

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष

BEFORE: HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 309/JP/2023
निर्धारण वर्ष/Assessment Year : 2018-19.

Shri Sunil Dutt Jain, Prop. M/s. Jain Food Products, 266/33, Diggi Chowk, Ajmer.	बनाम Vs.	Asstt. Commissioner of Income –tax, C.R. Building, Opposite Session Court, Jaipur Road, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAQPJ 8741 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 372/JP/2023
निर्धारण वर्ष/Assessment Year : 2018-19.

Joint Commissioner of Income –tax, C.R. Building, Opposite Session Court, Jaipur Road, Jaipur.	बनाम Vs.	Shri Sunil Dutt Jain, Prop. M/s. Jain Food Products, 266/33, Diggi Chowk, Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAQPJ 8741 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal, CA

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 12/07/2023

उद्घोषणा की तारीख / Date of Pronouncement: 29/08/2023

आदेश / ORDER

PER BENCH :

These are two cross appeals by the assessee and revenue directed against the order dated 21.03.2023 of Id. CIT (A), Udaipur-2 passed under section 250 of

the IT Act, 1961 for the assessment year 2018-19. For the sake of convenience, both these appeals are being disposed off by this combined order. The grounds raised by the assessee and revenue are as under :-

ITA NO. 309/JP/2023 (ASSESSEE'S APPEAL):

1. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 15.50 lacs u/s 69A of the Act on account of alleged investment in agricultural land at village Kanas, Pushkar by making various observations even when seized document do not show that land is purchased by assessee, the seller in his letter & statement dt. 05.12.2019 has confirmed that he has not sold the land and assessee has retracted from his statement u/s 132(4) dt. 13.09.2018 in post search proceedings vide letter dt. 23.10.2018 and statement of even date.
2. The Id. CIT (A) has erred on facts and in law in confirming the addition of Rs. 1.15 crore u/s 69A of the Act on account of unexplained loan given on the basis of Annexure AS-1 without allowing set off of funds available on sale of shops/property in earlier years and income offered to tax in previous years.
3. The Id. CIT (A) has erred on facts and in law in confirming the addition of interest income of Rs. 3,45,000/- by applying interest rate of 1.5% p.m. for 2 months on the addition of loan confirmed by him of Rs. 1.15 crore.
4. The appellant craves to alter, amend and modify any ground of appeal.
5. Necessary cost be awarded to the assessee.

ITA NO. 372/JP/2023 (DEPARTMENTAL APPEAL):

1. The learned CIT (Appeals) has erred in law and on facts in granting relief to the assessee.
2. Whether on the facts and circumstances of the case for the assessment year under consideration, the Id. CIT (A) is justified in law in restricting the addition to Rs. 1,15,00,000/- out of Rs. 1,93,50,000/- made on account of unaccounted cash loan under section 69A r.w.s. 115BBE of the Act without appreciating the facts and findings given by the AO that clear nexus is proved between the entries made on page No. 35 of exhibit-26 and entries available on page no. 1-26 of exhibit-1, Annexure-AS.

3. Whether on the facts and circumstances of the case for the assessment year under consideration, the Id. CIT (A) is justified in law in restricting the addition to Rs.3,45,000/- as against Rs. 7,74,000/- made on account of undisclosed Interest income earned through advancing of cash loans.
4. The appellant craves leave to add, amend or withdraw any of the grounds of appeal during the course of appeal proceedings.

Ground No. 1 : (Assessee)

2. The brief facts of the case are that the assessee is engaged in the business of manufacturing, wholesale and retail business of Namkeen and Sweet products in his proprietary concern M/s Jain Food Products. This is the family business of assessee which he carries out along with his brother Shri Kamal Kant Jain. He filed the original return of income for the year under consideration on 30.10.2018 declaring total income of Rs.22,82,810/-. A search and seizure action under section 132 of the I.T. Act, 1961 was carried out on 12.09.2018 at the residential and business premises of Jain Group of Ajmer wherein the assessee is also covered. Pursuant to search, the AO issued notice under section 153A of the Act on 29.05.2019 which was duly served upon the assessee by E-mail. In response to the notice, the assessee filed the return of income on 12.06.2019 declaring the income of Rs. 22,82,810/-. A notice under section 143(2) was issued on 30.09.2020 and the same was duly served upon the assessee by e-mail. Query letter along with notices under section 142(1) were also issued on 03.12.2020, 27.02.2021 and 02.06.2021. In response to these notices, the assessee submitted the desired details in the assessment proceedings. The seized books of accounts and other books of accounts have been examined on test check basis.

