SEH	Lincoln	09.02.2011	9,09,12,000	Vatika Ltd.
14.02.2011	7,50,00,000	UKPI	Lincoln	14.02.2011	7,50,00,000	Vatika Ltd.
21.02.2011	7,25,00,000	UKPI	Lincoln	21.02.2011	7,25,00,000	Vatika Ltd.
24.02.2011	7,50,00,000	Span India	Lincoln	24.02.2011	10,50,00,000	Vatika Ltd.
24.02.2011	3,00,00,000	UKPI	Lincoln			
08.03.2011	2,40,60,000	Sohan Singh	Lincoln	08.03.2011	9,66,00,000	Vatika Ltd.
28.04.2011	25,00,000	Sohan Singh	Lincoln	01.04.2011	15,00,000	Vatika Ltd.
28.04.2011	5,00,000	Sohan Singh	Lincoln			
31.05.2011	1,00,00,000	UKPI	Lincoln	31.05.2011	1,10,00,000	Vatika Ltd.
02.06.2011	1,50,00,000	Sohan Singh	Lincoln	02.06.2011	1,50,00,000	Vatika Ltd.
06.06.2011	1,00,00,000	Span India	Lincoln	06.06.2011	1,00,00,000	
08.06.2011	1,00,00,000	Span India	Lincoln	08.06.2011	1,00,00,000	Vatika Ltd.
10.06.2011	1,00,00,000	Span India	Lincoln	10.06.2011	1,00,00,000	
14.06.2011	1,00,00,000	Span India	Lincoln	14.06.2011	1,00,00,000	
15.06.2011	1,00,00,000	Span India	Lincoln	15.06.2011	1,00,00,000	
Total	62,72,96,000				69,93,36,000	

AO concluded on the basis of these documents in page 16 & 17 of assessment order A.Y. 2007-08 that Vatika Group has camouflaged the agreement as sale and purchase agreement which was basically a loan agreement. Similar findings is given by the AO in various assessment years that the assessee has camouflaged the loan transactions into sale and purchase transactions. The assessee has paid unaccounted payment of interest to lender group at the rate of 24% per annum from assessment year 2006-07 to 2011-12.

*Findings of CIT(A) in this issue:*

CIT(A) passed common order for A.Y. 2007-08 to 2013-14.

CIT(A) has confirmed the action of the Assessing Officer in NH-8 deal treating the agreement as loan agreement simplicitor and has given final finding in para 4.4.1.18. In case of agreement with SEH Realtors Pvt. Ltd. has held it to be a purchase agreement where as with other lenders, initial agreement was loan agreement and subsequent agreement was loan cum

*purchase agreement. The CIT(A) has analyzed the agreement with SEH Realtors Pvt. Ltd. and held the agreement to be purchase agreement as date of initial agreement is different from other agreements and dominantly it is purchase agreement. He has discussed the facts of SEH Realtor Agreement from para 4.4.1.19 to 4.4.1.26 and directed to delete the additions made on account of interest payable to SEH Realtors Pvt. Ltd.*

*Further, CIT(A) has held that unaccounted interest payable to the parties except SEH Realtors Pvt. Ltd. is taxable in the A.Y. 2011-12 for all interest computed from the date of initial agreement to final buy back of loan by one sister concern of M/s Vatika Ltd. which took place in A.Y. 2011-12, as all interest was accumulated and the CIT(A) enhanced the income of the assessee on such unaccounted interest in A.Y. 2011-12 after giving Show Cause.*

**Arguments of Ld. AR:**

*Arguments of Ld. AR are summarized as under:*

- 1. There is no evidence of payment of interest by M/s Vatika Ltd. to the lenders of the group, while making the addition.*
- 2. The Department has assessed the transaction as transfer of land transaction and addition added interest too.*
- 3. Such expenditure which is impugned addition has never been recorded.*
- 4. The Assessing Officer has given the finding that assessee has incurred liability of interest expenditure proceeded to invoke Section 69C to make addition.*
- 5. Ld. CIT(A) has erred in confirming the entire addition for NH-8 deal for A.Y. 2011-12 without any evidence.*
- 6. For unabated assessment, no addition can be made u/s 153A in absence of incriminating materials found as a result of search.*
- 7. In enhancement notice CIT(A) has not quantified the enhancement notice.*

*My submission on the issue of addition of interest in NH-8 are as under:*

- 1. All lenders have entered into agreement with advancing of money to the assessee initially as loan agreement except SEH Realtors Pvt. Ltd. where initial agreement is Loan cum Purchase agreement. In all other cases the initial lenders have entered into loan agreement and subsequently loan agreement was changed to loan cum purchase agreement.*

*However, in all cases material facts has remained same i.e. the advances are fully backed up by security agreement, guarantee agreement and obtaining PDCs at different times of extension of agreement.*

*For the sake of brevity following security for amount advanced were received by the lenders:-*

- 1. Collateral Security inform of immovable properties of M/s Vatika Group was offered vide guarantee agreement.*
- 2. Personal guarantee of Sh. Anil Bhalla promotes of the company was offered by personal guarantee agreement. In the event of failure of payment of loan guarantor agrees for the repayment of loan and interest.*
- 3. PDCs was given for the principal and interest.*
- 4. There was provision of compulsory buy back by lender at the option of investor.*

*In view of the above securities the advance given is fully secured not in terms of guarantee of immovable properties & personal guarantee but also liquid security in form of post dated cheques. Such security cannot be given in case of purchase transaction. In spite of fully secured advances along with interest, the property was bought back by Vatika Group either at principal values or at much lesser value compared to principal & interest till buy back, which clearly established that it was never a purchase transaction.*

*Further, the fund used for buy back is belonging to assessee i.e. M/s Vatika Ltd. as discussed in the assessment order. Still further, there is no*

*registration of property in the name of lender. Therefore, entire transaction of option of purchase and buy back is nothing but colourable device to conceal the real transaction of loan on which unaccounted interest has been paid.*

*If it would have been a purchase transactions why there would be provision of buy back. The provision of compulsory buy back itself establishes that the transaction is basically financing and not a purchase transaction.*

*Further, the arguments of Ld. AR that there is no evidences of interest payment is not tenable as in spite of fully secured advance at three layer i.e. guarantee given in form of immovable property, personal guarantee of the promoters and total PDCs of value principal and interest, the buy-back prices were accepted by the lender either at principal value or at much lesser amount compared to the amount due principal plus interest. Such acceptance of lower buy back prices by the lender without any dispute proves the payment of unaccounted interest on principal.*

*Ld. ARs argument that the Assessing Officer has accepted the assessee's contention in assessment year 2011-12 that the transaction is a purchase and sale transaction, therefore, there is contradiction in treating the transaction as loan transaction and payment of interest for same transaction. The revenue's stand is the payment of unaccounted interest which is not reflected and recorded in Books of Accounts. Therefore, unaccounted interest payments has no bearing in recorded transactions. If the transaction is held to be loan transaction and unaccounted interest payable is upheld, to the extent of change in work in progress due to buy back of property, set off can be given from the interest.*

*Ld. ARs argument that the section 69C has been wrongly involved by the Ld. AO is not tenable as from the conduct of assessee by accepting buy back value less than principal and interest at buy back proves the assessee has paid unaccounted interest and therefore such expenditure has incurred and section 69C can be invoked.*

*Ld. ARs argument that Ld. CIT(A) has enhanced the interest for A.Y. 2011-12 without any basis is also not tenable as CIT(A) has held that all interest was paid at the time of buy back when all the liability of assessee got discharged towards the lender.*

*Ld. ARs contention that CIT(A) has enhanced the unaccounted interest payment without quantifying the amount in enhancement notice has been dealt by Ld. CIT(A) that in enhancement notice, the principals of enhancement has been given namely total interest payable from date of advance of loan by lenders was paid at the time of buy back. From there exact amount of interest can be computed.*

*Another contention of Ld. AR's that there is no incriminating document found from A's premise therefore, for unabated assessment no addition can be made u/s 153A. Ld. CIT(A) conclude in Para 4.4.1.18 that the seized loan agreement constitute the primary evidence on the basis of which the addition emanates. This holds goods for all agreements for NH- 8 & Jaipur deal. CIT(A) has given the finding in respect of SEH Realtors & Jaipur deal that there was no incriminating material because he has treated the agreement as purchase agreement. If these agreement is treated as loan agreement as discussed in subsequent para, then these loan agreements become primary basis for making addition of unaccounted income & hence incriminating material to assess such unaccounted income. Other evidences found during search i.e. emails, statement etc only supporting evidences therefore, origin of the addition is based on seized documents, hence the theory of non availability seized documents for addition made u/s 153A for unabated assessment will not apply.*

**II. Submission in support of addition of unaccounted interest in NH- 8 deals by the assessee in case of lender M/s SEH Realtors P. Ltd. Revenue Appeal):**

*CIT(A) has analyzed the loan cum purchase agreement between the appellant and lender M/s SEH Realtors Pvt. Ltd for NH-8 project and in Para 4.4.2.19 to 4.4.1.26 and 4.4.2.1 to 4.4.2.18 and held that the*

*agreement with SEH Realtors is a purchase transaction mainly on two grounds:*

- 1. Date of agreement in case of SEH Realtors Pvt. Ltd is different from date of agreement with U.K. Paints and others in the case NH-8 deal.*
- 2. In case of SEH Realtors from the date of entering the agreement there was option to purchase the plots by the lender. In fact from the initial date of agreement, the loan and purchase agreements were simultaneously entered. Therefore, CIT(A) was of the view that these agreements were basically in the nature of purchase agreements where as in other lenders can in NH 8 deals initial agreements was a loan agreements. Accordingly Ld. CIT(A) deleted the addition of unaccounted interest made by the AO.*

**My Submission against deletion of unaccounted interest in case of SEH Realtors Pvt. Ltd. (Revenue's Appeal):**

*In substance, the agreements between the assessee and U.K Paints & other are similar to agreements entered between the assessee & SEH Realtors Pvt. Ltd. Only change of date of agreements and initial agreement in the case U.K Paints Ltd. & other being loan agreements and loan cum purchase agreement in the case of SEH Realtors Pvt. Ltd will not change the basic character of the transaction. Basic Characters of the transaction are as under which are common in both transaction either with U.K paints & other with SEH Realtors Pvt. Ltd.*

