

**IN THE INCOME TAX APPELLATE TRIBUNAL,
ALLAHABAD BENCH, ALLAHABAD
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA Nos.59 & 100/ALLD/2019
Assessment Years: 2014-15 & 2015-16

Mr. Ramesh Chandra Vaish, 5A, 10/6 Muir Road, Ashok Nagar, Allahabad-211001,U.P.	v.	Asstt. Commissioner of Income Tax, Central Circle, Allahabad,U.P.
PAN-ADZPK8058K		
(Appellant)		(Respondent)

Appellant by:	None (Application)
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	26.04.2023
Date of pronouncement:	03.07.2023

ORDER

PER Bench

These two appeals, filed by the assessee, firstly being ITA No.59/ALLD/2019 for assessment year 2014-15, is directed against an appellate order dated 25.03.2019 in Appeal No. 07/ACIT/CC/Alld./CIT(A)-III/Lko./17-18 passed by learned Commissioner of Income Tax (Appeals)-III, Lucknow (hereinafter called "the CIT(A)"),for assessment year(ay): 2014-15, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 23.12.2016 passed by learned Assessing Officer u/s 143(3) of the Income-tax Act,1961 and Secondly being ITA No.100/ALLD/2019 for assessment year 2015-16, is directed against an appellate order dated 12.06.2019 in Appeal No. 106/ACIT/CC/Alld. /CIT(A)-III/Lko./17-18 passed by learned CIT(A),for

assessment year(ay): 2015-16, the appellate proceedings had arisen before learned CIT(A) from the assessment order dated 30.06.2017 passed by AO u/s 143(3) of the 1961 Act.

2. We have heard ld. Sr. DR in open court proceedings through physical hearing mode, while the assessee chose not to appear before the Bench when these appeals were called for hearing before the Division Bench . When these two appeals were called for hearing before Division Bench, the ld. Sr. DR raised serious objection to the adjournment application filed by the ld. Counsel for the assessee. The Department has filed letter dated 26.04.2023 strongly objecting to grant of any further adjournment to the assessee, and the said letter is placed on record in file. The ld. Sr. DR stated before the Bench that the assessee was granted last opportunity by the Bench on the earlier occasion , but still the assessee is seeking adjournment. It was further submitted by ld. Sr. DR that even cost was imposed on the assessee by the Bench, but still the assessee is seeking adjournment and not interested in arguing the matter. It was also submitted that the assessee was directed to file the copy of sale deed w.r.t. transfer of Rohit Stone Product by the Bench on earlier occasions , but the same is still not filed by the assessee. It was submitted by ld. Sr. DR that the assessee is not interested in pursuing these appeals, and hence no adjournment may be granted to the assessee. After hearing ld. Sr. DR and perusing the material on record and conduct of the assessee as borne out from record before us, the Division Bench declined to grant adjournment to the assessee and proceeded to hear the appeals in the absence of the assessee , after hearing ld. Sr. DR and perusing the material on record.

3. First , we shall take up assessee's appeal in ITA No. 59/Alld/2019 for assessment year 2014-15. The assessee has raised following grounds of appeal in ITA No. 59/Alld/2019 for assessment year 2014-15 in memo of appeal filed with Income

Tax Appellate Tribunal, Allahabad (hereinafter called "the tribunal") , which reads as under:-

"1-That in any view of the matter the assessment order dated 23.12.2016 framed u/s 143(3) of the IT Act and vide such order an addition of Rs. 35,23,514/- as made by the assessing officer as short term capital gain as per point No. 2 of the assessment order and his action as confirmed by the Commissioner of Income Tax (Appeal) by ignoring the correct facts is highly unjustified and illegal because the transaction was completed in A.Y. 2015-16 and amount of the capital gain of Rs. 15,58,927/- has already duly been taxed by the assessing officer vide the assessment order dated 30.06.15 passed u/s 143(3) of the IT Act for A.Y. 2015-16.

2- That in any view of the matter the two lower authorities are absolutely wrong in taxing short term capital gain in the year under consideration specially when amount of Rs. 78 lacs as "advance" was received which is appearing in the balance sheet also during the assessment year in question hence the addition so made and maintained is wrong & illegal as the capital gain was disclosed and accepted by the assessing officer in A.Y. 2015-16 and therefore so called addition is double addition which is not permissible under the IT Act.

3-That in any view of the matter the entire approach of the two lower authorities in taxing the capital gain during the year in question is highly unjustified, illegal and against the settled law, hence on these count the addition so made & maintained is liable to be deleted.

4-That in any view of the matter the addition of Rs. 1,80,000/- on account of gift received by the assessee from a genuine party and man of status as made and confirmed by the two lower authorities without appreciating the correct facts is highly unjustified and illegal hence the same is liable to be deleted in the facts and circumstances of the case.

5- That in any view of the matter finding and observations of the two lower authorities in their order for making and maintaining the aforesaid additions ignoring the correct facts are totally unjustified, wrong, illegal and contrary to the actual facts of the case hence the same are liable to be sponged off in all fairness and interest of justice.

6- That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

7-That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal.”