2.1 The AO observed that in search Pages 56-58 of Annexure AS 20 (PB 161-184) found from the residence of assessee revealed that Shri Indrajeet Singh purchased an agricultural land on 06.03.2017 for Rs.14,00,000/- which was sold for Rs.15,50,000/- as per agreement dated 04.05.2017 keeping the name of buyer blank in all the documents, i.e. Sale Agreement, Will and Power of Attorney.

2.2 The assessee in his statement dated 12.09.2018 recorded u/s 132(4) of IT Act, 1961, in reply to Question No.31 (PB 14-15) and Question No.54 (PB 36) admitted that he has purchased the said agricultural land from Shri Indrajeet Singh for Rs.15.50 lacs which has not been recorded in his books of accounts and thus offered the same as his unaccounted investment. Immediately thereafter assessee vide letter dated 23.10.2018 to DDIT, Investigation, Ajmer (PB 51-64, specific Page 59) retracted from his statement stating that his name is not written in any of the documents. He has neither purchased this agricultural land nor made any payment towards the said purchase.

2.3 To examine the above facts, summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Shri Indrajeet Singh. Shri Indrajeet Singh vide letter dated Nil (PB 165) explained the reason for keeping the documents with assessee. Thereafter his statement u/s 131 dated 05.02.2019 (PB 166-167) was also recorded wherein he explained the reasons for giving these documents to the assessee and also confirmed that as on date the ownership of land remains with him.

2.4 The AO, however, held that it is a general tendency of market that one who wants to invest one's unaccounted money in property, takes the chain of document i.e. Power of attorney, Will and Agreement of Sale by keeping the name of the

beneficiary blank from the seller and pays his unaccounted money. Later on whenever he feels feasible or wants to sell this property, he completes his chain of document by filing the name of the beneficiary and sell the property. In this case also, same has been followed by Shri Sunil Dutt Jain to invest his unaccounted money and he purchased the property from Shri Inderjeet Singh Koli for an amount of Rs.15,50,000/- by keeping blank in beneficiary's name. On the basis of these documents Shri Sunil Dutt Jain in due course of time would have either registered the above property in the name of self or family member or could sold this land to another party directly by just filling the name of beneficiary in blank space in all the documents. These original chain documents were found in possession of Shri Sunil Dutt Jain at his residence. Also during the search proceedings, in his statement he accepted the dealing of this land in Rs.15,50,000/- and voluntarily surrendered the amount for tax. During post search proceedings as well as in assessment proceedings, Shri Sunil Dutt Jain retracated from his earlier statement of 12.09.2018 recorded at the time of search proceedings merely on one ground that documents executed by Shri Inderjeet Singh Koli are left blank and his name is not mentioned anywhere on the documents as a purchaser. Thus it is established that Shri Sunil Dutt Jain has purchased agriculture land from Shri Inderjeet Singh Koli by investing his unaccounted money. Therefore, an amount of Rs.15,50,000/- is considered as his unexplained investment u/s 69 read with section 115BBE of the I.T. Act, 1961.

2.5 Aggrieved by the order, assessee preferred an appeal before the Id. CIT (A). The Id. CIT(A) held that addition made by the AO is based on statement u/s 132(4) and corroborative evidences. The statement recorded during search operation u/s

132(4) is having strong evidentiary value. The appellant is found in possession of original Sale deed and Power of Attorney of the same plot of land. The sale deed is duly signed by the seller in the presence of two witnesses. The document is duly notarized by an advocate named Shri Yuvraj Singh and date of 04.05.17 is noted on this document. The fact that this document is found from the possession of the appellant proves that the transaction is done by the appellant. In addition to this General Power of Attorney was also found and seized where the name of person in favour of whom this power is given is not written but it is also signed by Shri Inderjeet Singh. For the same property sale deed and General Power of Attorney is prepared on the same date. After a substantial gap of time the appellant retracted from the statement which is nothing but an effort to avoid the tax liability. The statement of Shri Inderjeet Singh after search is not reliable because this does not disprove the signature of him on sale deed prepared on stamp paper, in this sale deed cash receipt of Rs.15,50,000/- is noted and Shri Inderjeet Singh is an interested party and admission by him will cast tax liability on him. Accordingly by relying on the various case laws, he confirmed the addition made by AO.

