

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**IT(SS)A Nos. 181 to 184/Ind/2014 &
ITA No. 406/Ind/2014
Assessment Years: 2005-06 to 2009-10**

Late Shri Jitendra Kumar Bhasne through Legal Heir Smt. Bharti Bhasne H. No. SH-6, Fortune Enclave Kolar Road, Bhopal PAN No: ABVPB8763B (Appellant)	Vs	The ACIT-2(1), Bhopal (Respondent)
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**IT(SS)A Nos. 178 to 180/Ind/2014 &
ITA No. 404/Ind/2014
Assessment Years: 2006-07 to 2009-10**

Smt. Bharti Bhasne H. No. SH-6, Fortune Enclave Kolar Road, Bhopal PAN No: AJKPB6582H (Appellant)	Vs	The ACIT-2(1), Bhopal (Respondent)
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**Assessee Represented: Shri Ashish Goyal &
Shri N.D. Patwa, A.Rs.
Revenue Represented: Shri P.K. Mishra, CIT-DR**

Date of hearing : 23-02-2023
Date of pronouncement : 16-05-2023

आदेश/ORDER

PER BENCH:-

These batch of appeals are filed by two assessees as against separate Appellate orders both dated 31.03.2014 passed by the Commissioner of Income Tax (Appeals)-1, Bhopal relating to the Assessment Years (A.Ys) 2005-06 to 2009-10. The assessees herein are husband and wife, substantial additions are made in the hands of the husband Late Shri Jitendra Bhasne and Protective additions are made in the hands of the wife namely Smt. Bharti Bhasne. Since common issues are involved in these batch of appeals, for the sake of convenience, this consolidated order is passed.

2. The brief facts of the case is Shri Jitendra Bhasne was an Executive Engineer with PWD Department, Government of Madhya Pradesh showing income from salary and house property. There was a search and seizure operation u/s. 132(1) of the Act was conducted in the residential premises on 26.02.2009.

2.1. During the course of search, cash of Rs. 3,93,800/- was found and out of that Rs. 3,53,300/- was seized. There were jewelries of Gold and Silver were found in the residential premises as well as the bank locker at State Bank of India, but jewelleries were not seized. Further certain documents belong to the assessee were also found and seized during the course of search proceedings.

Pursuant to the same, the assessees were issued with notices u/s. 153A on 17.02.2010 to file the Return of Income for the Assessment Years 2002-03 to 2008-09. The assessees filed the respective Return of Incomes as follows:

Shri Jitendra Bhasne					
<i>Asst. Years</i>	<i>Original Return</i>		<i>Return u/s. 153A</i>		
	<i>Dated</i>	<i>Income</i>	<i>Dated</i>	<i>Income</i>	<i>Assessed Income</i>
2005-06	-	-	30.08.2010	1,56,460	9,77,460
2006-07	-	-	30.08.2010	1,14,457	29,72,695
2007-08	-	-	30-08-2010	1,25,890	32,83,890
2008-09	31.07.2009	1,43,110	30.08.2010	1,43,110	72,82,620
2009-10	31.07.2009	2,83,100	-	-	1,03,25,004

Smt. Bharti Bhasne					
<i>Asst. Years</i>	<i>Original Return</i>		<i>Return u/s. 153A</i>		
	<i>Dated</i>	<i>Income</i>	<i>Dated</i>	<i>Income</i>	<i>Assessed Income</i>
2005-06	NA	NA	NA	NA	NA
2006-07	11.10.2006	1,12,310	30.08.2010	1,12,310	14,25,550
2007-08	30.03.2009	18,56,640	30-08-2010	13,53,110	44,61,110
2008-09	08.04.2009	63,96,820	30.08.2010	16,39,560	76,47,490
2009-10	31.07.2009	84,93,120	30.08.2010	67,43,120	1,36,37,120

2.2. The Assessing Officer after detailed discussions and verification of various seized materials passed assessment orders and made addition based on the loss papers seized from the assessee's premises, purchase of plot at Gora Bishankhedi, Investment in ICICI Prudential Policy in the name of the wife and husband, loose papers found at the premises of the contractor Shri R.K. Garg and registration expenses for plot at Kerwa Dam and demanded tax thereon. Similarly in the case of Smt. Bharti Bhasne various additions were made on Protective basis, since substantial additions made in the hands of her husband.

3. Aggrieved against the assessment orders, the assessee filed appeals before Ld. Commissioner of Income Tax (Appeals)-1, Bhopal. The ld. CIT(A) considered the additions in the case of Shri Jitendra Bhasne issue-wise and Assessment Year-wise after detailed discussions and confirmed the additions. For better understanding of the issues, the same is reproduced as follows:

(A) Additions of Rs. 4,12,000/- in A.Y. 2006-07 and of Rs. 2,65,000/- in A.Y. 2007-08 in respect of investment for purchase of plots at Village Gora Bishankhedi in the name of Smt. Bharti Bhasne and addition of Rs. 30,000/- being unexplained registry charges for A.Y. 2009-10, on substantive basis.

5.4 I have carefully considered the submission of the appellant and facts of the case. As mentioned by the AO, the appellant's wife Smt. Bharti Bhasne did not have any regular source of income before starting her occupation as an agent of ICICI Prudential in August, 2006. Before the date of search, that she had filed return of income for A.Y.2006-07 only showing nominal income from tuition and no return prior to A.Y 2006-07 or after that had been filed by her. She had filed her returns of income only after search & seizure operations. Her claim of earning from tuition was also not supported by any document. Thus, the appellant and his wife failed to prove that Smt. Bharti Bhasne had ever earned any income from tuition or beauty parlour etc. Considering the facts of the case, the AO was justified in rejecting the cash flow submitted by the appellant. Since Smt. Bharti Bhasne had no source of income, the AO was justified in holding that the source of investment in plots at Goragoan and payment for registry of plot at Kerwa Dam at Bhopal remained unexplained and assessing the same as unexplained investment of the appellant from undisclosed sources. Accordingly, the addition of Rs.4,12,000/- in A.Y. 2006-07, of Rs.2,65,000/- in A.Y. 2007-08 and of Rs.30,000/- in A.Y. 2009-10 made on substantive basis in the hands of the appellant are confirmed.