4. The brief facts of the case are that the assessee is engaged in the business of sale & purchase of Stone Grits products having place of business at Bari Dalla in Sonebhadra and Gagaora, in Mohaba. The assessee has two proprietary concerns namely M/s Ravisha Stone Products at Bari Dalla Sonebhadra and M/s Rohit Stone Products at Gagaora, Mohaba. The assessee filed his return of income online on 27.07.2014 declaring taxable income of Rs. 23,56,940/-. The case of the assessee was selected for compulsory scrutiny by Revenue and statutory notices under section 143(2) and 142(1) were issued by Department, as detailed in the assessment order . The assessee participated in assessment proceedings conducted by the AO. During the assessment proceedings, the AO observed from the perusal of the Balance-sheet that the assessee has declared unsecured loan of Rs. 78 lac from M/s Hanumant Enterprises, 114/97/6, Mahabir Lane,Muthiganj, Allahabad. The assessee was asked by AO to explain the same. Notice u/s 133(6) was issued by the AO to the said party , to submit the details. The summons were also issued by the AO under section 131 to M/s Hanumant Enterprises. The said party submitted reply before the AO , in which it submitted that the assessee has made an agreement to sale with Sh. Narender Singh, proprietor of M/s Hanumant Enterprise for sale of assessee’s concern M/s Rohit Stone Products Plant including Piloders, Crashur, office including land and its apparatus etc. to him for Rs. 1,30,00,000/- by agreement dated 1.4.2013 which was made on the stamp paper of Rs. 100/. As per the above agreement, the assessee received Rs. 78 lac by cheques and balance Rs. 52 lac was to be received by assessee over the period of 36 months. The buyer got the possession of all the plant and machinery on the date of agreement and running his business. The AO relied upon the provisions of section 2(47) and observed that the assessee has transferred whole plant and handed over possession alongwith plant

and machinery etc. to the buyer and the buyer is also running the plant. As the possession of the said plant was handed over by the assessee to the buyer, the AO was of the view that the transfer is complete whether or not full payment was received by the assessee . The AO confronted the assessee regarding the same and AO was also of the view that the total consideration for the transfer is Rs. 1,30,00,000/- and difference between written down value of Rs. 94,76,484/- and the sale consideration of Rs. 1,30,00,000/- , which comes to Rs. 35,23,514/- shall be short term capital gain chargeable to tax in the hand of the assessee which was brought to tax by the AO by invoking provision of section 50 of the Act as short term capital gain on sale of assets in the hands of the assessee.

4b. There is one more addition with respect to gift of Rs. 1,80,000/- received by the assessee from Sh. Saurabh Vaish which is subject matter of challenge before the tribunal. The assessee was asked by the AO to submit complete details alongwith address of the said party and confirmation along with necessary details of creditworthiness of the said party , i.e. copy of ITR complete set with Profit and Loss Account , Balance Sheet and annexure's. The assessee could not file any documentary evidence which could prove genuineness of the transaction and mode of payment/source of funds. The AO observed that the gift of Rs. 1,80,000/- from Sh. Saurabh Vaish remains unsubstantiated and unverifiable, the same was added to the income of the assessee by the AO.

5. Aggrieved by assessment framed by the AO, the assessee filed first appeal with Id. CIT(A) and the assessee submitted before Id. CIT(A) that the said amount of Rs. 78 lac received from M/s Hanumant Enterprise, Mutthiganj was merely advance received from the said party for purchase of his unit M/s Rohit Stone Product with Plants, Crashur, office including land for a sum of Rs. 1,30,00,000/- and for that purpose only advance of Rs. 78 lacs was given by said party to the assessee . The agreement was dated 1.4.2013 made between the parties on a stamp paper of Rs.

100/-, which was simply notarized and not registered. An amount of Rs. 78 lac was received from the said M/s Hanumant Enterprise and the balance amount of Rs. 52 lac was payable by the purchaser in the next 36 months. The assessee has handed over the possession of all assets including land to the buyer for using the same. It was submitted that the ownership of the assets was not transferred. The assessee submitted that it was simply an unregistered agreement to sale on the notarized stamp paper of 100/- and hence it could not be said that the transfer is complete keeping in view the decision of Hon'ble Supreme Court in the case of **CIT vs. Balbir Singh Maini (2017)** 398 ITR 531(SC). It was also submitted that the assessee has never executed sale deed but simply agreement was entered into. It was submitted that no transfer of ownership took place as the said party not even made the full payment to the assessee. It was submitted that since the document was unregistered agreement not registered with Sub Registrar and was simply notarized, thus as per the Indian Registration Act and Transfer of Property Act, the transfer is not yet complete and the short term capital gain was wrongly charged to tax in the hands of the assessee. The assessee relied upon provision of section 2(47)(v) of the 1961 Act r.w.s. 53A of the Transfer of Property Act. The Id. CIT(A) rejected the contentions of the assessee by holding as under:-

"8. I have examined the facts and circumstances of the case. I have considered the findings of the AO in the assessment order and the submission of the appellant made during the appellate proceedings. It is to be noted that the appellant has made an agreement to sale with Shri Narendra Singh, Prop. Of M/s Hanumant Enterprises for sale of assessee's firm M/s Rohit Stone Products Plant, including Piloders, Crashur, office including land & its apparatus etc. for Rs. 1,30,00,000/- by agreement dated 1/04/2013. As per the agreement appellant got Rs. 78,00,000/- by cheque and balance Rs. 52,00,000/- is payable by purchaser in 36 months and buyer get the possession of all the plant and machinery on the date of the agreement and running this. The AO held that as per provisions of section 2(47) of the Act since the appellant has transferred whole plant and hand over possession alongwith plant & machinery e.t.c. and further the buyer is running the whole plant, hence transfer has taken place whether full payment has been received or not on the date of transfer or registration. After considering the details of plant and machinery of assets

WDV of Rs.94,76,484/- has been taken and amount of difference of Rs. 35,23,514/-(Rs. 1,30,00,000/- - Rs. 94,76,484) has been treated as short term capital gain or sale of assets as per section 50 of the Act.