Now the assessee is in appeal before us.

3. Before us, the Id. A/R of the assessee submitted that both the lower authorities on the basis of statement of assessee dated 12.09.2018 recorded u/s 132(4) where he has admitted that he has purchased the agricultural land from Shri Inderjeet Singh for Rs.15.50 lacs and on the basis of unexecuted sale agreement, Power of Attorney & Will signed by Shri Inderjeet Singh where the name of buyer/name of person in whose favour it has been executed has been left

blank but were found in the possession of assessee made/confirmed the addition in the hands of assessee by treating it as unexplained investment u/s 69 of the Act.

3.1 Regarding statement of assessee dated 12.09.2018 recorded u/s 132(4) it is submitted that immediately thereafter assessee vide letter dated 23.10.2018 to DDIT, Investigation, Ajmer (PB pages 51-64, specific Page 59) retracted from his statement stating that his name is not written in any of the document. He has neither purchased this land nor made any payment towards the said purchase. To examine this fact, summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Shri Inderjeet Singh. Shri Inderjeet Singh vide letter dated Nil (PB 165) submitted that in order to repay the loans he was in urgent need of funds and therefore he has given these documents to assessee so that the land can be sold as soon as possible and his need of funds can be fulfilled. However neither any transaction was carried out by him with the assessee nor he has given the ownership of this land to assessee. These facts were also confirmed by him in his statement u/s 131 dated 05.02.2019 (PB 166-167). The DDIT, Investigation, Ajmer or the AO have not controverted such statement. Hence the statement of assessee which has been immediately retracted thereafter cannot be the basis for making the addition.

3.2 So far as unexecuted Sale Agreement, Power of Attorney & Will signed by Shri Inderjeet Singh which were found in the possession of assessee is concerned, it is submitted that assessee's name is not written in any of these documents. Shri Inderjeet Singh in his letter dated Nil (PB 165) and statement u/s 131 dated 05.02.2019 (PB 166-167) has explained the reason as stated above for keeping

these documents with the assessee. Hence no addition can be made in the hands of assessee on the basis of these documents.

3.3 The Ld. CIT(A) has made certain observations at Pages 7 to 15 of its order and relied on certain case laws. He has stated that retraction of statement after a considerable time is not acceptable. However, he ignored that retraction is within 40 days of recording of statement u/s 132(4) which cannot be said to be after a considerable lapse of time. Further Shri Inderjeet Singh in post search proceedings has filed a letter dated Nil to DDIT, Investigation, Ajmer explaining the correct facts and these facts were also reiterated in statement u/s 131 dated 05.02.2019. The same is not controverted by the lower authorities. Therefore, addition confirmed by Ld. CIT(A) is without appreciating the correct facts.

In view of above, addition of Rs.15.50 lacs confirmed by Ld. CIT(A) be directed to be deleted.

4. On the other hand, the Id. D/R supported the orders of the revenue authorities.

5. We have heard rival contentions, perused the material on record and gone through the orders of the revenue authorities. We note that both the lower authorities on the basis of statement of assessee dated 12.09.2018 recorded u/s 132(4) wherein he has admitted that he has purchased the agricultural land from Shri Inderjeet Singh for Rs.15,50,000/- and on the basis of unexecuted Sale Agreement, Power of Attorney & Will signed by Shri Inderjeet Singh wherein the name of buyer/name of person in whose favour it has been executed has been left blank but were found in the possession of assessee, made/confirmed the addition in

the hands of assessee by treating it as unexplained investment u/s 69 of the Act. However, we find that assessee vide letter dated 23.10.2018 to DDIT, Investigation, Ajmer retracted from his statement stating that his name is not written in any of the documents. To examine this fact summon u/s 131 of IT Act was issued by DDIT, Investigation, Ajmer to Shri Inderjeet Singh who vide letter dated Nil and statement recorded u/s 131 dated 05.02.2019 stated the reasons as to why these documents were given by him to the assessee. We find that in search no evidence is found to prove that assessee has paid Rs.15,50,000/- to Shri Inderjeet Singh. The statement given u/s 132(4) is also retracted within 40 days. Thus in the absence of any material on record that assessee has paid Rs.15,50,000/- to Shri Inderjeet Singh, addition made/confirmed by lower authorities is not justified. Hence the addition made is deleted. This ground no. 1 of the assessee is allowed.