(B) “Additions of Rs.19,90,000/- in A.Y.2007-08, of Rs.50,09,528/- in A.Y.2008-09 and of Rs.67,64,000/- in A.Y.2009-10 on account of unexplained investment in ICICI Prudential Insurance policy in the name of Smt. Bharti Bhasne substantively in the hands of appellant.”

6.4 I have carefully considered the submission of the appellant and facts of the case. In this case, it was found that following investments were made in ICICI Prudential Life Insurance Co. Ltd. for the purchase of policies in which majority

of the payments were made by DDs of amounts below Rs.50,000/- in the name of Smt. Bharti Bhasne.

Name of the policy holder	Amount (Rs.)	A.Y.
Smt. Bharti Bhasne	19,90,000/-	2007-08
Smt. Bharti Bhasne	50,09,528/-	2008-09
Smt. Bharti Bhasne	67,64,000/-	2009-10
Total	1,37,63,528/-	

Regarding the source of investment of Rs.1,37,63,528/- with ICICI Prudential Insurance in the name of Smt. Bharti Bhasne, it was admitted by Smt. Bharti Bhasne during search proceedings in her statement that this was her undisclosed income and admitted to pay tax thereon. She had also filed returns for A.Ys.2007-08 to 2009-10 u/s 139(1)/139(4) for these assessment years declaring unexplained investments in ICICI Prudential Insurance as additional income. However, subsequently while filing returns in response to notices u/s 153A, she had reduced the additional income disclosed in the returns. Here it may not be out of place to mention that section 153A is for the benefit of the department and the assessee cannot claim reduction in income u/s 153A which was earlier disclosed in the returns of income filed u/s 139 of the Act. However, it is pertinent to note that Smt. Bharti Bhasne had started her occupation as an agent of ICICI Prudential Insurance in August 2006 and had earned commission income from ICICI Prudential Insurance. This was the only source of income with her. She had not filed any returns of income before the date of search except for A.Y.2006-07, wherein a nominal income on account of tuition and salary were shown which were also not substantiated with any cogent material. Smt. Bharti Bhasne also failed to prove that she had made any investment in the purchase of ICICI Prudential Insurance policies from the commission income earned from ICICI Prudential Insurance. The commission income was deposited in bank account which was utilized to purchase FD etc., whereas the investment in ICICI Prudential Insurance Policies was made by Demand Drafts of amounts less than Rs.50,000/- purchased in cash. Smt. Bharti Bhasne had tried to explain the above investment mainly from following sources:

- (i) Amount of Rs.51,00,000/- claimed to be received from Roshan Co- operative Housing Society after surrender of her rights in the property; and
- (ii) On account of cessation of customers liability of Rs.5,03,531/- in A.Y.2007-08, of Rs.47,57,258/- in A.Y.2008-09 and of Rs.17,50,000/- in A.Y.2009-10.

From the facts of the case, it is evidently clear that both these sources were an afterthought made up story just to try to explain an unaccounted investment in ICICI Prudential Insurance Policies.

As regards source of Rs.51,00,000/-, it was claimed that the father of Smt. Bharti Bhasne had gifted a property to her before her marriage which was claimed to be purchased for Rs.1,00,000/- in 1990 and she had surrendered her rights in the property after settlement and received Rs.51,00,000/- in August, 2008. But the AO, after examining the facts in detail proved that it was a cooked up story and no transaction had taken place in which the Smt. Bharti Bhasne had received cash of Rs.51,00,000/-. The observations of the Ld. AO were not rebutted by the appellant during appellate proceedings. Thus, the AO was correct in holding that the story put up by the appellant was a fabricated story played to build up the availability of cash to explain the investment with ICICI Prudential Insurance in the name of Smt. Bharti Bhasne. It may be noted that Smt. Bharti Bhasne had been changing her stand on this issue. Initially, she stated that she had entered into an agreement to purchase the property by making payment of about Rs.1,00,000/- in 1990 and received Rs.51,00,000/- in cash from Roshan Grih Sahakari Samiti on surrender of her rights in August, 2006. But when the AO proved that Roshan Grih Sahakari Samiti had not made any such payment, she had changed her stand and stated that these rights were given to her by her father before her marriage and these rights in property were surrendered by her in favour of other persons in lieu of payments of Rs.51,00,000/- in cash received by her through Roshan Grih Sahakari Samiti and the payment was not actually made by Roshan Grih Sahakari Samiti. It may also be pertinent to note that in the statement of Secretary/ Treasurer of Roshan Grih Sahakari Samiti, Shri Deepak Soni recorded on 23.12.2010. He categorically stated that no payment was made for any such transaction through Roshan Grih Sahakari Samiti. Smt. Bharti Bhasne also failed to produce Shri Shakil Ahmed and others stated to be owner of the property to verify the veracity of her submission regarding receipt of Rs.51,00,000/- in cash from them. The AO also pointed out that Smt. Bharti Bhasne rather in her statement dated 16.12.2010 stated that she could not remember any person by the name Shri Shakil Ahmed, which speaks for itself regarding the truthfulness of this submission. Furthermore, she also claimed to have received an astronomically high amount of Rs.51,00,000/- in cash as against original investment of about Rs.1,00,000/- only by her father which is also against ordinary human probabilities. Thus, the AO had rightly rejected the claim of receipt of Rs.51,00,000/- in cash on surrendering of rights in the said property.