9. The appellant has contended that plant and machinery which belongs to M/s Rohit Stone Products, a proprietary concern of the appellant has been sold to M/s Hanumant Enterprises, Muthignaj, Allahabad who advanced Rs. 78,00,000/- through cheque in the A.Y under question against the sale consideration of Rs. 1,30,00,000/-.The appellant has disclosed the capital gain in A.Y. 2015-16 when full payment was received and the same has been accepted by the AO in assessment u/s 143(3) of the Act.

10. On examination, I find that as per agreement dated 01/04/2013, appellant has made an agreement to sell appellant's proprietary firm M/s Rohit Stone Products Plant, including Piloders, Crusher, Office including land and its apparatus for Rs. 1,30,00,000/- and received Rs. 78,00,000/- by cheques during the year under consideration. Further it is an undisputed fact that the appellant has transferred whole of the plant and handed over possession alongwith plant and Machinery etc. and the buyer is running the plant. As per the provisions of 2(47) of the Act transfer includes any transfer involving the allowing of the possession of any immovable property to be taken or retained in part performance of contract. Therefore, in the instant case transfer has taken place, whether full payment has been received by the appellant or not.

11. Considering the above mentioned facts addition of Rs. 35,23,514/- made by the AO by treating it as Short Term Capital Gain on sale of assets is held to be justified and hereby upheld”

5b. Regarding gift of Rs. 1,80,000/-received from Sh. Saurabh Vaish, the Id. CIT(A) observed that the primary onus is on the appellant to prove the sources of funds and genuineness of transaction , which has not been discharged by the assessee . Thus, the said addition was confirmed by Id. CIT(A).

6. Aggrieved by appellate order passed by Id. CIT(A), the assessee has filed second appeal with Tribunal . When this appeal came up for hearing before the Division Bench, none appeared on behalf of the assessee while the learned Sr. DR strongly objected to the grant of adjournment in favour of the assessee . The Department has filed letter dated 26.4.2023 wherein the Department has strongly objected to grant of any further adjournment to the assessee. The said letter filed by the Department is placed on record in file. The Id. Sr. DR stated before the Bench

that the assessee was granted last opportunity by the Bench on earlier occasion , but still the assessee is seeking adjournment. It was further submitted by ld. Sr. DR that even cost was imposed on the assessee by the Bench, but still the assessee is seeking adjournment and not interested in arguing the matter. It was also submitted that the assessee was directed to file the copy of sale deed w.r.t. transfer of Rohit Stone Product by the Bench on earlier occasions , but the same is still not filed by the assessee. It was submitted by ld. Sr. DR that the assessee is not interested in pursuing these appeals, and hence no adjournment may be granted to the assessee. It was observed by the Bench that the assessee has taken adjournments in the past on large number of occasions and in fact last opportunity was also granted to the assessee but still the assessee was asking for adjournment. It is also observed that even cost has been imposed on the assessee on earlier occasions, but still assessee is seeking adjournments. It also transpired that the assessee has not filed sale deed for transfer of the unit M/s Rohit Stone Product, despite given several opportunities. After hearing ld. Sr. DR and perusing the material on record and conduct of the assessee as borne out from record before us, the Division Bench declined to grant adjournment to the assessee and proceeded to hear the appeals in the absence of the assessee , after hearing ld. Sr. DR and perusing the material on record. It is also pertinent to mention that both the assessee as well Revenue has filed paper books which are taken on record and are considered while adjudicating the appeal.

6b. The learned Sr. DR, at the outset submitted before the Bench that the assessee has transferred Stone Crashur plant as per sale agreement , and possession thereof was also handed over to the purchaser . It was submitted that vide agreement to sale dated 1.4.2013 transfer took place in this year itself as the possession of the plant etc., was handed over by assessee to the buyer. It was also submitted by learned Sr. DR that no capital gain was declared in this year by the assessee on the sale of the M/s Rohit Stone Product i.e. stone crushing plant. It was

submitted that although entire sale consideration was not received this year as only Rs. 78 lacs was received in this year out of Rs. 130 lacs, and the remaining consideration was outstanding to be received to the tune of Rs. 52 lac which was to be received in subsequent year, but since the possession was handed over, the transfer was complete as per Section 2(47)(v) read with Section 53A of the Transfer of Property Act. It was submitted by ld. Sr DR that the capital gain was shown in the next year, but the entire material was not on record before the Department during the assessment proceedings as well as appellate proceedings. Our attention was drawn by ld. Sr. DR to page no. 134 of the Departmental paper book and it was submitted that Rs. 78 lac was received during the year under consideration while Rs. 52 lac was not received and the total consideration was Rs. 1,30,00,000/-. At page no. 134 to 135 of departmental paper book, is an agreement to sale entered into by assessee with the buyer M/s Hanumant Enterprise dated 1.4.2013 for sale of Crashur plant M/s Rohit Stone Product to M/s Hanumant Enterprise proprietor Sh. Narender Singh for a total consideration of Rs. 1,30,00,000/-. It was submitted by learned Sr. DR that the Bench directed the assessee to file registered sale deed but the assessee has failed to file the said sale deed. It was submitted that the plant and machinery was depreciable asset and short term capital gain was there which were brought to tax. It was submitted that land was also included in the sale which is transferred. It was submitted by ld. Sr. DR that for assessment year 2015-16, the assessee has declared a slump sale but there is no element of slump sale and it does not fulfill the requirement of slump sale. It was submitted that for slump sale, Section 50B is applicable. The assessee was directed by Bench to file computation of long term capital gain on sale of land included in the total sale consideration, but no such details were submitted. The learned Sr. DR submitted that there is no element of slump sale as it does not fulfill the requirement under section 50B. In slump sale under section 50B, all the assets and liabilities must be taken over by the purchaser and it was submitted that the purchaser has taken over the Stone Crashur plant but

has not taken over the liabilities. Our attention was drawn to the assessment order as well to Id. CIT(A).