6. **Ground No. 1 of the Revenue** is general in nature and needs no separate adjudication.

Ground No. 2 of Assessee and Ground No. 2 of Revenue :

7. Both these grounds involve a common issue. Therefore both these grounds are taken up together.

8. The brief facts of the case are that during the course of search, certain papers indicating advance given was seized as per Pages 1-23 of Annexure A-1. The AO on the basis of these papers took the amount of cash loan given at Rs.2,08,50,000/-. On these papers there is reference of loan given to Shri Pramod Gupta. In the statement recorded u/s 132(4), the assessee in reply to Question No.36 (PB 25) offered the same for tax. In post search proceedings the assessee

vide letter dated 23.10.2018 to DDIT, Investigation, Ajmer (PB 54-55) explained that correct amount of loan given is Rs.1,10,00,000/- and not Rs.2,08,50,000/-. He further explained that source of such loan is out of the funds from business earned in earlier years. Statement of the assessee u/s 131(1A) dated 23.10.2018 was also recorded wherein in reply to Question No.6 (PB 66) & Question No.12 (PB 69) he again explained that the correct amount of loan given is Rs.1,10,00,000/-. Thereafter statement of Shri Pramod Gupta was recorded u/s 131 dated 29.11.2018 (PB 71-74), wherein he confirmed that he has taken loan of Rs.60 lacs from the assessee directly and has arranged loan of Rs.50 lacs from the assessee for other person. The AO on the basis of Page 35 of Annexure AS-26 (PB 183) observed that assessee had advanced loan of Rs. 20 lacs between 15.02.2018 to 25.03.2018 to Shri Pramod Gupta. The interest calculated on such amount is @ 24% p.a. Further on the same paper there is calculation of interest for the month of April to June of Rs.3,47,000/- p.m. The principal amount considering interest rate of 24% p.m. works out at Rs.1,73,50,000/-. Accordingly it is held that amount of loan advanced is Rs.1,93,50,000/-. Further the claim of assessee as to the source of such amount is not acceptable as discussed at Pages 15 to 18 of the order. Accordingly AO made addition of Rs.1,93,50,000/-u/s 69A of the Act. Aggrieved by the order of AO, the assessee preferred appeal before the Id. CIT (Appeals). The Id. CIT (A) held that Pages 1 to 23 of Annexure AS-1 and Page 35 of Annexure AS-26 are not interlinked and the interest rate assumed @ 24% for reverse calculation to find out principal amount of loan is not matching with interest rate of 18% mentioned on Pages 1-23 of Annexure AS-1 and the statement of assessee recorded u/s 132(4) and that of Shri Pramod Gupta. Accordingly the Id. CIT(A) worked out

the amount of advance as per Pages 1-23 of Annexure AS-1 at Rs.1,15,00,000/- (including Rs.5,00,000/- as per Page No.5 of Annexure AS-1) and allowed relief of Rs.78,50,000/-.

9. Being aggrieved, now the assessee as well as revenue are in appeal before us.

10. Before us, the Id. A/R of the assessee submitted his written submissions as under :

“ It is submitted that at Pg 1 to 23 of Annexure AS-1 (**PB 171-179**) the details of loan given is noted as under:-

Pg No.	Name of borrower	Amount (in Rs.)	Period	Remarks
4	Sh. Ram Gopal	15,00,000	01.02.18 to 30.06.18	-
5	Sh. Kamal Nayan	0	01.02.18 to 31.03.18	The amount given is Rs.10 lacs but it is crossed which means that it is realized.
5	Jitendra Agarwal	0	01.07.18	Amount given is Rs.5 lacs on 01.07.18 which falls in AY 2019-20
6	AnkurChouhan	10,00,000	01.02.18 to 30.06.18	-
7	Sh. Pramod Gupta	5,00,000	01.02.18 to 30.06.18	-
8	Vijay Gupta	10,00,000	01.02.18 to 30.06.18	-
9	Pramod Gupta	5,00,000	01.01.18 to 31.05.18	There is a noting of Rs.90 lacs (60+20+10) which is total advance given to Pramod Gupta
10	Vijay Gupta	10,00,000	01.02.18 to 30.06.18	-
11	Mukesh	10,00,000	01.02.18	-