- 1. In both the cases the amount of principle with interest is guaranteed by a guarantee agreement where immovable property of a group concern is offered as guarantee which can be utilised for securing interest plus Principals in case of default by leaders.*
- 2. In both cases the personal guarantee has been offered the personal guarantee agreement by sh. Bhalla being promoter of the M/s Vatika Ltd.*
- 3. In both Cases PDCs (Post dated Cheque) were given by M/s Vatika Ltd. cover principals & interest.*

4. *In both cases, there was option to purchase the plots of M/s Vatika Ltd. by lenders & lenders have acquired the plots but registration was done.*
5. *In both the Cases, there was provision of Compulsory purchase by borrower i.e. M/s Vatika Ltd. at the option of lenders.*
6. *Buy back price is at much lesser rate than principal plus interest. Mostly buy back price at the principal only.*

*When the amount advanced alongwith interest is covered by so many guarantees as discussed above, why buy back prices were less than principals & interest without any dispute? This action of lenders & borrower cannot be explained by the principle of human probability. I rely on the decision of Sumati Dayal vs. CIT(1995) 80 Taxmann 89 (SC)/214 ITR 801 (SC).*

*In fact CIT(A) has upheld the addition in case of other lenders in NH-8 deals mainly on the above ground that buy back price is much less than principal plus interest [Para 4. 4.1.28 of CIT(A) order].*

*In view of the above CIT(A) ought to have upheld the unaccounted interest paid to by M/s Vatika Ltd. in case of M/s SEH Realtors Pvt. Ltd. too.*

**Issue of Jaipur deals:**

*Facts are similar to the facts, of NH-8 deals except the first agreement that is loan agreement. In these cases first agreement was of loan cum purchase agreement. Otherwise extension of agreement, PDCs, personal guarantee agreement, guarantee agreement Seized materials & other facts are similar.*

**CIT(A) Finding:**

*CIT(A) has given the relief to the assessee on the similar ground that of SEH Realtors of NH-8 deals which has been discussed, in earlier paragraph.*

**My Submission:**

*My Submission is on same lines that of M/s SEH Realtors P. Ltd. in NH-8 deal Discussed Supra.*

**Issue of Interest of ICDs:****Facts**

*M/s Vatika Ltd. has received ICD from U. K. Paint Group of Companies SPAN Group & Shahi group of companies interest payments has been made ranging from 11-16% per annum in the books of accounts.*

*During the Course of search proceedings at 1st floor, 19, DDA commercial complex Zamrupin, Kailash Colony Extn., G.K.-I New Delhi in the group Case of U. K. Paints group on 24.11.2011, Various documents agreements & deeds of loan / ICD including the hand written dairy in the handwriting of Sh. Naveen Choudhary was seized from this cabin marked as annexure AA-1 & AA-2 respectively.*

*Contents of various pages of AA-1 & AA-2 has been analyzed by AO and where ever 'M / Material' is written, on such pages has been held as Cash interest paid by M/S Vatika Ltd. AO's finding in supported by interest calculation of interest which comes @ 36% per annum, 15% interest has been disclosed in the books of accounts and balance interest has been paid in cash by M/s Vatika Ltd. Content of the seized documents of Page No. 12 of AA1, Page 52 of annexre-AA1, Page 53 of AA1, Page 12 of Annexure-AA1, Page 52 of Annex AA-1 which contains the interest calculation of loan advanced by lender group and interest Calculation is codified with 'M / Material' has been scanned & reproduced in the assessment.*

*Sh. Naveen Choudhary, CFO of U.K. Paints Ltd has accepted that the dairy is in his hand writing but gave evasive reply by saying that "I don't recall".*

*He subsequently stated that 'M' stands for material supplied by U.K. Paint to Vatika Ltd. & finally answer to question no 60 & 61 of statement to*

*recorded during Simultaneously Search in Dhingra / U. K. Paint group, Sh. Naveen. Choudhary on 16.01.2013 on confronting the documents accepted that "M / Material" stands for Calculation of delayed interest on principal amount. These statements reproduced in the assessment order. Therefore 'M' is accepted as interest calculation written in the seized documents.*

*Further during the search proceeding on 16.01.2013 at the residence of Sh. Naveen Choudhary, CFO of U. K. Paints group of these Jottings specially when 'M / Material' has been used in the documents Seized on 16-9-2011 Sh. Naveen Choudhary has sent brief for the opinion for making disclosure to Sh. C.S. Agarwal (Annexure A-6 from hard disc of laptop of Sh. Naveen Choudhary).*

*Sh. C.S. Agrawal has advised U. K. Paints group (K.S. Dhingra / G. S. Dhingra) to Surrender the cash loan of 2.75 crores & interest Coded as material in Seized annexure, which is part of seized document.*

*AA-1 & AA-2. In fact hard dire contains the disclosure on the basis of contains in Annexure AA-1 & AA-II amounting the Rs.7,95,45,530/- in the hand of Sh. K. S. Dhingra.*

*CIT(A) after analyzing the entire evidence found during search of seizure operation has a funding tired, the addition of unaccounted, interest paid the U. K. Paints to be calculated @ 36% per annum after deducting the interest shown in the of accounts, b) addition of unaccounted Cash Loan for Rs 2.75 crore advanced by U.K. Paint Ltd. for A.Y. 2010-11.*

*CIT(A) has deleted the penal interest delayed interest delayed payment of interest as AO has not mentioned the manner by which it in computed & there is no seized documents in support of such penal interest.*

*Similarly CIT(A) has upheld the interest payable to on the Loan advanced by M/s Wang Investment Pvt. Ltd. @36%. after reducing the interest paid in the books of accounts.*

*CIT(A) has deleted the addition on unaccounted interest paid other lenders on the basis that in seized documents those investors name is not appearing.*

**Arguments of Id AR before Hon'ble ITAT:**

*Arguments of Ld. AR are broadly summarized as under:-*

- 1. The addition has been made by the AO on the basis of documents Seized from third parties without recording the Satisfaction notes & invoking provisions of Section 153C.*
- 2. The documents relied for making addition namely AA-1, AA-2 from the premises of U.K. paints group are dumb documents.*
- 3. No opportunity to cross examine the person has been given by the AO. Before utilizing the such statement.*
- 4. During the present search, no incriminating documents were seized, therefore, no addition Can be made for non abated assessment u/s 153A relying on the decisions of Hon'ble Delhi in the case of Kabul Chawla.*

*My arguments in support of additions made for unaccounted interest on ICDs Confirmed by (CIT (A) & against the arguments of Ld. AR:*

- 1. Ld. AR has raised the issue of invoking provisions of Section 153C for utilizing the seized documents AA-I, & AA-2 seized from the premise of Zamrupur, from third party on U. K. Paint group on 24.11.2011 for invoking addition & argued, that without invoking provisions of See 153C, such evidences cannot be used.*

*The primary issue is whether during the present Search where M/s Vatika ltd & U.K. Paints, group were simultaneously searched on 16.01.2013 evidence for making the addition of unaccounted interest on ICD was found or not. During the present search .evidence in form of emails & texts were found from the computer of Sh. Naveen Choudhary, CFO of U. K. Paint group inform of emails to Sh. C. S. Agarwal for opinion, opinion given by Sh. C. S. Agarwal on the entries on seized. Annerure AA- 1 & AA2 & finally a draft written statement of Sh. S. K. Dhingra , MD of U. K. Paints group for surrendering the amount of Rs.7,95,45,530/- on the basis seized document AA-I & AA-2 from earlier search. Therefore, in present search also incriminating evidences in form of subsequent correspondences on the*

*basis of earlier Seized comments. AA 1 & AA-2 of U. K Paints group seized 24.11.2011 was found.*

*Therefore in present search also, evidences in form of incriminating materials was found. Hence earlier seized documents AA-1 AA-2 Corroborates the unaccounted interest Payment on ICDs. CIT(A) has given same funding in para 4.6.16 of this order. In view of the above, since the addition of unaccounted interest on ICDs emanates from Seized documents of present Search i.e. 16.01.2013 and seized documents AA-I & AA-2 of earlier search Corroborates the finding of unaccounted interest payment, separate proceedings u/s 153C is not required for utilizing the seized document AA-1 & AA-2 of earlier search u/s 153C.*

*Second issue is whether for utilizing the evidences obtained during the simultaneous search in UK Paints group i.e. on 16.01.2013, the proceeding u/s 153C is required or these evidences can be used in the proceedings u/s 153A. My submissions are as under: -*

- (i) In simultaneous search, there is a common satisfaction for issuance of warrant u/s132 where over lapping interest of various concerns are established or apprehend against various persons searched simultaneously. Therefore, once evidences is seized from one person which is connected to other person has to be used simultaneously in one hand recipient and in other hand payer. Like in present case in U.K. Paints group have accepted interest which is the unaccounted income and in vatika Ltd. how it is unaccounted expenditure. Hence, in simultaneous search, concept of third person will not apply because of unity of common business activities of all person's searched together.*
- (ii) If a view is taken that even simultaneous search, section 153C is required to be involved to use documents seized from one person in the hands of other person, then there will be multiplicity of proceedings u/s 153A and 153C. Further, comprehensive view of evidence gathered during search operation u/s 132 cannot be taken if each separate evidence is analyzed for undisclosed*

*income separately, Such interpretation will jeopardies the operation of present search and assessment scheme u/s 153 A & 153C.*

*(iii) I rely on the decision of Hon'ble Supreme Court in the case of Sh. Vinod Gupta 2018-TIOL-350 (SC) Where Hon'ble Supreme Court has upheld the use of evidence gathered from one person in the hands of other person in simultaneous search.*

*In view of the above the contention of Ld. AR is not tenable that satisfaction should have been recorded u/s 153C & proceedings should have been taken u/s 153C before utilizing the seized documents of one persons in the hands of other person when both person were simultaneously searched being part of same group by virtue of common satisfactions and proceedings are pending u/s 153A for same block period.*

*ii. Second arguments of Ld. AR is that these documents are dumb documents. These documents have been analyzed by the assessing officer Ld. CIT(A) in details in the assessment order. The contents of various pages in annexure AA-1 & AA-2 clearly indicate that against the word used 'material', there in calculation of interest as principal is multiplied by period and interest rate which comes interest rate of 36% as deciphered by Ld. AO and CIT(A). Further where the content of these papers was confronted to the written of the paper Sh. Naveen Choudhary has given evasive reply and wrong statement that it pertains to goods transacted when there was no goods transacted between UK Paints and vatika & other borrower. Ultimately Sh. Naveen Choudhary accepted that calculation against the words 'Material/M'is related the interest calculation for delayed interest/payment. The contents of Seized material is self-speaking and is nothing but interest calculation payable on ICD.*