7. We have considered the contentions of Id. Sr. DR and perused the material on record including paper book filed by both the parties. The brief facts of the case are that the assessee is engaged in the business of sale & purchase of Stone Grits products having place of business at Bari Dalla in Sonebhadra and Gagaora, in Mohaba. The assessee has two proprietary concerns namely M/s Ravisha Stone Products at Bari Dalla Sonebhadra and M/s Rohit Stone Products at Gagaora, Mohaba. The assessee filed his return of income online on 27.07.2014 declaring taxable income of Rs. 23,56,940/-. The case of the assessee was selected for compulsory scrutiny by Revenue and statutory notices under section 143(2) and 142(1) were issued by Department, as detailed in the assessment order. The assessee participated in assessment proceedings conducted by the AO. During the assessment proceedings, the AO observed from the perusal of the Balance-sheet that the assessee has declared unsecured loan of Rs. 78 lac from M/s Hanumant Enterprises, 114/97/6, Mahabir Lane, Muthiganj, Allahabad. The assessee was asked by AO to explain the same. Notice u/s 133(6) was issued by the AO to the said party, to submit the details. The summons were also issued by the AO under section 131 to M/s Hanumant Enterprises. The said party submitted reply before the AO, in which it submitted that the assessee has made an agreement to sale with Sh. Narender Singh, proprietor of M/s Hanumant Enterprise for sale of assessee's concern M/s Rohit Stone Products Plant including Piloders, Crashur, office including land and its apparatus etc. to him for Rs. 1,30,00,000/- by agreement dated 1.4.2013 which was made on the stamp paper of Rs. 100/. The said agreement is placed in paper book filed by department at page 134-135. As per above agreement, the assessee received Rs. 78 lac by cheques and balance Rs. 52 lac was to be received by assessee over the period of 36 months. The buyer got the possession of all the plant and machinery on

the date of agreement and running his business. The AO relied upon the provisions of section 2(47) and observed that the assessee has transferred whole plant and handed over possession alongwith plant and machinery etc. to the buyer and the buyer is also running the plant. As the possession of the said plant was handed over by the assessee to the buyer, the AO was of the view that the transfer is complete whether or not full payment was received by the assessee . The AO confronted the assessee regarding the same and AO was also of the view that the total consideration for the transfer is Rs. 1,30,00,000/- and difference between written down value of Rs. 94,76,484/- and the sale consideration of Rs. 1,30,00,000/- , which comes to Rs. 35,23,514/- shall be short term capital gain chargeable to tax in the hand of the assessee which was brought to tax by the AO by invoking provision of section 50 of the Act as short term capital gain on sale of assets in the hands of the assessee. The additions made by the AO are contested by the assessee before Id. CIT(A), but the appeal stood dismissed. Before us, the assessee has filed paper book as well statement of fact. On the earlier occasion , when the appeal of the assessee came up for hearing before the Bench, the counsel of the assessee had drawn our attention to the agreement to sale dated 01.04.2013 entered into by the assessee with Hanumant Enterprises (placed in Departmental PB/page 134-135) and it was submitted that the stone crusher plant was sold along with land , for Rs. 1,30,00,000/- and possession was handed over in the impugned assessment year. The part payment of Rs. 78 lacs was received in this year , while balance payment of Rs. 52 lacs was not received during the year. It was submitted that during next year , the assessee himself declared capital gains arising from sale of Stone Crusher Plant during assessment year 2015-16, which was accepted by department. It was submitted that since agreement dated 01.04.2013 was on an unregistered agreement on notorized stamp paper of Rs. 100/-, no transfer took place during impugned assessment year, keeping in view provisions of Registration Act as well Transfer of Property Act. Reliance was placed on judgment and order of Hon'ble

Supreme Court in the case of **Balbir Singh Maini(supra)**. The Bench on earlier occasions directed ld. counsel to file registered sale deed entered into by the assessee with Hanumant Enterprises , but the same were not filed despite repeated directions by the Bench. The registered sale deed has not been filed even before lower authorities, and even description of land has not been filed . The assessee has not filed even before us, the details of land transferred. It is also pertinent to mention that claim is made that the assessee declared capital gain during the assessment year 2015-16, which was accepted by department in scrutiny assessment u/s 143(3) read with Section 143(2) for assessment year 2015-16 by the AO . However, on perusal of the assessment order for assessment year 2015-16 passed by AO, it transpires that the case of the assessee was selected for framing **limited scrutiny** assessment for ay:2015-16 owing to **large cash deposits in the bank**, and thus, it was not the case selected for framing complete scrutiny , or limited scrutiny to verify capital gain declared by the assessee. The assessee has sold crusher plant (Rohit Stone Product) at Kali Pahari (Black Mountain) Mahoba along with land and office situated therein, as it emerges from the sale agreement dated 01.04.2013. The details of land transferred in not furnished by the assessee. The stone crushed is mined. The mining is a regulated activity, and several statutory legislations are applicable such as Mines and Minerals(Development and Regulation) Act , 1957, Environment (Protection) Act , 1986, Forest (Conservation) Act,1980, Mining Concession Rules, 1960 , Water (Prevention and Control of Pollution) Act,1981, Air (Prevention and Control of Pollution) Act, 1981 etc. etc. Mining Lease are granted by Government to extract minerals. The lessee has right to extract minerals over a stipulated period by Government over the mining lease, on payment of Royalty and other statutory dues, tax etc. to Government. There is no ownership right over the said land granted under lease to mine(unless contrary is brought on record by the assessee through cogent evidences) , nor is the lessee entitled to transfer the same without permission of Government. Rule 37 of Mining