	Chauhan		to 30.06.18	
12	Soni Balasiya	5,00,000	01.02.18 to 30.06.18	-
13	Vijay Singh Rawat	15,00,000	01.02.18 to 30.06.18	-
14	Leena Kashyap	5,00,000	01.02.18 to 30.06.18	-
15	Chella Ram	10,00,000	01.02.18 to 30.06.18	-
16	Pramod Gupta	2,50,000	01.02.18 to 30.06.18	-
17	Pramod Gupta	3,00,000	01.02.18 to 30.06.18	-
18	Pramod Gupta	4,00,000	01.02.18 to 30.06.18	-
19	Pramod Gupta	4,00,000	01.02.18 to 30.06.18	-
	Total	1,13,50,000		

From the above table it can be noted that total advance noted is Rs.1,13,50,000/-. At Pg 9 there is noting of Rs.90 lacs (60 lacs+20 lacs+10 lacs). The amount of Rs.60 lacs represent the total of advance given at Pg 6 (Rs.10 lacs), Pg 7 (Rs.5 lacs), Pg 8 (Rs.10 lacs), Pg 10 (Rs.10 lacs), Pg 13 (Rs.15 lacs), Pg 16 (Rs.2.5 lacs), Pg 17 (Rs.3 lacs), Pg 18 (Rs.4 lacs), Pg 19 (Rs.4 lacs) totaling to Rs.63.50 lacs which is settled on 01.06.2018 at Rs.60 lacs. Rs.20 lacs and Rs.10 lacs represents the estimated interest and other phutkar amount which is included to make the total at Rs.90 lacs. Thus the advance given to Pramod Gupta is Rs.60 lacs and to other person through Pramod Gupta is Rs.50 lacs totaling to Rs.110 lacs. The Ld. CIT(A) has included Rs.5 lacs on the basis of Pg 5 of Annexure AS-1 (**PB 172**) which in fact is given on 01.07.2018 falling in AY 2019-20 and therefore this amount cannot be added.

So far as Pg 35 of Annexure AS-26 (**PB 183**) is concerned, it is an independent paper in as much as no link of Rs.20 lacs mentioned on top of Pg 35 is established with any of the entry noted in Annexure A-1. Further the AO by reverse working by taking interest rate of 2% p.m. on the amount of Rs.3,47,000/- has worked out the principal amount at Rs.1,73,50,000/-. On the paper the interest rate of 24% p.a. is not mentioned. As against this the assessee and Sh. Pramod Gupta in their statement has admitted that advance is given at the interest rate of 18% p.a. Hence on the basis of Pg 35 of Annexure AS-26 it cannot be presumed that assessee advanced Rs.1,93,50,000/- ignoring the person-wise detail of advance given noted at Pg 1-26 of Annexure A-1 and also admitted by Sh. Pramod Gupta.

Thus the advance given during the year as per these papers is Rs.1.10 crores and not Rs.1.15 crores as taken by Id. CIT(A) or Rs.1,93,50,000/- as taken by the AO and therefore the ground of the department be dismissed.

So far as the source of giving advance is concerned the same is out of past income. This is also evident from the seized document at Annexure A-2 (**PB 97-99**), Annexure A-3 (**PB 100-104**), Annexure A-22 (**PB 105-106**) and Exhibit 28 (**PB 107-108**). These papers indicate that Sh. Mirchu Mal owned a plot on which he intended to built a shopping complex and therefore he entered into understanding with Sh. Godu, Jaggu & Amit Meghnani (Group I) and Sh. Vinod & assessee (Group II) to carry out the construction having share of 66.66% of Mirchu Mal, 20% of Group I and 13.33% of Group II(**PB 104**). The seized paper shows the amount invested in construction by Group I and Group II as under:-

Duration	Exhibit No.	Page No	Construction Amount Invested	Party	Amount	PB
07.04.2010 to 06.12.2011	2	3	Vinod		6,50,000	99
05.04.2010 to 03.07.2010	3	7	Godu, Jaggu & Amit		6,50,000	