In regard to cessation of customers' liability also, the story of the appellant is unbelievable. In the case of an LIC Agent, it is not the normal practice that investor would give amount in advance to the agent for a long time and normally the investor pays the amount through cheque or draft in the name of insurance

company itself. Further, Smt. Bharti Bhasne had provided names of 18 customers from whom she had claimed to have received these amounts, which were later on claimed to be appropriated by her as cessation of liability. But when she was asked to produce these 18 persons who were claimed to be agriculturist, only 8 persons were produced and their statements were recorded. From the statements recorded it was found by the AO that there were contradictions in their statement and, therefore, could not be relied upon. The appellant also failed to explain satisfactorily the contradictions in their statements. Thus, this was also a made up story just to try to show availability of cash in the hands of Smt. Bharti Bhasne to explain unexplained investment by the appellant in the purchase of ICICI Prudential Insurance in the name of his wife, Smt. Bharti Bhasne.

In this regard, reference may be made to the decision of the Hon'ble Supreme Court in the case of Income Tax Officer Vs. Atchaiach (Ch) (1996) 218 ITR 239 (SC), wherein the Hon'ble Supreme Court observed as under :-

"Under the present Act, the Income-tax Officer has no option like the one he had under the 1922 Act. He can, and he must, tax the right person and the right person alone. By "right person" is meant the person who is liable to be taxed, according to law, with respect to a particular income. The expression "wrong person" is obviously used as the opposite of the expression "right person". Merely because a wrong person is taxed with respect to a particular income, the Assessing Officer is not precluded from taxing the right person with respect to that income."

In view of the above, the AO was justified in taxing the income in the hands of appellant regarding unexplained investment in ICICI Prudential Insurance in the name of his wife, Smt. Bharti Bhasne.

Therefore, considering the facts and circumstances of the case, the AO was justified in making addition on substantive basis in the hands of the appellant on account of unexplained investment in ICICI Prudential Insurance in the name of his wife Smt. Bharti Bhasne. Hence, additions of Rs.19,90,000/- in A.Y.2007-08, of Rs. 50,09,528/- in A.Y 2008-09 and of Rs.67,64,000/- in A.Y. 2009-10 are confirmed.

(C) Additions of Rs.9,01,238/- in A.Y.2006-07, of Rs.7,53,000/- in A.Y 2007-08 and of Rs.8,98,400/- in A.Y 2009-10 on account of unexplained investment in ICICI Prudential policies, substantively in the hands of appellant and protectively in the hands of Smt. Bharti Bhasne, wife of the appellant.

7.4 I have carefully considered the submission of the appellant and facts of the case. The appellant had purchased in his own names ICICI Prudential Insurance

policies for Rs.901238/-in A.Y. 2006-07, for Rs.7,53,000/- in A.Y. 2007-08 and for Rs.8,98,400/- in A.Y. 2009-10, aggregating to Rs.25,52,638/-. The main contention of the appellant was that these policies were purchased by the appellant out of funds provided by his father Shri B.L. Bhasne. It was submitted that Shri B.L. Bhasne had made an agreement to purchase the agriculture land situated at village Kothwal, Tehsil Morena on 13.05.2003 for a sale value of Rs.15,00,000/- and had paid advance of Rs.1,50,000/- only. This agreement was subsequently cancelled and Shri Mardan Singh had paid Rs.25,00,000/- to Shri B.L. Bhasne (father of the appellant) who had purchased ICICI Prudential Insurance Policies in the name of the appellant. But it may be noted that the on investigation/ enquiry, Ld. AO had proved with cogent material that it was a made up story just to build up cash to show the source of purchase of ICICI Prudential Insurance Policies. It may be noted that during the course of search no such argument was taken by the appellant and rather the appellant's wife, Smt. Bharti Bhasme had surrendered the total investment in ICICI Prudential Insurance Policies including the policies purchased in the name of the appellant and agreed to pay tax thereon. The Ld. AO had successfully proved that the alleged agreement to purchase dated 13.05.2003 purported to be entered between appellant's father Shri BL. Bhane and Shri Mardan Singh was not genuine as it was shown that no such stamp paper was actually purchased from Shri Sayed Anwar Rizvi in the case of Shri Mardan Singh Vs. Shri B.L.Bhaste. The AO also found from the statement of Shri Mardan Singh recorded on 15.12.2010 that he was a contractor working under the appellant and further that Shri Mardan Singh did not possess the creditworthiness to pay such an amount in cash. There were many contradictions in the submission of the appellant and the statement of Shri Mardan Singh, which the appellant could not satisfactorily explain or rebut. Further, it is also unbelievable, when the total sale consideration of the alleged purchase deed was only Rs.15,00,000/- and it was stated that Shri B.L. Bhasne had paid earnest money/ advance/ bayana of Rs.1.50,000- only that on cancellation of such an agreement a huge amount of Rs 25,00,000/- would be paid to Shri B.L. Bhasne. In the case of such a transaction, on cancellation of an agreement to sale, double of the amount of the advance given is generally paid in the real estate transactions. The appellant had claimed an astronomically increase in the compensation stated to be received by his father. The AO was justified in disbelieving the story which is prima facie a fantastic story, it is a story that does not at all with human probability. Therefore, the AO was justified in holding that the appellant failed to satisfactorily explain the source of investment in ICICI Prudential Insurance Policies in his name made in A.Y. 2006-07, A.Y. 2007-08 & A.Y. 2008-09.

Considering the facts and circumstances of the case, I am of the opinion that the AO was justified in making addition on account of unexplained investment in ICICI Prudential Insurance Policies in the name of the appellant in A.Ys.2006-07,

2007-08 & 2008-09. Hence, additions of Rs.9,01,238/- in A.Y. 2006-07, of Rs.7,53,000/- in A.Y. 2007-08 and of Rs.8,98,400/- in A.Y. 2008-09 on account of unexplained investment in ICICI Prudential Insurance Policies are confirmed.

(D) Addition of Rs.8,27,000/- on the basis of LPS-11 page 41 treating the same as unexplained income.