Concession Rule , 1960 is relevant. The consequences for breach are also stipulated in the law. Decision of Hon'ble Supreme Court in ***Common Cause v. UOI*** , dated 02.08.2017 in Writ Petition (Civil) No. 114 of 2014 is relevant. The evidence which could be produced but is not produced would , if produced , be unfavourable to the person who withholds it. Section 114(g) of Indian Evidence Act,1872 is relevant. It is also pertinent to mention that , prima-facie, if the assessee has merely transferred the Stone Crusher Plant, without transfer of any land as the assessee has only right to extract mineral , then on sale of Stone Crusher Plant, Sales of Goods Act shall be applicable, and transfer will be complete on the signing of contract and handing over possession, whether or not registered agreement is made or not as also whether or not complete payments were made, as property in the goods passes under the Sale of Goods Act on agreement and transfer of possession . The Id. Sr. DR has contended that it was not a case of slump sale , as complete assets and liabilities of Rohit Stone Product, were not transferred. The complete details are not on record as the assessee has not furnished the same and also the authorities below have not comprehensively looked into the issue . Thus, it is considered fit and proper , in the interest of justice , to restore the matter back to the file of the AO for fresh determination(denovo assessment) of the issue on merits in accordance with law. The assessee is directed to produce all details before the AO , in set aside proceedings for denovo assessment by the AO. In case , the assessee do not cooperate before the AO during set aside proceedings for framing denovo assessment, the AO shall be free to decide the issue on merits in accordance with law. The AO also has ample powers under the 1961 Act to collect information directly from authorities as well other persons considered deemed fit. The AO is directed to give fair hearing to the assessee in accordance with principles of natural justice. Thus, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

7b. So far as gift of Rs. 1,80,000/- from Mr. Saurabh Vaish is concerned, it is claimed by the assessee in statement of fact that Mr. Saurabh Vaish is son of the assessee and complete details/evidences were filed before the authorities below, but the authorities below have not properly considered the said details/evidences, and on general manner, added the said amount to income of the assessee. We find merits in the contentions of the assessee that all the documents which were filed by the assessee , needed to be verified and considered by authorities below. Thus, it is also considered fit and proper , in the interest of justice , to restore the matter back to the file of the AO for fresh determination(denovo assessment) of the issue on merits in accordance with law. The assessee is directed to produce all details before the AO in his defense , in set aside proceedings for denovo assessment by the AO. In case , the assessee do not co-operate before the AO during set aside proceedings for framing denovo assessment, the AO shall be free to decide the issue on merits in accordance with law. Thus, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

8. In the result, appeal of the assessee in ITA No. 59/Alld/2019 for assessment year 2014-15 is allowed for statistical purposes. We order accordingly.

ITA No. 100/Alld/2019-Assessment Year 2015-16

9. The assessee has raised following grounds of appeal in memo of appeal filed with tribunal in ITA No. 100/Alld/2019 for assessment year 2015-16,which reads as under:-

“1-That in any view of the matter the assessment order dated 30.06.2017 framed u/s 143(3) of the IT Act as passed by the assessing officer and his action as partly maintained by the Commissioner of Income Tax (Appeal) is bad both on the facts and in law.

2-That in any view of the matter a sum of Rs. 50 lacs added under the head other source by the assessing officer ignoring the correct facts and maintained

by the first appellate authority is highly unjustified, incorrect and illegal, hence the same is liable to be deleted in the facts and circumstances of the case.

3-That in any view of the matter a sum of Rs. 50 lacs as maintained by the Commissioner of Income Tax (Appeal) without appreciating the correct facts of the case is nothing when it is a duplicate addition because the said amount was already disclosed in the return under the head income from other source, therefore there is no justification to add and maintain the same by the lower authorities. Hence the same is liable to be deleted in the facts and circumstances of the case.

4- That in any view of the matter finding and observations of the two lower authorities in their order for making and maintaining the addition of Rs.50 lacs as other source income ignoring the correct facts are totally unjustified, wrong, illegal and contrary to the actual facts of the case hence the same are liable to be deleted in all fairness and interest of justice.

5- That in any view of the matter the interest charged under different sections of the IT Act is highly unjustified and illegal in the facts and circumstances of the case.

6-That in any view of the matter the appellant reserves his right to take any fresh ground before hearing of the appeal.”

10. The brief facts of the case are that the assessee filed return of income on 10th August, 2015 declaring total income of Rs. 92,69,400/-. The case of the assessee was selected for framing **limited scrutiny** for reasons that “*Large Cash Deposits in Saving Bank Account*”. Statutory notice under section 143(2) and 142(1) were issued to the assessee by the AO, as detailed in assessment order. The assessee participated in scrutiny assessment , which was in fact **limited scrutiny** conducted by Revenue. It was observed by AO that the assessee has made huge cash deposit in his saving bank account. The AO asked the assessee to explain the sources of cash deposit of Rs. 1,43,20,000/- in his bank accounts. The AO observed that the assessee in his return of income has declared income from salary of Rs. 24,00,000/- , business income of Rs. 1,67,749/- and long term capital gains of Rs. 19,58,927/- . The AO asked assessee to explain the head wise details of computation with supporting

evidences of sources of total deposits made into bank accounts of Rs. 1,43,20,000/- and the sources of deposit of Rs. 1,43,00,000/- made in the bank account as cash deposit. The assessee submitted before the AO as under:-

"That all the cash deposits in bank accounts are duly recorded in the books of accounts. During the year the assessee had declared additional income of Rs. 50.00lacs before the Hon'ble Income Tax Settlement Commission, New Delhi and on the direction of the commission the additional income was incorporated in the books of accounts. The assessee also declared income from other sources of Rs. 50.00 lacs in the return of income and paid due taxes. The cash deposits in banks are from these incomes. Further, the deposits in the bank account of the proprietorship firm namely M/s. Ravisha Stone Products is from opening cash balance as on-01.04.2014 and in M/s. Rohit Stone Products is from opening cash balance as on-01.04.2014 and Rs. 8.00 lacs received from Ramesh Chandra Vaishya Individual cash book."