*iii. The next arguments of Id. AR is that the documents relied by the assessing officer was never confronted to the assessee and persons whose statement has been relied was never allowed cross examination. In this regard it submitted that the content of seized documents relied was confronted to the assessee and scanned copy of such documents were part*

*of show cause and assessment order, therefore, the contents of seized documents were being apprised to the assessee.*

*Further the statement of Sh. Naveen Choudhary has been reproduced who has given evasive reply on the contents of seized documents. Therefore, the issue of cross examination will not serve much purpose as the same is only used to corroborate the facts of the case.*

*iv. The Ld. AR's arguments that in assessee's premise no incriminating material was found, hence no addition can be made by applying the decision of Kabul Chawla cited supra. In present case, evidence of unaccounted interest received from assessee has been found and seized from the premises of recipient's M/s U.K. Paints group. Therefore, the decision of Hon'ble Delhi High Court in the case of Kabul Chawla should be interpreted as evidence seized at any premise of either of the parties of transaction. In present case evidence from external parties other than simultaneous search has not been used for making addition.*

**Submission against deletion of unaccounted interest on ICD to other parties (Revenue appeal):-**

*Ld. CIT(A) has confirmed the appeal on the issue of unaccounted interest on ICD case of M/s UK Paints Pvt. Ltd. and M/s Wang Investment Pvt. Ltd. but deleted the addition made for the interest paid on ICD in case of other lender of UK Groups, Shahi Group, Span Group.*

*The Ld. CIT(A) has deleted the addition in case of other lender for unaccounted interest on ICD on the ground that there is no evidences in case of another lender. Evidence is only for U.K. Paints and Wang Investment (Para 4.6.10 of CIT(A)'s order).*

*Hon'ble CIT(A) has over looked the findings of AO on page 49 for A.Y. 2007-08 which contains the scanned copy of page 81 & 82 of annexure A-13 seized during the search on page 49 & 50 of AO (for AY 2007-08). Scanned copies of page 49 & 50 shows that Sh. Naveen choudhary was in possession of interest cheques for M/Sarla fabrics Pvt. Ltd. (Shahi group), Span Holdings P. Ltd. (Span group) & Wang Investment & Finance P. Ltd.*

Similar findings in given for all AYs. Therefore, in seized documents for all three group of lenders namely U.K. Paints group, Spangroup and Shahi group, interest cheques are mentioned. Sh. Naveen Choudhary used to coordinate all lenders for interest on ICDS. Therefore, similar cash interest payment must have been made to all members of U.K. Paints group, Shahi group & Span Group. Accordingly it is prayed that unaccounted interest paid to all lenders as per assessment order, should be upheld.

V. **Revenue Appeal for A.Y. 2010-11:**

Deletion of addition on account of (GND No. 9 & 10)

Cash receipt Rs. 45 crores.

**Facts of the case:-**

Vatika group and Shahi group, span Group & Dhingra Group entered into deal in F.Y. 2009-10 & 2010-11 where vatika group has agreed to sale land at sector 84 & 85 of Gurgaon land vide agreement to sale with Shahi group, span group & Dhingra Group. The details of such agreement is as under:-

<b>'Buyer'/Group</b>	<b>Total 'sales' Consideration (Amount Rs.)</b>	<b>Rate per sq. Yards (Amount Rs.)</b>	<b>Total area (sq. Yards) under 'sale'</b>
Scorpio Research & Consultants Pvt. Ltd./Dhingra Group	35,00,00,000/-	8140/-	43000
H.A. Realtors Pvt. Ltd. (Shahi Exports group)	35,00,00,000/-	8140/-	43000
Positive Buildwell Pvt. Ltd. (Span India group)	35,00,00,000/-	8140/-	43000

During search operation various mails were recovered from hard disc Annexure A-66 from 'Vatika Triangle" Shushant Lok-1 M.G. Road Gurgaon in respect of this transfer of land. Ld. AO has reproduced the contents of the following mails in the assessment order:

<b>S.NO.</b>	<b>Mail Date</b>	<b>From</b>	<b>To</b>
1.	02.01.2010	Sh. Anupam Nagalia	Sh. Anil Bhalla (promoter of M/s Vatika Group)
2.	13.01.2010	Sh. Bala Parameshwara	Sh. Anupam Nagalisa
3.	15.01.2010	Sh. Bala Parameshwara	Sh. Anupam Nagalisa

*Copy marked to Naveen Choudhary, CFO, U. K. Paints group.*

*The above mails evidences that M/s Vatika Ltd. received unaccounted money of Rs, 45 crores on the above land deal & the AO has made addition of Rs. 45 crores.*

### **Findings of CIT(A)**

*Ld. CIT(A) has considered the evidences in form of email relied by the Id. AO and held that the contents of mail is in proposal form and does not constitute evidence of payment for the agreement to sale under consideration. The Ld. CIT(A) has given his findings in para 4.8.7, 4.8.8 & 4.8.9 where he has deleted the addition mainly on 3 counts.*

- 1. In the emails the rate of sale for land are different. Therefore, the mails are in proposal form.*
- 2. The figure mentioned in accounted payment in case of Scorpio research & consultant shows entire payment of accounted is 35 crores as per RTGS, as per seized mail there is accounted payment of Rs. 3 crore before 20.001.2010. Therefore, even accounted payment does not match hence email is a proposal only & not in respect of agreement to sale.*
- 3. No statement was recorded u/s 132(4) in respect of these seized paper.*

### **My submission on this issue:-**

- 1. Undisputedly M/s Vatika Ltd. has entered into 3 agreements of sale to 3 group companies of Shahi, Dhingra & Span group as tabulated in earlier paragraph of AO's findings. The period of such agreements of sale*

is Jan. 2010. In case of Scorpio research & consultants Pvt. Ltd. The date of agreements to sale is 20.01.2010.

2. All three mails are in the month of Jan 2010 i.e. date 02.01.2010, 13.01.2010 & 15.01.2010.

3. These emails are between promoters of M/s Vatika Ltd. & senior persons of Purchaser group or copy worked to them such as Sh. Anil Bhalla of M/s Vatika Ltd. Sh. Parmeshwara Arora, Sh. Naveen Chourdhary CFO of U.K. Paints group, Dhingra group.

4. Email dated 13.01.2010 has attached with documents named Vatika 100 crores NH 8 agreement word 1997 documents. Therefore, the name of documents clearly suggests that the deal is regarding NH-8 land in respect of sector 85 & 86 of Gurgaon which matches with the agreements to sale. Further this attachment contains the Shahi funding, U.K. Paints funding & Span group funding reproduced in the assessment order (page 68 & 69). Still further the area sold for each group is 37556 sq. Yard & actual agreement to sale is for 40000 sq. Yard which almost matches.

5. In the attachment to mail dated 13.01.2010 total balance payment to be made in different group are as under: - Shahi Group-Rs. 33,33,31,900/- UK Paints Group Rs. 33,33,54,300/- SPAN group Rs. 30,33,29,708/-.

If we add 'A' as accounted from already paid in the group, total sale consideration comes to

SHAHI Group Rs.34,83,31,900/- (Rs.1,50,00,000/- + Rs.33,33,31,900/-)

'A' fund given already

UK Paint Group Rs.36,33,54,300/- (Rs.3,00,00,000/- + Rs.33,33,54,300/-)

'A' fund given already

SPAN Group Rs. 31,33,29,708/-(Rs. 10000000/- + Rs.30,33,29,708/-)

Accounted fund given already (AO page No. 67& 68)

The above figure almost matches with sale consideration shown in the agreement for sale which is Rs. 35 crore in each group.

*In view if the above the data contained in these mails matches with agreement to sale entered by the parties.*

*Ld. CIT(A)'s finding that Rs. 3 crores account money received till email dated 13.01.2021 & 15.01.2021 in case of Scorpio Research & Consultant Pvt. Ltd. (UK Paints Group) is not supported by sale deed as accounted fund payment does not contain Rs.3 crore, it may be mentioned that Ld. CIT(A) himself in Para 4.4.8 on page 119 has noted that the consideration depicted in the agreement for sale is Rs. 35 crore paid by RTGS on 20.01.2010 where a ledger of Vatika Shows payment by cheque on 10.01.2010 for Rs 29,33,39,906/- & Rs.5,66,60,094/- on 21.01.2010 (RTGS). Therefore, entry in the books of accounts of M/s Vatika Ltd. does not match with agreement to sale. Hence on this basis above, the contents of mail cannot discarded.*

*In view of the above, the contents mentioned in the mail is not estimated figure but have a correlation with actual deal of agreement to sale between Vatika & three groups.*

*Now coming to figure 'B' which has been deciphered by black or unaccounted, there is a coherency in the mail*

*i) In the documents attached with the mail dated 13.01.2010. Total Black/unaccounted fund already given group wise as under:*

- a. SHAHI Group "B" Rs.1.50 crore*
- b. U.K Paint Group "B" Rs. 3.00 Crore*
- c. SPAN Group "B" Rs. 12.00 crore*  
*(Page No. 68 & 69 of AO)*

*ii) In the documents attached the mail dated 20.01.2010. total black/unaccounted fund already given/to be given is as under:*

- a) SHAHI Group B 8.50 Crore*  
*B+ - 6.50 crore (to be given)*
- b) . U.K paint funding*  
*'B' - Rs. 7.00 crore*

*B+ - Rs. 8.00 crore(to be given)*

*c) . SPAN funding*

*'B' - Rs. 12.00 crore*

*B+ - Rs. 3.00 crore(to be given)*

*(Pg No 72 & 73 of AO)*

*Total comes to Rs. 45 Crore.*

*These fund already given or to be given is reduced from total costing to arrive at the figure for agreement to sale. In view of the above , total black/unaccounted fund already given or to be given as per record email dated 20.01.2022 should be considered as final black money correspondent which is Rs. 45 crore in the deal which is just a day earlier to date of agreement to sale. Since the wordings of seized material are quite clear & specific, the addition made by AO may be restored."*

*Sd/-*

*(H.K. Choudhary)*

*Commissioner of Income Tax (DR),*

*G-Bench, ITAT, New Delhi*

40. The Id. DR argued extensively on various dates detailing the entire events of all the groups involved along with the M/s Vatika Ltd. He has taken us through the seized material pertaining to U.K. Paints India Pvt. Ltd. and the agreements thereof, the agreements with Sohan Singh Dhingra, Heminder Kumari, Span India Pvt. Ltd. and also SEH Realtors Pvt. Ltd. He has argued based on the fund flow showing that the fund used in repurchase of the property from the lender in the name of M/s Lincoln Developers Pvt. Ltd. is the fund of M/s Vatika Ltd. The table has been shown at page no. 6/7 of the written submission of the Id. DR which is reproduced above. The Id. DR has also argued based on the initial agreements, advancing the money, subsequent agreements, loan-cum-purchase agreement, collateral securities, personal guarantees and the PDCs. The Id.