8.4 I have carefully considered the submission of the appellant and facts of the case. It may be relevant to mention here that section 292C of the Income-tax Act provides, inter- alia, that where any books of account or other documents are found in possession or control of any person in the course of search u/s 132, it may, in any proceedings under this Act, be presumed that the contents of such books of account and other documents are true. The relevant clause (ii) of section 292C reads as under:

"(ii) that the contents of such books of account and other documents are true; and"

As regards page no.41 of seized document LPS-11, it may be noted that in the submission before AO, the appellant admitted that the transactions recorded on this page relates to office work calculation of allotment receipts, whereas in the submission during appellate proceedings, it was contended that it was purely a dumb document and the same cannot be used as an evidence as the name, date and purpose were not mentioned on this page. This shows that the appellant is taking a different stands at different stage of proceedings, which cannot be relied upon. During assessment proceedings, it was stated that the transactions recorded on this page were related to work calculation of allotment receipts but the appellant failed to adduce any evidence from the office of P.W.D. to prove this contention. Thus, the appellant had not discharged his onus to properly explain the transactions recorded on this page. It was not a dumb document as the appellant himself admitted that on this paper transactions relating to government receipts were entered. This paper clearly mentioned the total amount of Rs.8,27,000/- received. Therefore, in these circumstances, the AO was justified in making addition of Rs.8,27,000/-, treating the same as undisclosed income of the appellant. Hence, addition of Rs.8,27,000/- in A.Y. 2005-06 is confirmed.

(E) Additions of Rs.15,00,000/- treating the same as unexplained income and of Rs.45,000/- treating the same as unaccounted interest income on Rs.15,00,000/- on the basis of LPS-11 seized.

9.4 I have carefully considered the submission of the appellant and facts of the case. The contention of the appellant that this document is a dumb document as it was not signed by any person is not acceptable. In the document the amount, date as well as the time period for which the amount were stated to be given are clearly

mentioned. The appellant initially submitted that these transactions represent the payments received by the PWD for the civil construction and maintenance work done for Medical College as deposit. But the appellant failed to adduce any evidence in his support either from the Medical College or from the P.W.D. to substantiate this contention. Since, the appellant failed to prove the source of payments of these amounts on dates mentioned in the loose paper, the AO was justified in considering that these transactions represented loans given by the appellant for the periods mentioned against each amount with date. Therefore, the AO was justified in making addition of Rs.15,00,000/- and interest of Rs.45,000/- on these loans in A.Y.2006-07. Hence, the additions of Rs.15,00,000/- on account of unexplained investment and of Rs.45,000/- as unaccounted interest for A.Y. 2006-07 are confirmed.

(F) Addition of Rs.1,50,000/- treating the same as unexplained income on the basis of LPS-11 pages 28 seized.

10.4 I have carefully considered the submission of the appellant and facts of the case. The appellant simply reiterated the same submission as was made before the Ld. AO that the appellant had paid Rs.1,50,000/- in cash from savings of his wife, Smt. Bharti Bhasne. But the appellant failed to adduce any cogent evidence in support of this contention. Smt. Bharti Bhasne was not having any regular source of income before commencing her work as an insurance agent in August 2006. Therefore, the AO was justified in making addition of Rs.1,50,000/- as unexplained investment in cash on 10.04.2006 for purchase of land. Hence, addition of Rs.1,50,000/- on account of unexplained investment in the purchase of land for A.Y. 2007-08 is confirmed.

(G) Addition of Rs.51,579/- treating the same as illegal gratification on the basis of LPS-10 page 4 seized.

11.4 I have carefully considered the submission of the appellant and facts of the case. The appellant stated that this amount of Rs.51,579/- was related to maintenance of government quarters. But the appellant failed to adduce any evidence whatsoever in support of his claim. In the absence of any evidence, the submission of the appellant cannot be accepted. Therefore, the addition of Rs.51,579/- made by the AO is confirmed.

(H) Additions of Rs.4,30,000/- on the basis of transactions recorded on page 8 of LPS-10 seized from the residence of the appellant.

12.4 I have carefully considered the submission of the appellant and facts of the case! The contention of the appellant that this is a dumb document is not tenable

because the appellant himself had admitted that the transactions recorded on this page pertained to purchase of a Scorpio Vehicle of Rs.4,30,000/-. However, the appellant contended that the vehicle belonged to a senior officer. But this statement of the appellant could not be accepted because the appellant had not stated the name of the senior person for whom the Scorpio vehicle was claimed to be purchased. The onus was on the appellant to prove with cogent evidence that expenditure of Rs.4,30,000/- made for purchase of Scorpio Vehicle was not made by the appellant but was incurred by another person. In these circumstances, the AO was left with no option but to treat that the expenditure of Rs.4,30,000/- for the purchase of Scorpio vehicle was incurred by the appellant. Since the appellant failed to explain the source of expenditure of Rs.4,30,000/-, the AO was justified in making addition of Rs.4,30,000/- as unexplained expenditure. Hence, the addition of Rs.4,30,000/- is confirmed.

(I) Addition of Rs.7,50,000/- treating the same illegal gratification on the basis of LPS-10 pages 15 seized.

13.4 I have carefully considered the submission of the appellant and facts of the case. The appellant's contention is that the transactions recorded on this page pertain to payments made to Shri Vinod Gupta and Anil Songra for the work done by them by PWD Department. But the appellant failed to substantiate this submission with any evidence either from P.W.D. Office or from the contractors. Thus, the appellant had not discharged his onus to prove that these transactions pertained to payments made to the contractors Vinod Gupta, Anil and Songra and not pertain to the payments received by the appellant as illegal gratification. In these circumstances, the AO had rightly treated the receipts of Rs.7,50,000/- from these persons as unaccounted income of the appellant. Hence, addition of Rs.7,50,000/- for A.Y. 2008-09 is confirmed.

(J) Additions made by the AO treating the same as illegal gratifications:

“The appellant failed to adduce any document in support of his contention that these are the policy money receipts received from policy holders by his wife. The appellant had not even furnished the names with address of persons from whom such payments were claimed to be received alongwith deposits of policies taken by them. Since the appellant had not discharged his onus to satisfactorily explain the source of receipt of the above mentioned amounts of Rs.53,828/-, the AO was justified in treating the same as unaccounted income. Hence, addition of Rs.53,828/- is confirmed.”