The AO asked assessee to explain as to how the cash of Rs. 50 lacs as cash deposits which was part of settlement order, was available in cash with the assessee during the financial year 2014-15, which was deposited in bank account . The AO also asked assessee to explain with documentary evidence as to the availability of cash of Rs. 50 lacs which was deposited in bank account, which was claimed as income from other sources. The assessee submitted that the assessee has declared additional income of Rs. 50 lac before the Hon'ble Income Tax Settlement Commission, New Delhi, and on direction of the Commission, the additional income was incorporated in books of account during the financial year 2013-14 as the books of accounts for the previous year were closed and duly audited. It was also submitted that after the approval of the Hon'ble Income Tax Settlement Commission, the cash in hand declared as additional income was deposited in the bank accounts from time to time. An Income Tax as directed by Hon'ble Income Tax Settlement Commission, New Delhi was paid from these bank accounts through cheques. It was also submitted that assessee has declared income from other sources of Rs. 50 lac in the return of

income and paid due taxes. Cash deposited in the bank accounts were also from this tax paid income, and since the said cash were not previously incorporated in books of accounts, same were self-declared and due taxes were paid as per direction of Hon'ble Income Tax Settlement Commission, New Delhi on the income declared before it and at the time of filing of return of income for the relevant year on the other income. The AO rejected the contentions of the assessee, by holding as under:-

"I have considered the reply of the assessee carefully and not found satisfactory on the following grounds.

1. The assessee has claimed that he has declared income from other sources of Rs.50,00,000/- on the basis of the ITSC direction.

(a) In this regard, it is mentioned here that during search & seizure proceeding a sum of Rs.61,00,000/- was found from the residence of assessee and seized by the department. During the statement proceedings the assessee claimed that the above cash belong to M/s. Kapoor Chandra Stone Products Private Limited in this company assessee is main director. This was on the request of assessee released for payment of Tax on income surrendered by the assessee before the ITSC. Vide cheque No.A/28-8J6469 dated-22/03/2013 of Rs.61,00,000/- issued by the CIT, Allahabad in favour of DCIT, Central Circle, Allahabad. Hence, it is clear that no such cash available in liquid form with assessee which could be deposited by the assessee in his bank account as claimed in his submission.

(b) During the assessment proceedings in the case of assessee of A. Y.- 2014-15 a query raised that the amount of Rs.61,00,000/- may not be treated as deemed dividend in the hand of assessee. Vide order Sheet entry dated-14/12/2016 at Note sheet page No.3.

In this connection the assessee had submitted his reply on 16/12/2016 stating that as mentioned in your notice regarding loan of Rs.61,00,000/-, it is submitted that no loan was taken neither during the year nor the previous year. The adjustment entry of Rs.67,54,971/- was passed on 01/04/2013 due to wrong transfer of balance related to M/s. Kapoor Chandra Stone Products Private Limited. The above entries were already passed in the books of M/s. M/s. Kapoor Chandra Stone Products Private Limited on-31/03/2013 on the basis of ITSC order.

Keeping in view of above facts, it is very much clear a sum of Rs.50,00,000/- was not available in cash liquid form which can be deposited by the assessee as claimed by him in his reply submitted during the assessment proceedings as mentioned supra.

2. The assessee claimed that the assessee had cash in hand during the year which was deposited in the bank accounts. Since, these cash were not previously incorporated in the books of accounts the same were self- declared and the due taxes were paid as per direction of ITSC. Further the deposits in the bank accounts of the proprietorship firm namely M/s. Ravish Stone Products is from opening cash balance as on-01/04/2014 and in M/s. Rohit Stone Products is from opening cash balance as on-01/04/2014 and Rs.8,00,000/- received from Ramesh Chandra Vaishya individual cash book.

(a) The reply of assessee is considered but found vague & baseless without any supportive evidence except verbal explanation as stated above, which is only after thought and creation of story. On the perusal of balance Sheet of assessee and his both firms the position of cash in hand as on- 31/03/2014 was as under:-

Name	Opening balance 01/04/2014	Closing balance 31/03/2015	Acutal + &-
Ramesh Vaishya cash in hand	Rs. 4,12,978/-	Rs. 5,25,491/-	Excess Rs. 1,12,513/-
M/s Ravish Stone Products	Rs. 11,78,945/-	Not declared	-
M/s Rohit Stone Products	Rs. 5,412/-	not declared	-

The assessee was not carried out business activities in both the firm & no books of accounts or copy of balance sheet of above firm submitted till date. Hence, it is not confirmed how the assessee claimed that the cash in hand of firm & own deposited during the year in cash into his & his firm bank account. Further all the bank account of assessee and both firm are in the individual name of assessee. The total amount deposited by assessee in cash was of Rs.1,43,00,000/- against the explanation of Rs. 1,00,00,000/-.

(b) Further, the assessee has declared sale of project Rs.1,30,00,000/- was received by the assessee during the A. Y.-2014-15. The assessee has not submitted any details that out of above sale consideration so many amounts received during the year.

(c) Further, the assessee has received salary of 24 Lac from M/s Kapoor Chandra Stone Product Pvt. Ltd.. In this connection the assessee has nor submitted copy of his account in the book of assessee Company which can prove that such amount was actually withdrawn by assessee in cash out if salary from the company.

(d) during the assessment proceeding the assessee has submitted cash deposit and withdrawn chart dated 29.05.2017 where in the assessee has shown deposit of Rs. 1,15,20,00/- withdrawal Rs. 18,60,000/- balance Rs. 96,60,300/- source of which claimed by assessee as under:

(i) As per Settlement Commission Order Rs. 5,00,00,000/-

(ii) Income from other sources declared in the return of income Rs. 5,00,00,000/-

After considering all the facts, is narrated above in detail date wise and point wise, it is clear that the assessee has totally failed to explain the source of Rs. 1,00,00,000/- (50,00,000+ 50,00,000) by submitting documentary evidence. Keeping in view these facts, a sum of Rs. 1,00,00,000/- is treated as income from undisclosed sources other than the declared income. Accordingly, addition of Rs. 1,00,00,000/- is made in the hand of assessee.

Addition: 1,00,00,000

11. Aggrieved by assessment framed by the AO, the assessee filed first appeal with CIT(A) , which stood partly allowed by learned CIT(A) , by holding as under:-

"8. I have examined the facts and circumstances of the case. I have considered the findings of the AO in the assessment order and the submission of the appellant made during the appellate proceedings. The AO made an addition of Rs. 1,00,00,000/- since the source of deposit of Rs.1,00,00,000/- was not satisfactorily explained by the appellant.

9. The appellant vide submission dated 20/05/2019 has contended as below:

i) Regarding deposit of Rs. 50,00,000/-

That in the present case an application was filed before the Hon'ble Income Tax settlement Commission for settling the appellant's cases and the Hon'able Commission passed their order dated 20/05/2014 by considering the said application and copy of the said order is already placed on record in second paper book at page no. 17 to 39. In para 9.9 of the order the Hon'ble Commission has stated as under:

"A further offer of Rs. 50 lacs was made by the appellant side by his letter dated 05/05/2014" Thus in these background Rs. 50 lacs was credited in the cash book on 30/05/2014 and copy of the cash book is at page no. 65 to 70 of the second paper book. The relevant entry of Rs.50 lacs is as per the offer which is at page no. 5 of the cash book enclosed in the submission dated 27-3-19. Thus within 10 days from the order of the Hon'ble Commission the amount was credited in book and there is no

adverse remark of the Assessing officer in respect of such entry anywhere in the assessment order.

ii) Regarding another deposit of Rs. 50,00,000/-

That with regard to the addition of Rs. 50 lacs it is submitted that the assessee earned the income under the head other sources income in respect of grit business which relates to the A.Y. in question. In these situation a sum of Rs. 50 lacs was offered in the return under the head income from other sources and on that income tax was also paid and also credited in books. The amount of Rs 50 lacs consists of number of cash entries on different dates under the head "Other income" and copy of the ledger is at page 3 and extract copy of cash book are at page no. 4 to 16 of the second submission dated 27/03/2019 already furnished before your goodself. The ledger copy and cash book as above is duly highlighted for your kind convenience.

That thus the amount of Rs. 1 Cr. (Rs. 50 lacs Rs.50 lacs) is from definite sources already disclosed to the department and the entire bank transaction is through books. hence the addition so made in haste without appreciating the correct facts is wrong and uncalled for and therefore the same is liable to be deleted in the facts and circumstances of the case.

10. On examination, I find that in the instant case appellant had filed an application before Hon'ble Settlement Commission for A.Y. 2005-06 to A.Y. 2011-12 on 12/03/2013. The Hon'ble Settlement Commission passed an order dated 20/05/2014, wherein in para 9 has held as under:

Conclusion:

9.1 In the case of Shri Ramesh Chandra (individual):..

The appellant by their letter dated 15/05/2014 have however offered this amount for taxation. In view of the offer made by the applicant, an addition of Rs. 50 lakh is made for assessment year 2011-12 in the case of Shri Ramesh Chandra to the additional income offered in the SOF.

11. Further on perusal of the cash book of the appellant it is noted that Rs. 50 lakh has been credited on 30/05/2014 which is shown as income under Settlement Order.

12. In view of the aforesaid facts, I find that Rs. 50 lacs has been credited in the books of account of the appellant which is as per the offer made by the appellant before the Settlement Commission and accepted by the Hon'ble Settlement Commission as the additional income of the

appellant. The said amount has been credited in the books of account within 10 days of the order of Settlement Commission dated 20/05/2014. Considering the totality of the facts and circumstances of the case, I find that appellant has satisfactorily explained source of Rs.50,00,000/-, hence addition of Rs. 50,00,000/- made by the AO is found to be unjustified and is hereby deleted.

13. Further, with regard to another deposit of Rs. 50,00,000/-, I find that the appellant has not adduced any cogent evidence in support of his contention that this relates to income earned as commission from parties in respect of grit business. Since the source of income of Rs. 50,00,000/-, which has been offered as income from other sources in respect of grit business, is found to be not satisfactorily explained by the appellant, addition of Rs. 50,00,000/- made by the AO is held to be justified and is hereby upheld.”