DR has also emphasized on the compulsory buy-back from the lender at the option of the investor lender parties. The Id. DR's main argument was that in view of the securities, the advance given is fully secured and it can never be treated as a purchase transaction.

41. The Id. DR argued that the unaccounted interest payment had no bearing in the recorded transaction. It was argued that if the transaction is held to be a loan transaction and unaccounted interest payment is upheld, to the extent of change in the work-in-progress due to buy-back of property, set off can be given from the interest. The Id. DR disputed the contention of the assessee regarding erroneous, invocation of Section 69 and submitted that such contention is not tenable as from the conduct of the assessee by accepting buy-back value less than principal and interest at buy-back proves that the assessee has paid unaccounted interest and therefore such expenditure has indeed been incurred and hence Section 69C can be invoked. At this juncture, it is pertinent to mention that this interest has been held to be chargeable in the A.Y. 2011-12 by the Id. CIT(A) instead of A.Y. 2006-07. The Id. CIT(A) held that all the interest was paid at the time of buy-back and all the liability of the assessee got discharged towards the lender.

42. The Id. AR argued that the transactions with U.K. Paints Pvt. Ltd., Dhingra Group, Span India Pvt. Ltd. and Heminder Kumari are business transactions and there was no evidence that the assessee made any actual payment, be it A.Y. 2006-07 or 2011-12, in the case of NH8 Project. It was argued that the

assessee received advance against the sale both in respect of Jaipur Deal and NH8 deal and that against such advances, the plots of land have been allotted, the same have been reflected in the regular books of accounts and then sold and offered to tax as income on the basis of percentage completion method. It was argued that the revenue has accepted the income so offered by the assessee while framing assessment, thus, accepting that the transactions have been accepted as that of sale. The Id. AR argued that notwithstanding the fact whether these transactions were loan transactions or advance received against sale of plots, the interest cannot be charged in the A.Y. 2011-12 as no evidence was found either as a result of search or even otherwise to indicate that the assessee actually made the payments. It was argued that even the Id. DR during the arguments did not bring out any evidence to prove that any interest has been paid to the lender parties.

43. Heard the arguments of both the parties and perused the material available on record.

44. We find that the learned CIT(A) while summing up in para 4.3.3.18 has held that the conclusion drawn by the AO in respect of the appellant's transactions for the Jaipur deal are erroneous and thus interest income added by the AO for AY 2006-07 to A.Y. 2011-12 in respect of the Jaipur deal was deleted. With regard to Jaipur Deal, the Id. CIT(A) held that the parties executed documents of agreement to sale in respect of certain properties owned by Vatika at Jaipur. As per these agreements, a specific right was granted to the buyers that the

plots, which were subject matter of the sale agreement, may be sold back by them to Vatika at a pre-determined sale consideration and additional payments of Rs.1,87,77,000/- was made by these parties for preferential plots allotted. The terms of the existing agreement between the parties prove that the transactions were for purchase of plots and not a financial transaction in the nature of loan. It was held that the agreements for sale have been entered by these parties with Vatika the "seller", on various dates in the month of May and June, 2005. Sanskar Buildtech P. Ltd. and Nakshatra Buildcon P. Ltd., who are the owners of the property, were the "confirming parties" to these agreements. It was a fact on record that the parties made full and complete payments of the cost of the plots including preferential location charges. We agree with the observation of the Id. CIT(A) that for construing the intention of the parties from the contents of a contractual document between them, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole. The Id. CIT(A) has rightly inferred through the harmonious reading of the agreements that the intention was to purchase the plots and not to advance loans as terms of the very first agreement and the accounting treatment given in the books of the parties also proves the same. We affirm the finding of the CIT(A) that none of the evidences referred to by the A.O. either individually or collectively, can be said to indicate that the specific transaction between the buyer and the assessee was actually a loan transaction.

45. With regard to NH8 Deal, the five customers namely, UK Paints Pvt. Ltd., SS Dhingra (HUF), Span India Pvt. Ltd., M/s SEH Realtors Pvt. Ltd and Smt. Heminder Kumari have lent monies for purchase of space in NH-8 Gurgaon known as "Vatika India Next", which aggregate to Rs. 25 crores and learned CIT(A) had held that out of the five customers, amount advanced by four customers i.e. other than M/s SEH Realtors Pvt. Ltd., was on account of loan till the date of allotment of the plot and the amount advanced by M/s SEH Realtors Pvt. Ltd. was on account of purchase of space, as such, proportionate interest in respect of sum received as advance of Rs. 10 crores from M/s SEH Realtors Pvt. Ltd. was deleted. Whereas, the proportionate interest in respect of sum of Rs. 15 crores received from 4 customers/lenders has been sustained on the ground that transaction with such 4 customers/lenders was loan simplicitor till the date of allotment of plot. While concurring with the decision of the Id. CIT(A) pertaining to M/s SEH Realtors Pvt. Ltd. on the issue of deletion made on account of alleged interest paid, we are unable to agree with the decision of the Id. CIT(A) holding that transaction with such 4 customers/lenders was loan simplicitor for the following reasons. In respect of NH-8 deal qua aforesaid four customers, the Id. CIT(A) has held that initial agreements were loan agreements, as in such agreements there was no indication of any purchase of land. By entering into the amendatory loan cum purchase agreement, the original agreement is amended to extend the periodicity of loan with an additional amendatory clause giving an option to the lender to opt for purchase of plots. It was held that this clause only provide an option to

purchase at future date, and same by itself does not convert the loan agreement to purchase agreement. It was held that subsequent extension agreements only change the date of tenure of loan and the amounts of PDCs, and all other conditions of the amendatory agreement continues in the extension agreement. It was held by the learned CIT(A) that it is only in the AY 2011-12 i.e. upon the exercise of the option to purchase the space, and allotment of plot thereafter, the loan agreement got converted into purchase agreement and till the exercise of the option, nature of agreement continued as a loan transaction till the AY 2010-11. Such findings of Id. CIT(A) are not correct on facts as he has failed to appreciate that loan agreement was subsequently modified as "Amendatory Loan cum Purchase Agreement", under which the vendees had opted to convert the loan as purchase consideration for the purchase of plot of land which tenure was extended from time to time and plot of aforesaid land was indeed allotted to the lenders in AY 2011-12.

46. All the lender parties were allotted the same area of plot as was quantified in the Amendatory Loan cum Purchase Agreement without any further charges. That infact, it is only such amendatory agreement which had been acted upon when the vendees had also taken both constructive and physical delivery of plots allotted to them. Thus, the lenders have exercised their option to acquire the plots of land instead of accepting the amount of interest originally agreed to be taken from the assessee. This fact itself shows that the original loan agreements, at this juncture, were effectively converted into an

agreement to sell/purchase of plots, and hence accrual of any interest does not arise at all. It is a fact that as per the terms of the Amendatory Loan cum Purchase Agreement, on exercise of the option to purchase the residential plot, the loan agreements and Amendatory Loan cum Purchase Agreement shall be deemed to be an agreement to sell and purchase of the residential plots. Under the loan agreements, Amendatory Loan cum Purchase Agreement and Extension Agreements, PDCs were given to the lender/customer in respect of principal amount and interest amount. However, since the lenders/customers never treated the agreement as loan agreement but always wanted to purchase the plot, as such, PDC's were never encashed. Had it been a case of loan instead of advance then obviously the allottees of the land, instead of taking the delivery of plots would have encashed the PDCs. The PDCs were given only as a security pending allotment so that the amounts are secured.

47. It is an undisputed fact that ultimately the plots were allotted to these parties as per Amendatory Loan cum Purchase Agreement/extension agreements. The situation could have been different, had they not exercised the option to purchase the plots or the plots were not allotted to such lenders. Once the plots were ultimately allotted to such parties, the nature of the agreements changed from loan agreement to agreement to sell/purchase of the plots. It is also a fact on record that no evidence of payment of any such interest has been found, which itself proves that no such liability by way of interest has accrued to the assessee. Infact, neither in the assessment proceedings nor in the first appellate proceedings, any material

has been brought on record to support the assumption that the assessee has incurred a liability by way of interest. There is no evidence, even, to suggest that the lenders have actually received any interest. Under these circumstances, the contention of the revenue that the assessee has paid the entire accrued interest till the date of allotment of the plots to the lenders, as agreed, but outside its books in cash is nothing but a figment imagination and based on mere suspicion and surmises.

48. Academically, if the statement of the revenue, that the assessee has paid unaccounted interest to the lender parties is considered as correct, in the backdrop of the fact that the principal amount received is accounted by the assessee as well as by the loan parties, the payment of interest from the books would be advantageous to the assessee to reduce their taxable income and hence we are not in a considered situation to accept the presumption of the revenue.

49. Further, we find that the agreements themselves show that the interest was not actually paid upto 27.08.2010 but accumulated and hence the question of payment of interest annually and disallowance of such interest by the revenue doesn't arise. And since the space was allotted by the assessee to these parties even the purported accumulated interest cannot be taxable in the A.Y. 2011-12. With regard to the allegation of the revenue that buy-back value is less than the principal plus interest proves that assessee has paid the unaccounted interest and is taxable u/s 69C of the Act is erroneous in the absence of

any material found either from the premises of the assessee or from the premises of investors that assessee has paid any unaccounted interest, as there can be none, since the investors were allotted the plot of land as was stipulated in the Amendatory Loan cum Purchase Agreement and Extension Agreements.

50. In the result, we decline to interfere with the order of Id. CIT(A) pertaining to the interest chargeable in case of SEH Realtors Pvt. Ltd. and unaccounted interest payment on account of Jaipur Project. With regard to NH8 Project, since the plots have been duly allotted as per the modified agreements and in the absence of any material found and seized/impounded suggesting interest payment in cash/unaccounted, we hold that no interest can be taxed on notional basis.

**ITA No. 3709/Del/ 2017 : A.Y. 2010-11**

**Addition on account of Cash Receipts:**

**Excerpts from the Assessment Order**

51. Vatika group and Shahi Exports group, Span India group and Dhingra group entered into a deal in the F.Y.2009-10 and 2010-11. As per this deal the various groups agreed to 'buy' and Vatika group agreed to 'sell' land in sector 84 & 85 of Gurgaon, Haryana. Separate 'Agreements for sale' were entered into between these groups and Vatika group. Following are the amounts stipulated [in the 'agreements to sell'] to be 'advanced' by each of these groups:

'Buyers/Group	Total 'sales'	Rate per	Total area
	Consideration (Amount Rs.)	sq. yards (Amount Rs.)	(Sq. yards) under 'sale'
Scorpio Research & Consultants Pvt. Ltd. /Dhingra group	35,00,00,000/-	8140/-	43000
H.A Realtors Pvt. Ltd. (Shahi Exports group)	35,00,00,000/-	8140/-	43000
Positive Buildwell Pvt. Ltd. (Span India group)	35,00,00,000/-	8140/-	43000

52. E-mail dated 02.01.2010 retrieved from the computers reads as under:

"From: [anupamnagalia@vaticagroup.com](mailto:anupamnagalia@vaticagroup.com)

Date: Sat, 2 Jan 2010 18:36 05 +0530

To: [anilbhalla@vaticagroup.com](mailto:anilbhalla@vaticagroup.com)

Subject: Shahi New Deal

Dear Mr. Bhalla,

Major highlights of the new agreement with Shahi Group

1. Total deal size 150 crs (including 30 of present loan).
2. Total area to be purchased - 100 acres.
3. Total yards to be given - 1,30,000 yds computed at 1300/- yds per acre.
4. Total Ch component is Rs.100 Crs (Rs.33.34 Cr. per party).
5. Total yds per entity - 43,333 yds.
6. Total Net rate per yard - 100 crs/1,30,000 = Rs.7,692 per yd.
7. Re-purchase price - Rs.25,000/- per yds. Total re-purchases consideration Rs.325 crs.
8. Entire new land purchase and allotment of plots to be done in Sector 84 & 85 only.
9. Total of 10% of area being allotted to be PLC plots without any PLC charges. Any PLC area above 10% to be charged at normal PLC charges as applicable.
10. Fund received to be utilized for buying land pocket at sector 84, 85 within the overall project.

11. *Plots to be allotted by 30<sup>th</sup> June 2010. Plots to be free of any lien/mortgage but the lands purchased could be under lien for project related Term Loan or Bank Guarantees."*

53. The AO held that the following seized documents show that the actual deal size was Rs. 150 crores out of which only Rs. 105 crores were recorded, and the deal entailed cash payments/receipts which were not recorded in the books of accounts of each of the parties mentioned above.

54. From the above email of 02.01.2010 wherein Sh. Anupam Nagalia is apprising Sh. Anil Bhalla regarding the latest 'deal' struck with the consortium referred as 'Shahi Group', the AO held that,

- *This deal is regarding Sector 84 & 85 Gurgaon deal with the above consortium (referred to as 'Shahi Group') as can be seen from point no. 8.*
- *The deal involves cash payments/receipts. This is seen from point no.4 which lays out Ch Component (ostensibly referring to the cheque amounts) as Rs. 100 crores out of the total deal of Rs. 150 crores. This shows the remaining amount of Rs. 50 crores is other than 'cheque amounts'.*
- *Point no. 1 speaks of total deal size of Rs. 150 crores out of which Rs. 30 crores is the 'present loan'.*
- *Further, an email dated 13.01.2010 sent by Sh. Bala Parmeswaran to Sh. Anupam Nagalia. This email has also been extracted from the above referred hard disc Annexure A66.*

55. The scanned image as found from the seized material is as under:

#### FUNDING PROPOSED

Total Funding	Rs.130 Cr.
Funding by each party	Rs.130 Cr. divided by 3 i.e. Rs.43,33,33,330/-
Cost agreed	Rs.1.50 Cr per acre
Plots agreed per acre	1300 sq.yds. per acre
Cost agreed per sq. yd.	Rs.1.50 Cr divided by 1300 i.e. Rs. 11538.50 per sq. yd.
Total No of Plot area to be Allotted to each party	Rs.43,33,33,330 divided by Rs. 11538.50. i.e. 37555.430 sq. yd. of plots
	That is, 37556 sq. yd. of Plots (making round Figure)
<b>SHAHI FUNDING</b>	
Total Plots to be taken	37555 sq.yds @ Rs.11538.50 per sq.yd i.e. Rs.43,33,39,906.00
Funds Already given	"A" .. Rs.1.50 Cr
	"B" .. Rs.8.50 Cr
Cost of plot per sq. yd re-worked to give adjustment of "B" i.e. Rs.43,33,39,905.00 minus Rs.8,50,00,000/-divided by 37556 which is Rs.9275.213 (roundabout figure of Rs.9275 per sq. yd)	
After above adjustments, Total Plots to be taken by Shahi	37556 sq.yd @ Rs.9275/- per sq. yd i.e. Rs.34,83,31,900/-
Money already given	Rs. 1,50,00,000/-
Balance to be given by 15.1.10	Rs.Rs.33,33,31,900/-
Re-purchase agreed after 2 years	37555 sq. yd @ Rs.25000/- per sq. yd i.e. Rs.93,89,00,000/-

#### UK PAINTS FUNDING

Total Plots to be taken	37556 sq.yds'@ Rs.11538.50 per sq.yd i.e. Rs.43,33,39,906.00
Funds Already given	"A" .. Rs.3.00Cr "B" .. Rs.7.00 Cr
Cost of plot per sq. yd re-worked to give adjustment of "BB i.e. Rs.43,33,33,906.00 minus Rs.7,00,00,000/- divided by 37556 which is Rs.9674.61 (roundabout figure of Rs.9675 per sq.yd)	

After above adjustments, Total Plots to be taken by UK Paints	37556 sq.yd @ Rs.9675/- per sq.yd i.e. Rs.36,33,54,300/-
Money already given	Rs 3,00,00,000/-
Balance to be given by 15.1.10	Rs.Rs.33,33,54,300/-
Re-purchase agreed after 2 years	37556 sq.yd @ Rs.25000/~ per sq.yd i.e. Rs.93,89,00,000/-
<b>SPAN FUNDING</b>	
Total Plots to be taken	37556 sq.yds @ Rs. 11538.50 per sq.yd i.e. Rs.43,33,39,906.00
Funds Already given	"A" .. Rs.1.00 Cr "B" .. Rs.12.00 Cr
Cost of plot per sq.yd re-worked to give adjustment of "B" i.e. Rs.43,33,39,906.00 minus Rs. 12,00,00,000/- divided by 37556 which is Rs.8343.27 (roundabout figure of Rs.8343 per sq.yd)	
After above adjustments, Total Plots to be taken by Span	37556 sq.yd @ Rs.8343/- per sq.yd i.e. Rs, 31,33,29,708/-
Money already given	Rs. 1,00,00,000/-
Balance to be given by 15.1.10	Rs.Rs.30,33,29,708/-
Re-purchase agreed after 2 years	37556 sq.yd @ Rs.25000/- persq.yd i.e. Rs.93,89,00,000/-

56. The AO held that on the perusal of the document, it can be seen that:

- The deal therein relates to Sector 84 & 85 Gurgaon deal.
- These agreements are to be entered in the month of January 2010.
- As a part of deal it is pre-decided that addendum agreements to agreement for sale are to be entered. These addendum agreements

will give the 'buyer' the right to re-sell the 'plots' to the seller at a predetermined rate.

- This deal is regarding 'funding' of Rs. 130 crores to be provided by three groups to Vatika group.
- Each party will fund approx. Rs. 43 crores.
- Based on above total funding rate per sq. yards is agreed to be Rs. 1538.50.
- Based on this rate of total funding each party of the Consortium will get 37556 sq. yards.
- Now 'money already given' is brought into calculations and adjustment is made in the rate per sq. yards to exclude 'B' amount already received. In the result rate per sq. Yards goes down. However the total area to be 'sold' does not gets changed. The following becomes the rate per sq. yards:

Sl. No.	Group	Rate per sq. yards (Rs.)
1	Shahi Exports	9275
2	Dhingra (UK Paints)	9675
3	Span India	8343

- All these facts clearly show that the "B" part of "money already given" is actually cash amount which is not accounted for. This is supported from the fact that the cost per sq. Yards is re-worked and it goes down with the introduction of "B" portion into calculations.
- Further the above funding proposal clearly show that some part of the money totaling Rs. 33 crores have already been given by three groups to the Vatika group. This money includes amounts of Rs. 27.5 crores of "B" portion. However it is evidently seen above that the declared amounts of 'considerations' to be reflected in the above agreements will be adjusted to show only "A" part and other amounts which are still to be given and not the "B" part.
- The concealment of "B" part of the 'consideration' clearly corroborate the above mentioned email of Sh. Anupam Nagalia to Sh. Anil Bhalla highlighting the understanding of the deal with the Consortium, wherein cheque portion of the deal is Rs. 100 crores out of total deal size of Rs. 150 crores.

- Another email dated 15.01.2010 from Sh. Anupam Nagalia to Sh. Niranjan Behera forwarding copy of email dated 15.01.2010 from Sh. Bala Parmeswaran to Sh. Anupam Nagalia (of which copies were marked to Sh. Naveen Choudhary and Smt. Vandana Wadhwa also). These emails have been extracted from hard disc Annexure A66 seized during the course of search at Vatika Triangle, Sushant Lok-1, M.G. Road, Gurgaon. The navigation path for its extraction is Backup:/All Archive Mail/Current User Archive/Anagalia/archive.nsf. In the last referred email Sh. Bala Parmeswaran has attached draft of the final agreements to be executed between the lender groups and Vatika group on the new deal. Perusal of page 2 of the attached "Agreement for sale" shows that the above agreed rate of Rs.9275 has been incorporated as the sale price per sq. yards in the agreement between Vatika Ltd. and SEH Realtors Pvt. Ltd. (Shahi Exports group).
- Thereafter in line of this communication is another email dated 16.01.2010 from Sh. Bala Parmeswaran to Sh. Anupam Nagalia. These emails have been extracted from hard disc Annexure A66 seized during the course of search at Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon. The navigation path for its extraction is Backup:\All Archive Mail\Current User Archive\Anagalia\archive.nsf. Scanned image of this email is inserted below:

bala.parsneswaran@shahi.co.in

01/16/2010 02:23 PM

To anupamnagalia@vaticagroup.com

cc

Subject: Vatika New Transaction

Dear Mr. Nagalia,

Vandana's agreement will be in the name of Positive Buildwell Pvt. Limited having office at 222, Okhla Industrial Estate, Ph-III, New Delhi. The funding will be same as I already sent to you.

There will be a fourth person/ agmnt., as I told you. It is for 2600 sq. yd of plots @ Rs.1153B.50 for a total investment of

Rs.300,00,100./- (Three Crores and Hundred). Name is Mr. Sanjay Israni S/o GK Israni, R/o 101-A, Pearl Apartments, 3rd Cross Road, Lokhandwala Complex, Andheri (W), Mumbai-53. Rest all terms are same as other three.

Rgds.

Parameswaran

From the above email it can be seen that Sh. Bala Parmeswaran is telling Sh. Nagalia that the agreement for this deal in the case of Span India group would be in the name of Positive Buildwell Pvt. Ltd.

57. The Assessing Officer relied on the emails and held that it established that the above deal finally entailed cash component of larger amounts. The details are as under:

- Email dated 20.01.2010 from Sh. Bala Parmeswaran to Sh. Anupam Nagalia with copies marked to Sh. Naveen Choudhary and Smt. Vandana Wadhwa. The subject of the email is "Vatika New Funding". It may be mentioned that this email has been was found deleted and thus has been recovered from a hard disc Annexure A35 seized in the case of search of Dhingra group on 16.09.2011 at 19 DDA Commercial Complex, Zamrudpur, New Delhi on 16.09.2011. The navigation path for its extraction is Drive:\Vasanta mail\outlook express\2010 mail.dbx.

A word document is attached to this email. Scanned image of this word document is inserted below:

**FUNDING PROPOSED BY SHAHI, SPAN AND UK**

Total Funding	Rs.150 Cr
Cost agreed	Rs.1.50 Cr per acre
Plots agreed per acre	1300 sq.yds per acre
Cost agreed per sq.yd	Rs 1.50 Cr divided by 1300 i.e. Rs.11538"50 per sq.yd
Total No of Plot area to be Allotted	150,00,00,000 divided by Rs. 11538.50 i.e. 130000 sq.yd of plots

SHAHI FUNDING	
Total Plots to be taken	44000 sq.yds @ Rs. 11538.50 per sq.yd i.e. Rs.50,76,94,000.00
Funds Already given	"A"..Rs.1.50 Cr "B" .. Rs.8.50 Cr "B+ -Rs.6.50 Cr (To be given)
Cost of plot per sq.yd re-worked after giving adjustment of "B" and "B+" i.e. Rs 35,76,94,000/-divided by 44000 which is Rs,8129.409 (roundabout figure of Rs.8129 per sq.yd)	
After above adjustments, Total Plots to be taken by Shahi	44000 sq.yd @ Rs.8129/- .per sq.yd i.e. Rs. 35,76,76,000/-
Money already given	Rs.1,50,00,000/-
Balance to be given by 20.1.10	Rs.34,26,76,000/-
Re-purchase agreed after 2 years	44000 sq.yd @ Rs.25000/- per sq.yd i.e. Rs.110,00,00,000/-
UK PAINTS FUNDING	
Total Plots to be taken	43000 sq.yds @ Rs.11538.50 per sq.yd i.e. Rs.49,61,55,500.00
Funds Already given	"A"..Rs.3.00 Cr "B" .. Rs.7.00Cr B+ .. Rs.8.00 Cr (To be given)
Cost of plot per sq. yd re-worked after giving adjustment of "B" and "B+" is Rs.34,61,55,500.00 divided by 43000 which is Rs.8050 127 (roundabout figure of Rs.8050 per sq. yd)	
After above adjustments, Total Plots to be taken by UK Paints	43000 sq. yd @ Rs.8050/- per sq. yd i.e. Rs.34,61,50,000/-
Money already given	Rs.3,00,00,000/-
Balance to be given by 20.1.10	Rs.31,61,50,000/-
Re-purchase agreed after 2years	43000 sq.yd @ Rs.25000/- per sq.yd i.e. Rs.107,50,00,000/-
SPAN FUNDING	
Total Plots to be taken	43000 sq.yds @ Rs. 11538.50 per sq.yd i.e. Rs.49,61,55,500.00
Funds Already given	"A" ..Rs. 1.00 Or "B" .. Rs. 12.00 Cr "B+".. Rs.3.00 Cr (To be given)
Cost of plot per sq.yd re-worked after giving adjustment of "B" and "B+" is Rs.34,61,55,500/- divided by 43000 which is Rs.8050.127 (roundabout figure of Rs.8050 per sq.yd)	
After above adjustments,	43000 sq.yd @ Rs.8050/- per sq.yd i.e.

Total Plots to be taken by Span	Rs.34,61,50,000/-
Money already given	Rs.1,00,00,000/-
Balance to be given by 20.1.10	Rs .33,61,50,000/-
Re-purchase agreed after 2 years	43000 sq.yd @ Rs.25000/- per sq.yd i.e. Rs. 107,50,00,000/-

58. From the perusal of this word document, the AO held that an amount of Rs.45 Cr. needs to be taxed being the cash money involved in the transactions. For the sake of ready reference, the relevant part of the order of the AO is reproduced as under:

- *The deal therein relates to Sector 84 & 85 Gurgaon deal.*
- *The deal size has increased to 'funding' of Rs. 150 crores by three groups to Vatika group, from the earlier Rs. 130 crores.*
- *Based on above total funding, rate per sq. yards is agreed to be Rs.11538.50.*
- *Now 'money already given' is brought into calculations and adjustment is made in the rate per sq. yards to exclude 'B' amount already received as well as "B+" amount (which is yet to be given). In the result rate per sq. Yards goes down. The following becomes the rate per sq. yards:*

Sl.No.	Group	Rate per sq. yards (Rs.)	Total area to be 'sold' (sq.yards)
1	Shahi Exports	8129	44000
2	Dhingra (UK Paints)	8050	43000
3	Span India	8050	43000

- *All these facts clearly show that the "B" part of "money already given" and "B+" amount (which is yet to be given) are actually cash amounts which are not accounted for. This is supported*

*from the fact that the cost per sq. Yards is re-worked and it goes down with the increase in "B" portion which is reflected by introduction of "B+" portion.*

- It is further noticeable that even though the rate per sq. yards to be shown as the 'sale price' goes down with the 'B\*' and 'B+' component going up/increasing, the 'repurchase' price remains constant at Rs. 25000/- per sq. yards. This further corroborates the finding that these 'B' and 'B+' portion represent unaccounted cash portion of the deal.*
- Further the above funding proposal clearly show that some part of the money totaling Rs. 33 crores have already been given by three groups to the Vatika group. This money includes amounts of Rs. 27.5 crores of "B" portion. Further this mail shows that about Rs. 17.5 crores is the "B+" portion of the total 'consideration' which is yet to be given.*
- The reference to the part of money to be given (for which adjustment in the 'sale price' has been made) by the words "B+" shows an extended portion of "B" only.*
- It is therefore evident from the above calculations that the declared amounts of 'considerations' to be reflected in the above agreements will be adjusted to show only "A" part and other amounts which are still to be given and not the "B" and "B+" part.*

*The concealment of "B" and "B+" part of the 'consideration' clearly corroborate the above mentioned email of Sh. Anupam Nagalia to Sh. Anil Bhalla highlighting the understanding of the deal with the Consortium, wherein cheque portion of the deal is Rs. 100 crores out of total deal size of Rs. 150 crores.*

*It is worthwhile to mention that the above understanding of funding and the modus operandi was then executed between the parties. This is evident from the seized documents evidencing the "Agreement for sale" between Vatika group and these lender groups. These documents have been discussed in detail in para 7.4.1 (B.5) infra. From these agreements it can be seen that the following area was 'sold' at the given rates:*

<i>'Buyer'</i>	<i>Total 'sales' consideration (Amount Rs.)</i>	<i>Rate per sq. yards (Amount Rs.)</i>	<i>Total area (Sq. yards) under 'sale'</i>
<i>Scorpio Research &amp; Consultants Pvt. Ltd.</i>	<i>35,00,00,000/-</i>	<i>8140/-</i>	<i>43000</i>
<i>H.A Realtors Pvt. Ltd.</i>	<i>35,00,00,000/</i>	<i>8140/-</i>	<i>43000</i>
<i>Positive Buildwell Pvt. Ltd.</i>	<i>35,00,00,000/</i>	<i>8140/-</i>	<i>43000</i>
<b>TOTAL</b>	<b>105,00,00,000/-</b>		<b>129000</b>

*Comparison of the above terms of the agreement with the understanding of funding discussed above it therefore appears that there is little deviation from the funding proposed. It is therefore evidently established that the parties have even acted on the 'funding proposed' and it can be clearly seen that the actual rate of Rs. 11538.50 per sq. Yards for plots have not been stated as 'sale price' in the agreement. Rather the understated rate of Rs. 8140 has been mentioned in these agreements because cash payments/receipts as discussed above are involved in the deal.*

*It is therefore evidently established from the documentary evidence seized during the search that the following amounts in cash have been received by Vatika Group.*

SI. No.	Name of the company/Group	Cash amount which is not reflected in the books of accounts "B" portion (Rs.)	Cash amount which is not reflected in the books of accounts "B+" portion (Rs.)	Total "B" and "B+" portion (Rs.)
1	Scorpio Research & Consultants Pvt. Ltd.	7,00,00,000/-	8,00,00,000/-	15,00,00,000/-
2	HA Realtors Pvt. Ltd. Shahi Exports Group	8,50,00,000/-	6,50,00,000/-	15,00,00,000/-
3	Positive Buildwell Pvt. Ltd. Span India Group	12,00,00,000/-	3,00,00,000/-	15,00,00,000/-
	Total	27,50,00,000/-	17,50,00,000/-	<b>45,00,00,000</b>

59. Aggrieved with the addition of Rs.45 Cr., the assessee filed appeal before the Id. CIT(A).

60. The Id. CIT(A) deleted the addition on the grounds that these emails do not patently show any agreement or discernible consent arrived at 'between the buyer and the seller regarding the actual area to be purchased or the rate per yard. These emails seem to be in the nature of proposals relating to a planned purchase transaction. The figures are different in the different emails, thus indicating that the emails are more in the nature of discussions. The actual entities from the purchaser group is not identified also in these emails.

61. The Id. CIT(A) considered the transaction with Scorpio Research & Consultants Pvt. Ltd. (a UK paints group concern) as an illustration, the contents of the emails can be summarized in the table below:

Sl. No.	-	As per Agreement to Sale	As per email dated 02.01.2010 from Anupam Nagalia to Anil Bhalla	As per email dt. 13.01.2010 from Bal Parmeshwara n to Anupam Nagalia	As per email dt. 20.01.2010 from Bala Parmeswaran to Anupam Nagalia
1.	Date of agreement/ email	20.01.2010	02.01.2010	13.01.2010	20.01.2010
2.	Area(Developed area only)	1,30,000	1,30,000	1,12,666.29	1,30,000
3.	Total Consideration	Rs. 105 cr.	Rs. 150 cr.	Rs. 130 cr.	Rs. 150 cr.
4.	Payment to Vatika (only for U.K. Paints group)	Rs.35 crores	Not mentioned	Rs.43,33,39,906 (including 'A' Rs. 3.00 crores 'B' Rs. 7.00 crores	Rs.49,61,55,500 (including 'A'= Rs.3.00 cr 'B'= Rs.7.00cr 'B+' = Rs.8.00 cr (to be given)
5.	Payment to Vatika by U.K. group, Span group, Shahi group	Rs. 105 crores	Rs. 150 cr. (including 'present loan' Rs. 30 crores)	Rs. 130 cr. (including A (Rs.5.50 Cr.) & B (Rs.27.50 cr.) = Rs.33 crores)	Rs. 150 cr. (including A, B & B+ = Rs. 50.50 crores (incl. Rs. 17 crores under 'B+' "to be given")
6.	Sale price computed after, excluding 'B' & 'B+'	-	Rs. 7692	Rs.9675	Rs.8050

62. The Id. CIT(A) held that subsequent to these emails, Scorpio Research & Consultants Pvt. Ltd. has entered into an agreement to Sale with Vatika Ltd. on 20.01.2010, in which the sale rate is Rs.8050/- p. sq. yd., which raises a suspicion that the recorded transaction excludes the 'B' and 'B+' sums, which were paid as unaccounted consideration. However, suspicion however strong, cannot take the place of evidence. It can be seen that even after excluding the 'B' part from the email dt.13.01.2010 and the 'B' plus 'B+' parts from the email- dated 20.01.2010 from the total amounts mentioned in the respective

emails, the consideration so computed does not quite match the actual consideration mentioned in the Agreements to Sale. There is no evidence about the exact nature of these 'B' and 'B+' categories that establish that these sums are unaccounted consideration paid in respect of the Agreements to Sale. The Id. CIT(A) also held that no statement has also been recorded u/s 132(4A) or 132(1A) of the Income Tax Act, 1961 on these seized emails.

63. The Id. CIT(A) also held that in the absence of any seized material conclusively showing that the 'B' and 'B+' amounts were actually paid or that any such sums were adjusted against the sale consideration, it has also to be examined if the proposals contained in the emails are actually in respect of the Agreement to Sale entered into with Scorpio Research & Consultants Pvt. Ltd. on 20.01.2010. It would be noticed from the table at para 4.1.7 above that the consideration amounts mentioned in the Agreement to Sale does-;not quite match with the consideration figures in the emails (after excluding the 'B' and 'B+' sums). Moreover, it would be seen that the mainstay of the A.O.'s finding is that the recorded sale rate of Rs.8,050/- per sq yd is similar to the sale value that would be computed after, excluding 'B' and 'B+' amounts, but including the 'A' amount. In the case of Scorpio Research & Consultants Pvt. Ltd., this means that the final sale consideration paid includes an accounted-for sum of Rs. 3 crores (i.e. the 'A' sum), which had apparently already been paid in or before January 2010 (the dates of the emails). Examination of the actual Agreement for Sale dated 20.01.2010 shows that the total sale

consideration is for a sum of Rs.35 crores. The consideration is depicted in the Agreement to Sale as Rs.35 crores paid by RTGS Transfer on 20.01.2010. The ledger account of Vatika Ltd however shows payment of Rs.29,33,39,906/- ( paid by cheque) on 10.1.2010 and Rs. 5,66,60,094/- on 21.1.2010 (by RTGS). It is thus seen that the consideration paid does not include any sum of Rs. 3 crores paid earlier, thus showing that the proposals seen in the emails could not be in respect of the land which is the subject matter of the Agreement to Sale dated 20.01.2010. Similar is the case with the transactions with H.A. Realtors P. Ltd and with Positive Buildwell P. Ltd.

64. To wrap up, the Id. CIT(A) held that the conclusions drawn by the A.O. are neither backed by any conclusive evidence nor can any such conclusion be logically drawn from an interpretation of the seized material.

65. Aggrieved the revenue filed appeal before us.

66. In these grounds the appellant challenges the additions made on the merits of the A.O's interpretation of the seized documents, The materials relied upon by the A.O. pertains to emails recovered from certain hard disks seized during the search actions of both 16.09.2011 and 16.01.2013. These emails contain an internal discussion of Vatika group and also exchange of emails between the Shahi group and Vatika group, and copies. These emails contain reference to a certain proposed transaction of purchase of developed land from Vatika Ltd by Shahi group, UK Paints group and Span Group (with the purchasers forming a loose consortium). The emails indicate

details of consideration in respect of a proposed purchase of property by Scorpio Research & Consultants Pvt. Ltd. for purchase of developed plots at a project being undertaken by Vatika Ltd. at Sector 84 & 85, Gurgaon.

67. Before us, the Id. DR relied on the order of the Assessing Officer and the Id. AR supported the order of the Id. CIT(A). The Id. AR argued that the assessment order is merely an extract/reproduction of the Appraisal report and therefore does not bear any application of mind by the A.O. It was argued that no notice, much less any notice of enquiry or a show cause notice was issued to the appellant requiring it to show cause why the addition of a sum of Rs. 45,00,00,000/-, as has been made in the assessment order, being made. Therefore the addition suffers from a basic legal infirmity, inasmuch as that the appellant had not been provided any opportunity. The appellant relied on certain case laws in support of its contention that an order made in violation of principle of natural justice is a nullity in the eyes of law. It was argued that there was no basis of the conclusion that the agreed consideration was Rs. 105 crores, but actual deal size was of Rs. 150 crores. Neither the assessee nor the parties to the agreements have confirmed that finally agreed sale price was actually in excess of the amount of Rs. 8,140 per sq. yard as recorded in the agreement for sale.

68. We have considered rival submissions and perused materials on record. From the observations of the Assessing Officer in the assessment order, it is clearly evident, relying

upon certain email communications between some persons related to the assessee company and other entities, the Assessing Officer has concluded that in addition to the amount recorded in the agreement towards consideration for sale of land in Sector 84 and 85 of Gurgaon, the assessee received money in cash, as, the information in the email suggests that the total consideration paid towards purchase of land by different entities was to the tune of Rs.150 crores and not the recorded amount of Rs.105 crores. Accordingly, he has inferred that the assessee has received an amount of Rs.45 crores in cash outside the books towards sale consideration of land, which was added back to the income of the assessee. It is observed from the materials on record, except the email communications, the Assessing Officer has no other corroborative evidence to conclusively prove that money in cash had actually changed hands. Except the email communications, no other documents have been seized, either from the assessee or from other entities to indicate that cash payment was actually made. Apart from relying upon the email communication, the Assessing Officer has not made proper inquiry to establish on record that cash payments were actually made to the assessee. As rightly observed by learned Commissioner (Appeals), the emails on which the Assessing Officer placed reliance, essentially, do not patently show any agreement or discernible consent arrived at between the buyer and seller regarding the land to be purchased or the rate per sq. yards. The emails are in the nature of discussions and proposals to a planned purchase transaction. It has been factually found by learned Commissioner (Appeals) that the

figures relating to the alleged total deal vary in different emails. Learned Commissioner (Appeals) has also given a factual finding that no seized materials were found conclusively establishing that any amount in cash was actually paid or any such sum was adjusted against the final sale consideration.

69. We must say, the Revenue has failed to controvert any of the factual findings recorded by learned Commissioner (Appeals). Though, email relied upon by the Assessing Officer may give rise to suspicion that there may be cash payment in addition to the recorded sale consideration, however, such suspicion, howsoever strong, cannot take place of evidence. It is a fact on record that the Assessing Officer has not brought any evidence to establish that cash payments were actually made to the assessee.

70. In view of the aforesaid, we do not find any reason to interfere with the decision of learned Commissioner (Appeals) on this ground.

**ITA No. 3712/Del/ 2017 : A.Y. 2013-14**

**Addition u/s 69A:**

71. During the course of search on 16.01.2013, cash of Rs. 3,42,93,000/- has been found from the office premises of appellant. The A.O. held that a sum of Rs. 32,93,000/- is explained and the remaining sum of Rs. 3,10,00,000/- has been treated as unexplained and addition has been made u/s 69A of the Income Tax Act, 1961.

72. The assessee submitted that this sum of Rs. 3.10 crores has been received by the appellant as in advance on 15.01.2015 against booking of property by 9 persons. The appellant submitted that these advances were received one day prior to the date of the search and therefore not entered into books of accounts of the assessee company on the day of the search. It was submitted that in the absence of booking forms provided by the Sales Department, these sums were yet to be entered in the books before the date of search. Subsequently allotment letters has also been issued in respect of 9 persons, the names and the amounts received are as under:

Sl. No.	Name/PAN	Address	Amount
1,	Chbote Lai S/o Lai Krishan	H.No.-4, Village and Post officer, Sikander Pur, Distt. Gurgaon - 122001	25,00,000
2.	Leela Ram S/o XJmrao	Village and Post Office Sikender Pur, Badha Distt Gurgaon-122001	15,00,000
3.	Jagbeer S/o Madhu Singh	Village and Post Office Harsru, Distt. Gurgaon	35,00,000
4.	Satbir S/o Jagan Singh	H. No. -16 SikenderPur, - Badha Distt - Gurgaon-122004	20,00,000
5.'	Deepak S/o Daya Ram	Village and Post Office Sikender Pur, Badha Distt Gurgaon-122001	15,00,000
6.	Ram Singh Yadav S/o Seesh Ram	H. NO. -16 Village and Post Office, Sikender Pur, Badha Distt Gurgaon-122004	35,00,000
7.	Dharam Bhushan Jain S/o RC. Jain PAN: AAFPJ9620G	Shakahar Building, 1, Ansari Road, Daryaganj, New Delhi-110002	20,00,000
8.	Krishna Yadav - Prop Devi Construction PAN: AADPY8394A	116-119, Anand Nagar, Sisri Road, Vaishali Nagar, Jaipur	50,00,000
9.	Mahender Talk S/o Ram Prtapji Tak	71, Shanti Nagar, Sirohi, Distt, Rajasthan	95,00,000
	Total		3,10,00,000

73. The evidence submitted by the assessee are allotment applications, allotment letter, confirmation from the party and allocation card from these persons. It was submitted that these persons had duly confirmed having made advanced the respective sums to the appellant. The Assessing Officer examined four parties namely, Dharam Bhushan, Deepak, Chhote Lal and Jagbeer. The observations of the Assessing Officer are as under:

**Sh. Dharam Bhushan Jain**

*From the examination of Sh. Dharam Bhushan Jain S/o P. C. Jain it is observed that the party has claimed certain cash withdrawals to have been made prior to the claimed date of booking of flat with Vatika Ltd. The party has failed to substantiate with documentary evidence whether the sum of Rs. 5 lakh withdrawn in the month of November 2012 was actually lying with him.*

**Sh. Chhote Lal**

*Statement of another party Chhote Lal S/o Lai Krishan is also being referred for analysis. From the statement of the party it is observed that the party is neither carrying his PAN Card or ITR nor remembers the PAN Card no. Further, the source of investment is explained as compensation money received on acquisition of his agricultural land. Further, when he was asked to explain the date of withdrawals he was not able to recall the same. Analysis of the bank statement of the party shows that the credit balance in the account of the party on 27.12.2012 was Rs. 1,50,052/-. The party has not furnished his bank*

*statement for January 2013 onwards. Hence, the creditworthiness of the party could not be established. Further, it is important to note that the party was not having his copy of application form or allotment letter/receipt of the payment made it was submitted by him that it will be furnished later. But no such submission was made. Another interesting fact is that which emerges is that the party having the annual source of income of Rs. 50,000/- has booked the plot with M/s. Vatika Ltd for a sum of Rs 1.25 crores. Also, two years have been passed since the date of application of the plot but no further installments have been paid by the party. Hence, the genuineness of the so-called transactions claimed by M/s. Vatika Ltd is in itself questionable.*

### **Sh. Deepak Kumar**

*Similarly, if we examine the statement of the third party Sh. Deepak Kumar S/o Daya Ram it is observed that he has also claimed the source of investment in M/s. Vatika Ltd to be on account of sale of his father's agricultural land in the year 2007. No supporting document of such sale could be furnished by the party. In support of his claim, he produced the bank statement of his father's but no such withdrawal was made on 15.01,2013 rather it must be noted that no cash withdrawal was made from the bank account of his father's in the month of January 2013. Also, it must be noted that the credit balance in this account as on 31.12.2012 was Rs. 6,808/-. Hence, the genuineness and creditworthiness of this transactions could not be established by M/s. Vatika Ltd.*

**Sh. Jagbeer**

*It is observed that he has also claimed the source of investment in M/s. Vatika Ltd to be on account of sale of his mother's agricultural land. No supporting document of such sale could be furnished by the-party. When the party was asked to explain the details of withdrawal he claimed to have made a withdrawal of a sum of Rs. 50,00,000/- in February 2012. But he could not explain any plausible reason as to why such huge amount was kept in cash with him for around one year. Hence, the genuineness of the claim of the assessee is not established as no prudent man would keep so much of cash with him for such a long period without any purpose of utilization. Another fact which raises doubt over the claim of the assessee is he could not establish whether this cash withdrawal had actually been received by him from his mother. This once again doubts the genuineness and creditworthiness of these transactions could not be established by M/s. Vatika Ltd.*

74. Hence, the AO held that the parties produced by the assessee shows that the assessee could not establish his claim regarding the cash receipts on account of booking amount received from various parties. It was also held that the claim of the assessee is not acceptable as assessee has claimed to have made bookings made on 15.01.2013 that is just a day before search on 16.01.2013 but no copy of booking forms received from the above mentioned customers or the copy of receipt given to them could be seized or found on the date of search. Considering the fact that the assessee was given repeated opportunities during post search investigation to file the

submissions and explanations regarding the cash found and seized from his premises but no reasonable explanation could be furnished by the assessee, the AO treated the amount of Rs.3.10 Cr. u/s 69A of the Income Tax Act, 1961.

75. The addition made by the AO has been confirmed by the Id. CIT(A) on the grounds that reasons given by the A.O. while rejecting the same has been elaborately brought out in the assessment Order and the AO has found that the explanation for the sum of Rs.3.10 crores as unsatisfactory. The Id. CIT(A) held that the onus is on the appellant not only provide a prima facie satisfactory explanation but also to lead evidence in support of its claim.

76. Heard the arguments of both the parties and perused the material available on record.

77. Having considered rival submissions, we find that the assessee had explained the source of cash seized amounting to Rs.3,10,00,000/- by stating that he has received the amount towards advance booking from 9 persons, who intended to purchase land from the assessee. In support of such contention, the assessee had furnished the names and addresses of the concerned persons and the amount received from them. It is a fact on record that in course of assessment proceeding, the assessee had made a specific request to the Assessing Officer to issue summons to the concerned persons, as they were not cooperating with the assessee. Instead of summoning them, the Assessing Officer called upon the assessee to produce the concerned parties. It is observed, out of 9 persons 4 persons

confirmed that they had paid money to the assessee towards advance booking of the land. However, the Assessing Officer disbelieved their statements citing various reasons. Another crucial reason for which the Assessing Officer disbelieved assessee's explanation is because of the fact that the advance booking amounts were received on 15.01.2013 just one day prior to the search and seizure operation conducted on 16.01.2013. However, perusal of record reveals that before the departmental authorities the assessee had submitted booking application, allotment letter, confirmations and some other evidences to prove the source of cash found and seized. Having taken note of factual position emerging on record, we are of the view that proper inquiry has not been conducted, either by the Assessing Officer or learned Commissioner (Appeals) to ascertain the veracity of assessee's claim regarding receipt of money from 9 persons towards advance booking of land. When the assessee has furnished the booking application, allotment letters, names and addresses of the persons, who had given advance booking with their PAN, bank statements etc., the minimum that the department could have done is to conduct necessary inquiry not only with the assessee but with the concerned persons to find out, whether, actually the lands were allotted to the concerned persons subsequently. Absolutely, no such inquiry has been made by the Assessing Officer. It is evident, in course of assessment proceeding, not only the assessee had requested the Assessing Officer for issuing summons to the concerned persons to verify assessee's claim, but on the insistence of the Assessing Officer, the assessee could be able to produce 4 persons. As it appears, the Assessing

Officer has not made any effort to ensure the attendance of the other 5 persons. The Assessing Officer has been conferred with adequate power under the statute to not only conduct necessary inquiry, but even enforce attendance of witness. In the facts of the present appeal, the Assessing Officer has failed to exercise such statutory power.

78. On the other hand, he has put the entire burden on the assessee to prove the source of cash seized. When the assessee has furnished explanation regarding the source of cash seized, the Assessing Officer was duty-bound to make proper inquiry to take the issue to its logical end. Since, the departmental authorities have failed to undertake necessary inquiry to ascertain the veracity of assessee's claim regarding source of cash seized, the assessee cannot be faulted for not providing the required details and proving the source, identity of the persons from whom the amount has been received on account of advance bookings of the plots. The onus having been discharged by the assessee, it was for the revenue to disprove the contentions of the assessee. The assessee cannot be faulted for not issuing the summons u/s 131 by the Assessing Officer and to make further enquiries as deemed fit. Hence, the appeal of the assessee on this ground is liable to be allowed.

79. In the result, this ground of appeal is allowed.

80. To conclude,

- With regard to payment of unaccounted interest by Vatika Ltd., in the absence of any details, proof, it is hereby held

that the addition made on interest paid is liable to be deleted.

- The decision of the Id. CIT(A) in ITA No. 3591, 3592, 3593, 3594, 3595, 3596, 3597 & 3598/Del/2017 in M/s Vatika Ltd. is hereby affirmed.
- The appeal of the assessee in ITA No. 3705, 3706, 3707, 3708, 3709, 3710 & 3711/Del/2017 in M/s Vatika Ltd. are hereby allowed on merits.
- In the absence of any proof of receipt of cash, the decision of the Id. CIT(A) in ITA No. 3709/Del/2017 for the A.Y. 2010-11 is hereby affirmed.
- In the absence of enquiries conducted, the addition made on account of cash on advance booking in ITA No. 3712/Del/2017 for A.Y. 2013-14 is hereby deleted.
- Owing to the conclusion that no interest has been paid by M/s Vatika Ltd., the additions made in the hands of M/s U.K. Paints, M/s Span India Pvt. Ltd., M/s Scorpio Research & Consultants Pvt. Ltd., M/s SEH Realtors Pvt. Ltd. on account of interest income are unsustainable.
- Owing to the conclusion on merits that no interest has been paid, the additions made in the hands of M/s Span India Pvt. Ltd. and M/s SEH Realtors Pvt. Ltd. would not survive, hence the COs in the case of M/s Span India Pvt. Ltd. and M/s SEH Realtors Pvt. Ltd. are treated as allowed for statistical purpose.
- Since, the matter has been adjudicated on merits of the issue based on facts and judicial pronouncements, any adjudication on the grounds raised on account of Section

148 and Section 153D becomes academic in nature hence not adjudicated.

81. In the result, the appeals of the assessee are allowed, the COs of the assessee are allowed for statistical purpose and the appeals of the Revenue are dismissed.

Order Pronounced in the Open Court on 20/04/2023.

Sd/-

**(Saktijit Dey)**  
**Judicial Member**

**Dated: 20/04/2023**

\*Subodh Kumar, Sr. PS\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(Dr. B. R. R. Kumar)**  
**Accountant Member**

**ASSISTANT REGISTRAR**