The appellant admitted that the entries written on this page as "40+ 40+ 20" below the names of 'Pathak', 'Raju' and 'More' are related to contractors. The appellant

contended that these amounts pertained to the payments to be made to these contractors for the work done by them but the appellant had not adduced any evidence whatsoever in support of his contention that these were not payments received by him. Therefore, the AO was justified in making addition of Rs.1,00,000/- as amounts received by the appellant from these contractors, who were undertaking contract work for roads under his jurisdiction. Hence, the addition of Rs.1,00,000/- for A.Y. 2009-10 is confirmed.

The appellant admitted that the entries written on this page as "100 = 35+20+" below the names of 'Abi' and 'Pandit' are related to contractors. The appellant contended that these amounts pertained to the allotment balances in regard to construction of roads in Raisen Division. But the appellant had not adduced any evidence whatsoever in support of his contention that these were not payments received by him. In the absence of any supporting evidence, the AO was justified in making addition of Rs.1,00,000/- as amounts received by the appellant from these contractors, who were undertaking contract work for roads under his jurisdiction. Hence, the addition of Rs.1,00,000/- for A.Y. 2009- 10 is confirmed.

The appellant reiterated the same submission as was made before the AO, which is unsubstantiated with any supporting documents and is a general reply. Thus, appellant failed to satisfactorily explain the contents of the entries recorded on this page. Therefore, the addition of Rs.1,00,000/- made by the AO for A.Y. 2009-10 is confirmed.

As mentioned by the AO the appellant failed to explain the nature of transaction of Rs.30,000/- from Shri Jodha Singh Atwal with any supporting evidence. The appellant had furnished a routine reply which was given before the AO. Since, the appellant failed to satisfactorily explain the entries in the said LPS, the AO was justified in taking the amount of Rs.30,000/- received by him from contractors as undisclosed income. Hence, addition of Rs.30,000/- is confirmed.

The appellant simply reiterated the same reply as was furnished before the AO. It was admitted that Shri Vinod Gupta was a contractor who had been allotted contracts within the jurisdiction of the appellant. The appellant failed to explain the entries with any supporting evidence regarding the amounts of Rs.2 Lakhs and Rs.3 lakhs in case of Shri Vinod Gupta. Therefore the AO was justified in treating the amounts of Rs.5,00,000/- (Rs.2,00,000+ Rs.3,00,000) as undisclosed income of the appellant. Hence addition of Rs.5,00,000/- for A.Y. 2009-10 is confirmed.

In the submissions furnished before the AO, the appellant contended that the entries recorded on these documents were pertaining to payments made to and works done by the contractors Shri S.Pathak and Shri Shiv Chouhan. Now, during

appellate proceedings, it was contended that this was a dumb document containing only rough notings. Thus, this submission of the appellant is not acceptable. Since the appellant failed to explain the nature of transaction recorded on this page satisfactorily with any evidence, the AO was justified in making addition of Rs.82,000/- written against the names of contractors, which were about 2 to 3 percent of the total amounts written against them. Hence, addition of Rs.82,000/- is confirmed.

It may be noted that the appellant had reiterated the same submission as was made before the AO. The appellant failed to substantiate his claim with any evidence that these amounts relate to the payments made to the contractor by PWD Department and not commission/ illegal gratification received by the appellant. Therefore, the addition of Rs. 11,50,000/- is confirmed.

The appellant reiterated the same submission as was made before the Ld. AO. The appellant had not mentioned the name of the person referred to as "Sahab" in the document. Had it been expenditure incurred for any official vehicle, the appellant could have furnished the relevant documents / confirmation from the office to explain the transaction. Since, the appellant had not discharged his onus to explain the source of expenditure of Rs.63,576/- incurred for repairing of a vehicle, the AO was justified in treating the same as unexplained expenditure incurred by the appellant. Hence, addition of Rs.63,576/- made by the AO in A.Y. 2009-10 on account of unexplained expenditure incurred by the appellant out of his undisclosed income is confirmed.

The contention of the appellant that these papers contain rough notings is not acceptable because the names and items of the goods purchased are specifically mentioned. Against the name of Smt. Seema Jaiswal, the appellant had written '500 notes' which reflects that the appellant had made the payments to Smt. Seema Jaiswal in cash for various purposes. Therefore, the AO was justified in holding that the total expenditure of Rs.3,82,500/- was incurred from undisclosed source by the appellant. Hence, addition of Rs.3,82,500/- for A.Y. 2009-10 is confirmed.

(K) Addition of Rs.3,86,000/- on account of cash found during the course of search.

17.4 I have carefully considered the submission of the appellant and facts of the case. The admitted facts in this case is that the cash of Rs.3,93,800/- was found from the briefcase of the appellant. The appellant tried to explain the source of cash out of amounts received from customers by his wife for purchase of ICICI Prudential Insurance policy of which she was an agent. But this submission of the appellant is not convincing because, as was also observed by the AO, the cash was

found in the briefcase of the appellant and not in any other almirah or drawer of Smt. Bharti Bhasne. If the amount was pertaining to the business of his wife, it would not have been kept in the briefcase of the appellant. Therefore, the AO was justified in holding that the appellant failed to satisfactorily explain the source of cash found in the briefcase of the appellant and making addition of Rs.3,86,000/- treating the same as undisclosed income of the appellant for A.Y. 2009-10. Hence, addition of Rs.3,86,000/- on account of unexplained cash found during the course of search is confirmed. K2

(L) Addition of Rs.3,00,000/- in A.Y.2009-10 on the basis of loose paper found in possession of Shri R.K. Garg during the course of survey u/s 133A of the Act as his premises.

It is an admitted fact that during the survey operation u/s 133A at the premises of Shri R.K. Garg, the contractor, some incriminating documents were impounded which contained list of persons to whom amounts were given as illegal gratification and the appellant's name appeared in that list. Shri R.K. Garg categorically stated that these amounts were illegal gratification given to these persons including the appellant Shri Bhasne of Rs.3,00,000/-. The AO had confronted the copy of statement of Shri R.K. Garg as well as the document impounded from his business premises containing an entry of payment of Rs.3,00,000/- to Bhasne ji, the appellant. But the appellant failed to rebut the fact that the name of the appellant was appearing in the incriminating documents found and impounded from the premises of Shri R.K. Garg, contractor. During assessment proceedings, the appellant had also not asked for cross examination of Shri R.K. Garg. Thus, the entries recorded in the incriminating document found from the premises of Shri R.K. Garg, which were corroborated by the statement of Shri R.K. Garg, contractor, proved clearly that amount of Rs.3,00,000/- was paid to the appellant as illegal gratification. Therefore, the AO was justified in making addition of Rs.3,00,000/- in the hands of the appellant for A.Y. 2009-10. Hence, the addition of Rs.3,00,000/- is confirmed.

4. Aggrieved against the Appellate Orders, the assesseees are in appeals before us raising various Grounds and the same are tabulated as follows:

Consolidated Grounds of Appeal- late Jitendra Bhasne & Smt. Bharti Bhasne

Assessment Years Issues involved	2005-06		2006-07		2007-08		2008-09		2009-10	
	Gr. No.	IT(SS)A 181/Ind/2014	Gr. No.	IT(SS)A 182, 178/Ind/2014	Gr. No.	IT(SS)A 183, 179/Ind/2014	Gr. No.	IT(SS)A 184, 180/Ind/2014	Gr. No.	ITA 406, 404/Ind/2014
Addition of Loose Papers	1	Rs. 8,27,000	4 5	Rs. 15,00,000 Rs. 45,000	6	Rs. 1,50,000	4 5 6	Rs. 51,579 Rs. 4,30,000 Rs. 7,50,000	4 5 6	Rs. 21,15,828 Rs. 63,576 Rs. 3,82,500
Purchase of Plot at Gora Bishankhedi	-	-	1-2 1-2	Rs. 4,12,000 Bharti (Protective)	1-2 1-2	Rs. 2,65,000 Bharti (protective)				
Investment in ICICI Prudential Policy-in name of Bharti	-	-	3	Rs. 9,01,239	3-4 3-4	Rs. 19,90,000 Bharti (protective)	1-2 1-2	Rs. 50,09,528 Bharti (protective)	1-2 1-2	Rs. 67,64,000 Bharti (protective)
Investment in ICICI Prudential Policy-in name of Jitendra	-	-	-	-	5	Rs. 7,53,000	3	Rs. 8,98,400		
Cash Found	-	-	-	-	-	-	-	-	3	Rs. 3,86,000
Loose Papers found at premises of R.K. Garg	-	-	-	-	-	-	-	-	7	Rs. 3,00,000
Registry Expenses for Kerwa Dam Plot	-	-	-	-	-	-	-	-	8 3-4	Rs. 30,000 Bharti (Protective)

5. Ld. Counsel Shri Ashish Goyal appearing for the assessee argued in detail by filing a Paper Book running to 170 pages containing Statement of Affairs from the Financial Year 1994-95 to 2005-06, Certificate of Experience as Teacher, Certificate of Beautician, Certificate from Insurance Regulatory and Development Authority, Statement recorded during search, Returns filed by the assessee, Affidavits and Agreements entered between the parties, copy of the loose paper seized, etc.

5.1. Regarding the first ground of Loose Papers addition of Rs. 8,27,000/- for A.Y. 2005-06, the Ld. Counsel stated that the loose papers does not carry any name and it also not clear whether the amount if received or paid, the totaling also not proper. Thus it was claimed initially before the Ld. A.O. as some rough jottings related to allotment and then after called as dumb document. Similarly, addition of Rs. 15,00,000 + 45,000/- for A.Y. 2006-07, the loose papers does not carry any name and it does not indicated to whom, it was given. This is nothing but a rough jottings related to allotment of work in Government Medical College. The Ld. A.O. has not conducted any inquiry in this regard. Similarly, Rs. 1,50,000/- for A.Y.2007-08, the loose paper contained only "Samradha" (near Mandideep) and "Santosh res" written at bottom of the loose paper. Only some amount and some measurements written, does not clear whether it is received or paid. Thus it is a dumb document. For A.Y. 2008-09 a sum of Rs. 51,579/- "Collector – A.C. Split AC", there was no bill for the above Split AC, no inquiry was conducted, where this A.C. is located but treated as illegal gratification given by assessee to Collector in the form of Split AC. Similarly, purchase of scorpio vehicle for Rs. 4,30,000/- from undisclosed income. In this loose paper, there is no name, only date relating to "Scorpio" and "Regn" were marked. Though the assessee submitted that this loose paper relates to Scorpio Vehicle of senior officer and the amounts given by him from time of payment of installments. But the Ld. A.O. failed to conduct any inquiry to correlate with any other document. Similarly Rs. 7,50,000/- added as illegal gratification received by the assessee. Similarly for the Assessment Year 2009-10, additions made on account of Rs. 21,15,828/- as

illegal gratification received by the assessee which claimed by the assessee as these entries relates to the office work jottings. Thus Ld. A.O. without conducting any proper inquiry made additions which is liable to be deleted whereas the Ld. CIT(A) simply confirmed the above additions on the ground that assessee takes different stands at every stage and no relief can be granted to the assessee.

6. Per contra, the Ld. CIT-DR Shri P.K. Mishra appearing for the Revenue submitted that the appellant admitted that the transactions recorded on the loose papers admitted to relates to office work calculation of allotment receipts, whereas during the appellate proceedings before Ld. CIT(A), it was contended by the assessee that it was purely a dumb document and the same cannot be used as an evidence, as there is no name, date and purpose were not mentioned. Thus the assessee is taking a different stands at different stage of proceedings. Therefore the claim of the assessee is rightly rejected by the Ld. CIT(A) which does not require any interference. Further the assessee could not dispute the above position with relevant documents.

7. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. In these additions made by the A.O. on loose papers, the assessee has not justified the initial burden cast upon him/her by producing cogent evidences and materials. The assessee claimed that the transactions are relating to the office work calculation of

allotment receipts, but the assessee failed to adduce any evidence from the office of PWD to prove his contention.

7.1. Regarding Rs. 1,50,000/- entry with loose paper seized, the assessee initially stated that these entries relating to the payments received by PWD for civil construction and maintenance work done for Medical College as deposit. But the assessee failed to adduce in support of the same either from Medical College or from the office of the PWD. Similarly the purchase of a Scorpio Vehicle, the assessee failed to prove that it belonged to the senior officer of the department, when various payments break-up are entered into the loose paper seized. Regarding Rs. 7,50,000/- treated as illegal gratification on the basis of loose paper seized, the assessee failed to substantiate the above payments were made to Shri Vinod Gupta, Anil Songra for the work done by them by PWD Department with necessary evidences. Thus the assessee failed to discharge the initial onus cast upon him/her.

7.2. Regarding addition of Rs.63,576/- based on seized documents LPS-17, the contents of the same is reproduced as follows:

SAHAB- Raisen		
1.	Scorpio Servicing	Rs. 6,060/-
2	Sahab GWL + Delhi TKT	Rs. 1,500/-
3	Mohan Salary - April, May, June	Rs. 12,000/-
4	Taxi Bill	Rs. 42716/-
Total		Rs. 62,276/-
5	Scorpio Horn	Rs. 1300/-
Total		Rs. 63,576/-

7.3. When this loose paper was confronted to the assessee and why an inference may not be drawn that these amounts, which appear to be expenditure incurred by the assessee for his senior officer referred to as "Sahab" represent the illegal gratification given by the assessee. The assessee replied that these entries relates to his senior officer scorpio vehicle repairing works. In fact, the bill raised by the work-shop was paid after taking the same from the said officer. Therefore it is incorrect to draw the inference that the amount mentioned in the diary page represented illegal gratification received by the assessee. All the transactions can be verified from the official records of the Department. The Ld. A.O. was not satisfied with the reply given by the assessee as the assessee has not given any details regarding the person mentioned as "Sahab" in the Loose Paper Seized nor has any proof of the claim of the payment of the amount mentioned in the Loose Paper seized by the so called "Sahab" has been furnished. The assessee has also not discharged its onus of submitting any documentary evidence in respect of the claim that the transaction could be in the official record of the department. Had it been expenditure incurred for any official vehicle, the assessee could have furnished the relevant documents/confirmation from the office of PWD to explain the above transaction. However the assessee has not produced the Registration Certificate of the so called scorpio vehicle before any of the lower authorities to sustain his stand that it belongs to the higher officer or to the PWD Office. In the absence of any proof to that extent, the explanation offered by the assessee cannot be accepted. Thus the Assessing Officer was justified in treating Rs. 63,576/- as unexplained expenditure incurred by the assessee out

of this undisclosed income. Therefore the same addition is hereby confirmed.

7.4. Regarding addition of Rs. 3,82,500/- on account of unexplained expenditure made by the assessee on the basis of seized loose papers LPS-9 Pages 1 & 11 seized during the course of search. The assessee submitted that these documents contain rough jottings and estimation of work to do and there was no entry related with Spice travel and no adverse inference may be drawn in this regard. As per the Assessing Officer, the only logical inference that can be drawn was that these amounts were in thousands of rupees because the price of TV & Fridge are mentioned as Rs. 10/- & Rs. 14/-. Against the figures "Seema 10/-" the assessee has written "500 Notes" which clearly proves that the figures are in thousands. Thus expenditure incurred by the assessee on purchase of T.V., Fridge, Gold, Shoes, etc. then amounts paid to various Journalists(Patrakar), amounts paid to various officials and Smt. Seema Jaiswal as unexplained expenditure totaling to Rs. 3,82,500/- which has been made by the assessee out of his income from undisclosed sources. The Ld. CIT(A) held that the contention of the assessee that these loose papers contain rough jottings is not acceptable because the names and item of the goods purchased are specifically mentioned in the loose sheet. Further against the name of Smt. Seema Jaiswal, the assessee had written "500 notes" which reflects that the assessee had made the payments to Smt. Seema Jaiswal in cash for various purposes. Therefore the Assessing officer was justified in holding that the total expenditure of Rs. 3,82,500/- was incurred from undisclosed sources by the assessee.

Even, before us, no new document or evidence filed by the assessee to disprove the past savings of the lower authorities. In the absence of the same, we have no hesitation in confirming the above additions made by the A.O.

7.4. The Ld. CIT(A) has dealt with the above issues which is reproduced in Para 3-A to J of this order wherein detailed discussion were made by Ld. CIT(A) for every additions made under the loose papers seized by the Revenue during the course of search. Further we notice the assessee submissions of Affidavits are self-serving document without any evidence and the contents therein are proved to be genuine. Thus the same are liable to be rejected and the substantive additions made by the Assessing Officer which were upheld by the ld. CIT(A) does not require any interference. Thus the grounds raised by the assessee on the substantive additions made on loose papers in the hands of late Shri Jitendra Bhasne are hereby upheld. However Protective additions made in the hands of Smt. Bharti Bhasne are here deleted.

7.5. Similarly addition of Rs. 3,00,000/- recorded in loose papers from the premises of contractor, Shri R.K. Garg wherein the assessee's claim appeared in the loose seized along with other person names, the assessee has not asked for cross-examination of Shri R.K. Garg during the assessment proceedings, whereas R.K. Garg has confirmed in his statement that a sum of Rs. 3,00,000/- was paid to the assessee as illegal gratification. Thus the addition made by the A.O. does not require any interference and assessee ground fail on this count.

8. Next issue namely purchase of Plot at Gora Bishan Khedi, the assessee claimed this plot was purchased for Rs. 4,12,000/- and Rs. 2,65,000/- on 24/10/2005 in the name of Smt. Bharti Bhasne out of the investment from the past savings, and the cash flow statement is enclosed at Page No. 39 of the Paper Book. Thus the Ld. A.O. is not correct in making addition in the hands of the husband.

8.1. We have considered the above submissions of the Ld. A.R., but the assessee and his wife had never earned any income from conducting tutuion or running Beautician for the earlier years which are source of purchasing the lands. There was no return of income filed for the above years. In the absence of the source of income, the Assessing officer was justified in holding the additions on substantive basis in the hands of the husband and protective additions in the hands of the wife are hereby deleted.

9. Next issue namely investment in ICICI Prudential Policy totaling Rs. 1,63,16,166/- in the name of Smt. Bharti Bhasne and Shri Jitendra Bhasne. The Ld. A.R. claimed that the investments were from the past savings and by teaching activity and beauty parlour which are unorganized activities, hence no details of the same could be produced before the Authorities. However Certificates as a Teacher and Beautician and IRDA are filed in the Paper Book at Page nos. 51 to 54, the source of investment is a sum of Rs. 51,00,000/- was received by Smt. Bharti Bhasne from her father by sale of land and similarly Rs. 25,52,638/- in the name of Shri Jitendra Bhasne which was claimed to be the refund of money from

agricultural land at Morena. The Ld. Assessing Officer after making detailed enquiry with Roshan Grih Nirman Sahakari Sanstha and its Secretary Shri Deepak Soni statement recorded on 23.12.2010 that no payments were made by the Samiti to Smt. Bharti Bhasne. Later Smt. Bharti Bhasne claimed that one Shri Shakil Ahmed has done the transaction on behalf of the Samiti. But the assessee failed to produce Shri Shakil Ahmed and confirmed that she do not have detail about the Shakil Ahmed. Further it is stated that the sum of Rs. 51,00,000/- was received in cash for surrendering of rights in the said property which are also made up story just to try to show that the availability of cash in the hands of the assessee. Thus the A.O. clearly added the same as the unexplained investment in the hands of the assessee. Thus the findings of the Lower Authorities is not contravened by the assessee by producing relevant documents/ evidences before the any authorities. In the absence of the same, the substantive additions made in the hands of late Jitendra Bhasne does not require any interference, however protective additions made in the hands of Smt. Bharti Bhasne is liable to be deleted. Thus the grounds raised by the assessee are devoid of merits and the same is liable to be dismissed.

10. The next issue namely addition of Rs. 3,86,000/- on account of cash found during the course of search. It is an admitted fact that a cash of Rs. 3,93,800/- was found from the briefcase of the assessee. The assessee explained the source of cash is the amount received from customers by his wife for purchase of ICICI Prudential Insurance Policy for which she was a registered agent.

The A.O. disbelieved the explanation on the ground that the cash was found in the briefcase of the assessee and not in any other almirah, purse or drawer of Smt. Bharti Bhasne. Thus the A.O. made the addition of Rs. 3,86,000/- was undisclosed income of the assessee for the Assessment Year 2009-10. The Ld. Counsel submitted before us that out of Rs. 3,83,800/- , Rs. 1,00,000/- towards the Insurance Policy of Dandana Jain wife of S.K. Jain which was paid by cash on 23.03.2009 and a sworn notarized affidavit (available at page 160 of the Paper Book) dated 02.07.2010 was filed before us that the cash of Rs. 1,00,000/- is paid towards ICICI Prudential Insurance Policy. Similarly, a sum of Rs. 2,00,000/- was received from Mr. Vinod Gupta towards ICICI Prudential Insurance Policy. In fact blank Insurance Form duly signed by Mr. Vinod Gupta was found during the course of search and seized by the Department. However the A.O. has not verified the same and added as the income. Further a sum of Rs. 86,000/- is the past savings of the assessee. Thus the assessee explained the source of Rs. 3,86,000/-.

10.1. We have perused an affidavit filed by the assessee except to the sworn affidavit filed by Shri S.K. Jain without any other proof stating that the cash of Rs. 1,00,000/- paid towards ICICI Prudential Insurance Policy. Similarly, the sum of Rs. 2,00,000/- said to be received from Vinod Gupta towards Insurance Policy, there is no proof filed by the assessee. Furthermore, the Insurance Policy that too of higher denomination of Rs. 50,000/- and above cannot be paid by cash. Those transactions is to be routed through only cheques or DDs in favour of the Insurance Company. Further

past savings of Rs. 86,000/- why it was seized from the briefcase of the assessee is not properly explained. In the absence proper explanation by the assessee with necessary evidences, the additions made by the Assessing Officer does not require any interference. Thus the ground raised by the assessee is hereby rejected.

11. The next ground namely addition of Rs. 30,000/- towards Registry expenses for purchase of plot at Kerwa Dam. The A.O. has rejected the explanation of the assessee that the payment is from the past savings of the assessee. Since the cash flow chart/statement of affairs of Smt. Bharti Bhasne submitted during the course of assessment proceedings already stand rejected and it was held that she was not having any regular source of income before commencing her work as an Insurance agent. The Ld. CIT(A) also confirmed that Smt. Bharti Bhasne did not have regular source of income before starting her profession as an agent of ICICI Prudential Insurance in 2006. There is no evidence to show that she had earned income from private tuition and beauty parlour business. Thus rejected the cash flow statement submitted by the assessee. In the absence of any evidence, we have no other option but to confirm the addition made by the Assessing Officer. Thus the ground raised by the assessee is devoid of merits and the same is hereby dismissed.

12. In the result, the appeals in IT(SS)A Nos. 181 to 184/Ind/2014 and ITA No. 406/Ind/2014 in the case of Shri Jitendra Bhasne are hereby dismissed. Appeals in IT(SS)A Nos. 178 to 180/Ind/2014

and ITA No. 406/Ind/2014 in the case of Smt. Bharti Bhasne are partly allowed.

Order pronounced as per Rule 34 of I.T.A.T. Rules, 1963/open court on 16/05/2023.

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 16/05/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	25/04/2023
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/04/2023
3) Date on which the approved draft comes to the Sr. P.S./P.S.	04/2023
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/04/2023
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/04/2023
6) Date on which the file goes to the Bench Clerk	/04/2023
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	