28.08.2010 to 09.10.2010	28	7	Godu, Jaggu & Amit	8,71,000	
	3	7	Sunil Dutt Jain	10,50,000	104
18.11.2011 to 05.12.2011 (Second Phase)	28	11	Sunil Dutt Jain	2,61,854	
				34,82,854	
Construction Cost Share					
	22	27	Godu, Jaggu & Amit	15,40,000	107
	22	27	Vinod, Sunil Dutt Jain	10,50,000	107
	22	27	Amount against advance received by pool of developers	6,50,000	107
28,50,000 given to contractor and 3,90,000 for other expenses				32,40,000	

On Pg 27 of Exhibit 28 since Godu, Jaggu & Amit wanted to exit, the assessee gave a proposal to pay Rs.17,82,600/- (Rs.15,40,000+ Rs.2,42,600 interest) but it was finalized at Rs.18,44,000/- (Rs.15.50 lacs for investment & Rs.2,94,000/- for interest). Vinod also intended to exit from the project and ultimately they were paid Rs. 24,94,000/- as noted at Pg 7 of Exhibit 3 **(PB 104)** as under:-

Duration	Exhibit No.	Payment done by Sunil Dutt Jain	Amount (in Rs.)	PB
08.10.2011	3	To Godu, Jaggu & Amit	10,00,000	104
18.11.2011	3	To Godu, Jaggu & Amit	8,44,000	104
18.11.2011	2	To Vinod	6,50,000	99
Total			24,94,000	

Thus after exit of these persons, Sh. Mirchu Mal has 66.66% share and assessee has 33.33% share in the project. The shops in the project were sold for Rs.1,15,90,000/- as per the following details:-

Date	Exhibit No	Page No	Amount(in Rs.)	No. of shops	PB
17.04.2010	A-28	27	34,40,000	3 shops	107
17.04.2010	A-28	27	59,00,000	2 shops	107
28.04.2010	A-28	27	22,50,000	2 shops	107
Total			1,15,90,000		

Thus assessee received 33.33% of Rs.1,15,90,000/-, i.e. Rs.38,63,000/- as his share which was available with the assessee for giving the advances. This fact is

also explained by the assessee in post search proceedings vide letter dt. 23.10.2018 **(PB 56)** and in reply to Q. No.7 & 8 of statement u/s 131(1A) dt.23.10.2018 **(PB 67-68)**.

Apart from the above source, assessee sold Plot No.311, Green City, Sikar Road, Jaipur to Smt. Amrita vide sale deed dt. 26.12.2012 **(PB 82-93)**.The actual sales consideration at which the property is sold is Rs.20,88,000/- which is also the DLC value**(PB 89)**but at the insistence of buyer the same has been shown in the sale deed at Rs.7,25,000/-**(PB 88)**.Thus assessee has received additional consideration of Rs.13.63 lacs (20,88,000-7,25,000) in cash. Though sales consideration of Rs.7,25,000/- is recorded in the sale deed but tax has been paid by assessee by taking the sale consideration at Rs.20,88,000/- as evident from the return **(PB 80)**. Out of Rs.13.63 lacs, an amount of Rs.2,00,000/-was utilized for purchase of 'Chabutari' in AY 2013-14 but since it was cancelled the assessee received back Rs.2 lacs. Thus an amount of Rs.13.63 lacs was also available for giving the advances.

From the above it can be noted that assessee has sources of funds available to the extent of Rs.52.26 lacs (38.63 lacs +13.63 lacs) for providing advances. Hence out of total advances of Rs.110 lacs, source to the extent of Rs.52.26 lacs is proved from the seized record and therefore addition can be sustained to the extent of Rs.57.74 lacs.

In view of above, ground of the department be dismissed and ground of the assessee be allowed as submitted above."

11. On the other hand, the Id. D/R supported the order of the A.O.
12. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. We note that the AO on the basis of papers found in search made addition of Rs.1,93,50,000/- on account of