12. Aggrieved by the appellate order passed by Id. CIT(A) , the assessee has filed second appeal with tribunal. When this appeal came up for hearing before the Division Bench, none appeared on behalf of the assessee while the learned Sr. DR strongly objected to the grant of adjournment in favour of the assessee . The Department has filed letter dated 26.4.2023 wherein the Department has strongly objected to grant of any further adjournment to the assessee. The said letter filed by the Department is placed on record in file. The Id. Sr. DR stated before the Bench that the assessee was granted last opportunity by the Bench on the earlier occasion , but still the assessee is seeking adjournment. It was further submitted by Id. Sr. DR that even cost was imposed on the assessee by the Bench, but still the assessee is seeking adjournment and not interested in arguing the matter. It was submitted by Id. Sr. DR that the assessee is not interested in pursuing these appeals, and hence no adjournment may be granted to the assessee. It was observed by the Bench that the assessee has taken adjournments in the past on large number of occasions and in fact the last opportunity was also granted to the assessee but still the assessee was asking for adjournment. It is also observed that even cost has been imposed on the assessee on earlier occasions, but still assessee is seeking adjournments. After

hearing ld. Sr. DR and perusing the material on record and conduct of the assessee as borne out from record before us, the Division Bench declined to grant adjournment to the assessee and proceeded to hear the appeals in the absence of the assessee, after hearing ld. Sr. DR and perusing the material on record. The learned Sr. DR submitted that there was an unexplained cash deposit of Rs. 1 Crores in the bank account of the assessee. The learned CIT(A) has already accepted and granted relief w.r.t. addition to the tune of Rs. 50 Lacs, which were cash deposited in bank account of the assessee after grant of acceptance by the Hon'ble Income Tax Settlement Commission of the statement of fact(SOF) filed by the assessee. It was submitted that ld. CIT(A) has already granted part relief to the assessee w.r.t. cash deposit pursuant to acceptance of SOF filed by the assessee, and the Department is not in appeal. It was submitted that the proprietary concern of the assessee namely Ravisha Stone Product was carrying on the business during the year, as is evident from the accounts of the assessee. Our attention was drawn by ld. Sr. DR to the assessment order and appellate order passed by ld. CIT(A) order as well to the written submission filed by the department and it was prayed that the appellate order of the learned CIT(A) be upheld.

13. We have carefully considered the contentions of ld. Sr. DR and perused the material on record. The assessee has filed paper book which is duly considered. We have observed that the case of the assessee was selected by Revenue for framing limited scrutiny assessment for ay: 2015-16, owing to large cash deposits in the bank accounts of the assessee. There were cash deposits of Rs. 1,43,20,000/- in the bank accounts of the assessee, during the year under consideration. The assessee was asked to explain the same. The assessee came out with explanation, inter-alia, that cash of Rs. 50 lacs was deposited in cash book owing to acceptance of its SOF filed before Hon'ble Income Tax Settlement Commission and further Rs. 50 lacs was deposited in cash with respect to commission income from Grit Business. It is

observed that the assessee has declared income of Rs. 92,69,400/- , wherein , inter-alia, there is income of Rs. 50,00,000/- declared by the assessee as 'income from other sources'. The Id. CIT(A) has already granted relief to the assessee so far as acceptance of income of Rs. 50,00,000/- in SOF by Hon'ble Income Tax Settlement Commission . The Revenue is not in appeal so far as aforesaid relief granted by Id. CIT(A). So far as other cash deposit of Rs. 50 lacs , which is presently under dispute before us, needs proper verification by authorities below for which cogent evidences to be brought on record by the assessee, that both the income , firstly Rs. 50 lacs which is accepted by Hon'ble Income Tax Settlement Commission , as well secondly income of Rs. 50 lacs as income from commission from stone grit, both have suffered taxation and was offered to tax by the assessee, and no income has escaped assessment while Revenue has got its due taxes . The complete facts are not on record, and balled statements are made by the assessee before the authorities below, while assessee is required to file cogent evidences to demonstrate that no income has escaped assessment and all dues taxes stood paid to Revenue . The authorities below are also required to verify comprehensively that both the income aggregating to Rs. 100 lacs have suffered taxation and no income escapes taxation. Thus, it is considered fit and proper , in the interest of justice , to restore the matter back to the file of the AO for fresh determination(denovo assessment) of the issue on merits in accordance with law. The assessee is directed to produce all details before the AO , in set aside proceedings for denovo assessment by the AO. In case , the assessee do not co-operate before the AO during set aside proceedings for framing denovo assessment, the AO shall be free to decide the issue on merits in accordance with law. Thus, the appeal of the assessee on this issue is allowed for statistical purposes. We order accordingly.

14. In the result, the appeal of the assessee in ITA No. 100/Alld/2019 for assessment year 2015-16 is allowed for statistical purposes.

15. In the result, both the appeals of the assessee in ITA No. 59 & 100/Alld/2019 for assessment year's 2014-15 and 2015-16 are allowed for statistical purposes.

Order pronounced in the open court on 03/07/2023 at Allahabad under Rule 34(4)
of the ITAT, Rules, 1963.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER
DATED: 03/07/2023

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Copy forwarded to:

Sh.

1. Appellant – Shri Ramesh Chandra Vaish, 5A/10/6, Muir Road, Ashok Nagar, Allahabad, U.P.
2. Respondent – The Assistant Commissioner of Income Tax, Central Circle, Allahabad, U.P.
3. The CIT(A) , Allahabad (The CIT(A)-III, Lucknow)
4. CIT, Allahabad, U.P.
5. The Id. Sr. DR , Allahabad, U.P.

By order
Assistant Registrar