unexplained advances but the Id. CIT(A) restricted the addition to Rs.1,15,00,000/-. However, we find that actual advance as per these papers is Rs.1,13,50,000/- as at Page 9 there is a noting of Rs.90 lacs (60 lacs+20 lacs+10 lacs). The amount of Rs.60 lacs represent the total of advance given at Page 6 (Rs.10 lacs), Page 7 (Rs.5 lacs), Page 8 (Rs.10 lacs), Page 10 (Rs.10 lacs), Page 13 (Rs.15 lacs), Page 16 (Rs.2.5 lacs), Page 17 (Rs.3 lacs), Page 18 (Rs.4 lacs), Page 19 (Rs.4 lacs) totalling to Rs.63.50 lacs which is settled on 01.06.2018 at Rs.60 lacs. Rs.20 lacs and Rs.10 lacs represents the estimated interest and other phutkar amount which is included to make the total at Rs.90 lacs. Thus the advance given to Shri Pramod Gupta is Rs.60 lacs and to other person through Shri Pramod Gupta is Rs.50 lacs totalling to Rs.1.10 crores. The Id. CIT(Appeals) has included Rs.5 lacs on the basis of Page 5 of Annexure AS-1 which in fact is given on 01.07.2018 falling in A.Y. 2019-20. Therefore the unexplained investment in advances as per the papers is Rs.1,10,00,000/-. We also find that Page 35 of Annexure A-26 is an independent paper and therefore on the basis of reverse working the advances worked out by the AO at Rs.1,93,50,000/- ignoring the person wise details of advances found in search is not correct and thus the **ground of the department is dismissed.**

12.1 We further note that source of such advance is partly verifiable from Rs.38,63,000/- received by the assessee as his share received from Shri Mirchu Mal in the shops built in his shopping complex as is evident from the document seized at Annexure A-2, A-3, A-22 & Exhibit 28 in F.Y. 2010-11 & 2011-12. Further assessee has funds available of Rs.13.63 lacs from sale of plot at Green City, Jaipur in F.Y. 2012-13. Thus the source of funds to the extent of Rs.52.26 lacs is available with the assessee to give advance of Rs.110 lacs. Therefore, addition is sustained to the

extent of Rs. 57,74,000/- (1,10,00,000-52,26,000). Thus the **ground of assessee is partly allowed.**

Ground No. 3 of Assessee and Ground No. 3 of Revenue :

13. Both these grounds involve a common issue. Therefore both these grounds are being disposed of together.

14. The brief facts of the case are that the AO at Para 10, Pg 32 of the order has observed that assessee has given advance @ 24% p.a. He therefore calculated interest for the month of February & March, 2018 @ 2% p.m. on the cash loan of Rs.1,93,50,000/- and made addition of Rs.7,74,000/- u/s 69A r.w.s. 115BBE of the Act. Aggrieved by the order of AO, the assessee preferred appeal before Id. CIT (A). The Id. CIT(A) at Pages 25-26, Para 6 to 6.2 of its order held that appellant offered Rs. 3.55 lacs for these 2 months @ 18%. He, therefore, directed the AO to work out the interest income by applying interest rate of 18% p.a. on the amount of Rs.1,15,00,000/- for the month of February & March, 2018.

15. Before us, the Id. A/R of the assessee has submitted that as explained in Ground No. 2 above, the cash loan advanced is Rs.1.10 core and the interest rate is 18% p.a. Therefore, interest income can be computed @ 1.5% p.a. for 2 months on Rs.1.10 crore which works out at Rs.3,30,000/- as against Rs.3,45,000/- confirmed by Id. CIT(A) and Rs.7,74,000/- made by the AO.

In view of above, ground of the department be dismissed and ground of the assessee be allowed as submitted above.

16. On the other hand, the Id. D/R supported the order of the A.O.

17. We have heard the rival contentions, perused the material on record and gone through the orders of the revenue authorities. We note that the AO on the amount of advances worked out by him calculated interest @ 24% p.a. for the month of February & March, 2018 to make addition of Rs.7,74,000/- but the Ld. CIT(A) directed the AO to work out the interest income by applying interest rate of 18% p.a. on the amount of Rs.1,15,00,000/-. While deciding Ground No. 2 (supra) of the assessee's appeal, we have accepted the amount of advance as worked out at Rs.1,10,00,000/- and therefore interest income on such advance for 2 months by applying interest rate of 18% p.a. is confirmed at Rs.3,30,000/-. Thus the **ground of the assessee is partly allowed** and the **ground of the department is dismissed**.

18. In the result, this appeal of the assessee is partly allowed while appeal of the department is dismissed.

Order pronounced in the open court on 29/08/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 29/08/2023.

Das/

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Sunil Dutt Jain, Ajmer.

2. प्रत्यर्थी / The Respondent- The ACIT, Central Circle, Ajmer.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 309 & 372/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar