

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

Before Sh. C. M. Garg, Judicial Member

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

ITA No. 1818/Del/2021 : Asstt. Year : 2012-13

ITA No. 1819/Del/2021 : Asstt. Year : 2013-14

ITA No. 1820/Del/2021 : Asstt. Year : 2014-15

ITA No. 1821/Del/2021 : Asstt. Year : 2015-16

ITA No. 1822/Del/2021 : Asstt. Year : 2016-17

ITA No. 1823/Del/2021 : Asstt. Year : 2017-18

ITA No. 1824/Del/2021 : Asstt. Year : 2018-19

OPG Securities Pvt. Ltd., 1 st Floor, 4/10, Asaf Ali Road, New Delhi-110002 (APPELLANT)	Vs	DCIT, Central Circle-8, New Delhi-110055 (RESPONDENT)
PAN No. AAACO1081C		

ITA No. 1204/Del/2022 : Asstt. Year : 2012-13

ITA No. 1205/Del/2022 : Asstt. Year : 2013-14

ITA No. 1206/Del/2022 : Asstt. Year : 2014-15

OPG Securities Pvt. Ltd., E-24, Preet Vihar, New Delhi-110092 (APPELLANT)	Vs	DCIT, Central Circle-8, New Delhi-110055 (RESPONDENT)
PAN No. AAACO1081C		

ITA No. 57/Del/2022 : Asstt. Year : 2016-17

ITA No. 58/Del/2022 : Asstt. Year : 2017-18

ITA No. 59/Del/2022 : Asstt. Year : 2018-19

DCIT, Central Circle-8, New Delhi-110055 (APPELLANT)	Vs	OPG Securities Pvt. Ltd., 1 st Floor, 4/10, Asaf Ali Road, New Delhi-110002 (RESPONDENT)
PAN No. AAACO1081C		

Assessee by : Sh. Akshat Jain, CA &

Sh. Rajat Jain, CA

Revenue by : Sh. Subhra J. Chakraborty, CIT-DR

Date of Hearing: 13.09.2023	Date of Pronouncement: 17.10.2023
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ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee and the Revenue against the orders of Id. CIT(A)-24, New Delhi dated 13.08.2021.

2. In ITA No. 1818/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying and enhancing the addition made by the A.O. from an amount of Rs.90,66,389/- u/s 69A of the Act to Rs. 94,65,189/- (Rs. 91,30,339/- as peak credit and Rs. 3,34,850/- as unexplained expenditure u/s 69C), is unwarranted and is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing the addition made by the AO, without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019.

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating "that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs. 3,34,850/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the La CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

7. That on the facts and circumstances of the case, the addition made / enhanced by the learned AO / CIT(A) is untenable in the eyes of law having been made without providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data/excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

9. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that such additions were made on the basis of un-authenticated seized document which were not found from the premises of the appellant during search action u/s 132 of the Act and hence, bad in law and is outside the scope of proceedings u/s 153A of the Act.

10. That on the facts and circumstances of the case, the learned CIT(A) has erred) both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that the case of relevant assessment year has already been concluded u/s 143(3) which could not abate on the date of search and no such additions were made on the basis of any incriminating material found / seized during search action at the premises of the appellant."

3. In ITA No. 1819/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying and enhancing the addition made by the A.O. from an amount of Rs.63,50,507/- u/s 69A of the Act to Rs. 3,14,06,822/- (Rs. 2.75,56,842/- as peak credit and Rs. 38,49,980/- as unexplained expenditure u/s 69C) and confirming addition of Rs 4,20,400/- being ad-hoc estimated commission income, is unwarranted and is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing the addition made by the AO, without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is

not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 658 of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Learned CIT(A) is erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs.38,49,980/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Ld. CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in confirming addition of Rs 4,20,400/- made by AO by ad-hoc estimating commission income at 2% of the alleged accommodation entries as per the unsubstantiated data/ excel sheet allegedly retrieved from the personal laptop of Shri Saurabh Gupta, merely on the basis of assumption and presumption.

7. That on the facts and in the circumstances of the case, when the Learned CIT(A) himself has made peak credit addition in the case of appellant by considering all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta, no separate addition of Rs. 4,20,400/- made by AO, should be sustained.

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need / requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

9. That on the facts and circumstances of the case, the addition made / enhanced by the learned AO / CIT(A) is untenable in the eyes of law having been made without

providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data/ excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice.

10. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

11. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that such additions were made on the basis of un-authenticated seized document which were not found from the premises of the appellant during search action u/s 132 of the Act and hence, bad in law and is outside the scope of proceedings u/s 153A of the Act.

12. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that the case of relevant assessment year has already been concluded u/s 143(3) which could not abate on the date of search and no such additions were made on the basis of any incriminating material found / seized during search action at the premises of the appellant."

4. In ITA No. 1820/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying and enhancing the addition made by the A.O. from an amount of Rs.9,20,911/- u/s 69A of the Act to Rs. 1.13.41.196/- (Rs. 4,51,648/- as peak credit and Rs 1,08,89,548/- as unexplained expenditure u/s 69C), is unwarranted and is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing the addition made by the AO, without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019.

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs.1,08,89,548/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Ld. CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need / requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

7. That on the facts and circumstances of the case, the addition made / enhanced by the learned AO/CIT(A) is untenable in the eyes of law having been made without providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice.

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

9. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that such additions were made on the basis of un-authenticated seized document which were not found from the premises of the appellant during search action u/s 132 of the Act and hence, bad in law and is outside the scope of proceedings u/s 153A of the Act.

10. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and enhancing additions made by Ld. AO by ignoring the fact that the case of relevant assessment year has already been concluded u/s 143(3) which could not abate on the date of search and no such additions were made on the basis of any incriminating material found / seized during search action at the premises of the appellant."

5. In ITA No. 1821/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying the addition made by the A.O. from an amount of Rs 5,33,00,383/- u/s 69A of the Act to Rs. 4,10.01.018/- (Rs. 3,94,77,039/- as peak credit and Rs 15,23.979/- as unexplained expenditure u/s 69C) and confirming addition of Rs 13,60,604/- being ad-hoc estimated commission income, is unwarranted and is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying the addition made by the AO, without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019.

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating "that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs.15.23.979/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Ld. CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in not appreciating the claim of the appellant that it has not incurred the alleged renovation expenses of Rs. 41,88,000/- outside its books of account for the Flat 504.CWG Village forming part of fixed assets of the appellant.

7. Without prejudice to the Ground of Appeal No. 6, the learned CIT(A) has erred both on facts & in law in not considering the amount of Rs. 41,88,000/- alleged to be incurred outside books of the appellant for renovation of Flat 504 CWG Village in peak credit calculation.

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in confirming addition of Rs

13,60,604/- made by AO by ad-hoc estimating commission income at 2% of the alleged accommodation entries as per the unsubstantiated data/ excel sheet allegedly retrieved from the personal laptop of Shri Saurabh Gupta, merely on the basis of assumption and presumption.

9. That on the facts and in the circumstances of the case, when the Learned CIT(A) himself has made peak credit addition in the case of appellant by considering all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta, no separate addition of Rs. 13,60,604/- made by AO, should be sustained.

10. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

11. That on the facts and circumstances of the case, the addition made / modified by the learned AO CIT(A) is untenable in the eyes of law having been made without providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data/ excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice.

12. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

13. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and sustaining additions made by Ld. AO by ignoring the fact that such additions were made on the basis of un-authenticated seized document which were not found from the premises of the appellant during search action u/s 132 of the Act and hence, bad in law and is outside the scope of proceedings u/s 153A of the Act.

14. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying additions made by Ld. AO by ignoring the fact that the no such additions were made on the basis of any incriminating material found / seized during search action at the premises of the appellant."

6. In ITA No. 1822/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying the addition made by the A.O. from an amount of Rs. 17,49,29,190/- u/s 69A of the Act to Rs. 13,53,76,6171- (Rs. 12,19,96,443/- as peak credit and Rs 1,33,80,174/- as unexplained expenses u/s 69C) and confirming addition of Rs.560/- being ad-hoc estimated commission income, is unwarranted and is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and sustaining the addition made by the AO. without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019.

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Leamed CIT(A) erred law and a fat in het appealing that the additions made by invoking provisions of Section 6A of the Act are bad as the appellant has not been found in possession of alleged cash which is pre-requite condition for invoking provisions of Section 69A.

5. That in the facts and in the cumstances of the case the Learned CIT(A) erred making separate addition of Rs 1,33,80,174 an unexplained expenditure u/s 69C of the Act when all such debt and credit entries alleged to be found den data excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Id. CIT(A) which tantamount to double addition and hence bad in law and is be to be deleted.

6. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in not appreciating the claim of appellant that it has not pad aged amount of Rs. 17,00,00,000 for purchase of house at E-24, Preet Vihar without adducing any corroborative evidence on record which could prove that the same was actually paid by the appellant and without conducting independent enquiry or getting valuation of the said property from approved Get valuer even though specifically requested by the appellant.

7. Without prejudice to the Ground of Appeal No. 6 the leamed CIT(A) has erred both facts & in law in not considering the amount of Rs. 17,00,00,000 alleged to be paid for purchase of house at E-24, Preet Vihar in peak credit calculation.

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in confirming addition of Rs 560/- made by AO by ad-hoc estimating commission income at 2% of the alleged accommodation entries as per the unsubstantiated data/ excel sheet allegedly retrieved from the personal laptop of Shri Saurabh Gupta, merely on the basis of assumption and presumption

9. That on the facts and in the circumstances of the case, when the Learned CIT(A) himself has made peak credit addition in the case of appellant by considering all such debit and credit entries alleged to

be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta, no separate addition of Rs. 560/- made by AO, should be sustained.

10. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

11. That on the facts and circumstances of the case, the addition made / modified by the learned AO CIT(A) is untenable in the eyes of law having been made without providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data/ excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice.

12. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

13. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and sustaining additions made by Ld. AO by ignoring the fact that such additions were made on the basis of un-authenticated seized document which were not found from the premises of the appellant during search action u/s 132 of the Act and hence, bad in law and is outside the scope of proceedings u/s 153A of the Act.

14. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying additions made by Ld. AO by ignoring the fact that the no such additions were made on the basis of any incriminating material found/seized during search action at the premises of the appellant."

7. In ITA No. 1823/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying the addition made by the A.O. from an amount of Rs.27,45,37,948/- u/s 69A of the Act to Rs.4,41,95,030/- as unexplained expenditure u/s 69C and confirming addition of Rs.2,03,000/- being ad-hoc estimated commission income, is unwarranted and is bad both in the eyes of law and on facts.

2 That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and sustaining the addition made by the AO, without rebutting the claim of the appellant that

(1) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the

verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872.

4. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs.4,41,95,030/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Ld. CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in confirming addition of Rs 2,03,000/- made by AO by ad-hoc estimating commission income at 2% of the alleged accommodation entries as per the unsubstantiated data/ excel sheet allegedly retrieved from the personal laptop of Shri Saurabh Gupta, merely on the basis of assumption and presumption.

7. That on the facts and circumstances of the case, when the Learned CIT(A) himself has made peak credit addition in the case of appellant by considering all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta, no separate addition of Rs. 2,03,000/- made by AO, should be sustained.

8. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically discrediting Affidavits of the concerned parties and also rejecting the contention of the appellant by making opinion that there was no need requirement of conducting independent enquiries by the Ld. AO from the alleged parties.

9. That on the facts and circumstances of the case, the addition made / modified by the learned AO CIT(A) is untenable in the eyes of law having been made without providing the opportunity to cross-examine Saurabh Gupta from whose personal laptop the alleged data/ excel sheets retrieved, which was found from the premises of his in-laws, which is the sole basis of making addition in the instant case and without following the principle of natural justice.

10. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact by arbitrarily and mechanically holding that proper opportunity of cross examination

was provided to the appellant while no such cross examination of the alleged parties/ deponents were provided even though specifically requested by the appellant before both the lower authorities.

11. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying additions made by Ld. AO by ignoring the fact that the no such additions were made on the basis of any incriminating material found/seized during search action at the premises of the appellant.

12. That on the facts and circumstances of the case, the learned CIT(A) has erred in law in arbitrarily and mechanically invoking deeming provisions of Section 69C read with Section 115BBE of the Act on addition made on account of unexplained expenditure without considering the fact that said expenses would even otherwise, qualify as business expenditure on which provisions of Section 115BBE is not applicable

13. That on the facts and circumstances of the case, the learned CIT(A) has erred in law in arbitrarily and mechanically invoking deeming provisions of Section 69C read with Section 115BBE of the Act on addition made on account of unexplained expenditure without considering the fact that the amendment made by Second Amendment Act, 2016 has no retrospective application."

8. In ITA No. 1824/Del/2021, following grounds have been raised by the assessee:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) in modifying the addition made by the AO, from an amount of Rs.7.3241.310 u/s 69A of the Act to Rs 4,08,39,093/- as unexplained expenditure u/s 69C and confirming addition of Rs.2,71,000/- being ad-hoc estimated commission income, is unwarranted, bad both in the eyes of law and on facts

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in modifying and sustaining the addition made by the AO, without rebutting the claim of the appellant that:

(i) the alleged party wise breakup into 48 parties provided to the appellant vide notice dated 30.10.2019 for explanation is not the verbatim data retrieved from the alleged personal laptop but redesigned, rearranged purposely.

(ii) the appellant had neither received nor paid alleged receipts and payments in the nature of investments, expenditure etc. mentioned against alleged parties in the notice dated 30.10.2019.

3. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law in not appreciating that the alleged data in Excel worksheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 658 of the Indian Evidence Act, 1872".

4. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in not appreciating that the additions made by invoking provisions of Section 69A of the Act are bad in law as the appellant has not been found in possession of

alleged cash which is pre-requisite condition for invoking provisions of Section 69A.

5. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in making separate addition of Rs.4,08,39,093/- as unexplained expenditure u/s 69C of the Act when all such debit and credit entries alleged to be found recorded in data / excel sheet retrieved from the personal laptop of Shri Saurabh Gupta have already been considered while making peak credit addition by the Ld. CIT(A) which tantamount to double addition and hence bad in law and is liable to be deleted.

6. That on the facts and circumstances of the case, the learned CIT(A) erred both on facts & in law in not appreciating the claim of the appellant that it has not paid alleged amount of Rs. 1,00,00,000/- as advance to Best View Properties without adducing any corroborative evidence on record which could prove that the same was actually paid by the appellant and without conducting independent enquiry even though specifically requested by the appellant.

7. That on the facts and in the circumstances of the case, the Learned CIT(A) erred in law and on fact in confirming addition of Rs 2,71,000/- made by AO by ad-hoc estimating commission income at 2% of the alleged accommodation entries as per the unsubstantiated data/ excel sheet allegedly retrieved from the personal laptop of Shri Saurabh Gupta, merely on the basis of assumption and presumption."

9. The issue involved in ITA Nos. 1204 to 1206/Del/2022 are similar they were heard together and being adjudicated by a common order. The grounds raised by the assessee in ITA No. 1204/Del/2022 are as under:

"1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) imposing penalty of Rs. 1,19,640/- under section 271(1)(c) of the Act on estimated enhanced addition of Rs. 3,98,800/- by the CIT(A) himself by modifying additions made by AO from an amount of Rs.90,66,389/- u/s 69A of the Act to Rs. 94,65,189/-, is bad both in the eyes of law and on facts.

2. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in imposing penalty of Rs. 1,19,640/- u/s 271(1)(c) of the Act without appreciating the fact that there was no concealment of particulars of income by the appellant as contemplated u/s 271(1)(c) of the Act.

3. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in imposing penalty of Rs. 1,19,640/- u/s 271(1)(c) of the Act without considering the fact that the explanation offered by the appellant was not acceptable to the learned CIT(A) would not itself amount to concealment of particulars of income by the appellant as contemplated u/s 271(1)(c) of the Act.

4. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in imposing penalty of Rs. 1,19,640/- u/s 271(1)(c) of the Act read with Explanation 5A of the said section without appreciating the fact that provisions of

Explanation 5A of Section 271(1)(c) of the Act are not applicable in the case of the appellant.

5. That on the facts and circumstances of the case, the penalty imposed u/s 271(1)(c) of the Act is not tenable in law as the judicial pronouncements relied on by the learned CIT(A) are distinguishable on the facts of the case.

6. That on the facts and circumstances of the case, the learned CIT(A) has erred both on facts & in law in imposing penalty u/s 271(1)(c) of the Act on addition enhanced by him being the additions made / modified/ enhanced on the basis of alleged data in Excel worksheets retrieved from laptop as well as recreated 48 ledgers / parties, does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872."

10. The issue involved in ITA Nos. 57 to 59/Del/2022 are similar, they were heard together and being adjudicated by a common order. The grounds raised by the Revenue in ITA No. 57/Del/2022 are as under:

"1. The Ld. CIT(A) has erred in law and on the facts in deleting the addition of Rs. 3,95,52,573/- out of total addition of Rs.17,49,29,190/- made on account of unaccounted cash received.

2. The Ld. CIT(A) has erred in law and on the facts relying on peak credit / highest credit while computing addition made on account of unaccounted cash received by considering that the nature of transactions made by the assessee are similar to that of an Entry Operator. In the assessment order in Para 6.1, the assessing officer distinguished the assessee's modus operandi different from the entry operator. So, the case laws relied upon the Ld. CIT(A) is not applicable on the facts of the assessee. Hence, peak credit / highest credit for unaccounted income is not applicable in this case as relied upon by the Ld. CIT(A)."

11. The assessee, a private limited company incorporated under the Companies Act, 1956 is a registered stock broker at National Stock Exchange (NSE) & Bombay Stock Exchange (BSE) and engaged in trading in shares, securities, derivatives, currency, futures & option (F&O), etc., through algorithmic trading, ie, automatic trading through software. The income of the assessee primarily includes income from sale & purchase of securities in its Proprietary Account (PRO account) and brokerage income. The assessee maintains client account for their dealing in shares, securities, etc., and all the trades are executed/ transacted online on a electronic platform in real time and in open market on recognized stock exchanges all

over India. Further, all the transactions of purchase and sale of securities, derivatives etc. are executed by the respective clients through their own trading code/account maintained with the assessee company in the open market on recognized stock exchange through banking channel and any profit or loss earned on these transactions is the profit or loss of the client.

12. A search and seizure operation u/s 132 of the Income Tax Act, 1961 was carried out at the various premises of the assessee and other persons on 15.11.2017. During the search operation, various documents, soft data, e-mails, printouts from the assessee company's computers and images retrieved from mobile phones and hard disks, pen drive were found and seized. Simultaneously a search and seizure operation were also carried out at the residential premises of Saurabh Gupta an employee of appellant at 3031/1, Old Ranjeet Nagar, New Delhi from where a laptop was found and Annexurized as Annexure No. A-2. The said laptop contained a number of excel worksheets containing details of various receipts and payments.

Income from Trading:

13. The AO has re-arranged the data found on the laptop. It consisted of 48 sub-heads. The total receipts for the period of assessment u/s 153A was Rs.164,77,58,330/- and total payments were to the tune of Rs.161,96,48,112/-. The Assessing Officer after examination of the inflow and outflow and after eliminating the repeated, duplicate entries collated the excel sheets into 7 main heads and tabulated the receipts and payments depicted as under:

S. No.	Heads	Receipt	Payment
1.	Paandan	31,15,89,836	5,57,95,819
2.	Paandan	15,50,00,000	-
3.	Kuber Securities(KS)	14,98,71,730	50,000
4.	Sanjay Garg	1,50,00,000	80,00,000
5.	Rajinder Gupta	79,91,000	3,44,637
6.	Mamta Jain	1,30,00,000	4,000
7.	Richa Arneja	40,88,528	-
	Total	65,65,41,094	6,41,94,456

14. The Assessing Officer determined an amount of Rs.59,23,46,638/- being the difference between the receipts and payments as the undisclosed income of the assessee for the entire period of assessment u/s 153A.

15. The year-wise amount of unaccounted income determined is as under:

A.Y.	Receipts	Payments	Amount
2012-13	91,03,889	37,500	90,66,389
2013-14	63,50,507	-	63,50,507
2014-15	61,56,250	52,35,339	9,20,911
2015-16	10,04,91,000	4,71,90,617	5,33,00,383
2016-17	17,84,79,190	35,50,000	17,49,29,190
2017-18	27,85,87,948	40,50,000	27,45,37,948
2018-19	7,73,72,310	41,31,000	7,32,41,310
Total	65,65,41,094	6,41,94,456	59,23,46,638

16. During the assessment, the Assessing Officer has also determined the unaccounted investment made by the assessee to the tune of Rs.34,14,38,880/-. The details of unaccounted investment as per the material available before the Assessing Officer is as under:

Particulars	Amount
Investment in E-24	17,00,00,000
Renovation of 504, common wealth games	41,88,000
Expenses made in Mumbai & Kolkata Office	3,73,60,136
Advance given to Best View Properties	1,00,00,000
Payment to Omega Securities	23,05,580
Payment to OFT / Option Fintech	5,13,60,300
Misc Office & Personal + Office Personal Receipts/Payments	5,16,76,727
Salary Payments	85,48,140
Paid to Vinay Jain	60,00,000
Total	34,14,38,883

17. The Assessing Officer having determined the unaccounted investment has also held that since the unaccounted receipts Rs.59,23,46,638/- was the source of making above investments has already been brought to tax, no separate addition is required to be made, thus interpolating the unaccounted income with unaccounted expenditure.

Income from Commission:

18. Besides the above addition, the Assessing Officer held that the assessee has acted as a facilitator for providing accommodation entries and commission as per prevailing market rate @ 2% of the amount has been determined as the undisclosed income of the assessee.

19. Year-wise quantity of accommodation entries facilitated by the assessee is tabulated below:

A.Y.	Receipts	Payments	Amount of Commission @ 2%
2012-13	-	-	-
2013-14	2,10,20,000	-	4,20,400
2014-15	-	26,00,000	-
2015-16	6,80,30,221	2,88,63,164	13,60,604
2016-17	28,000	4,39,50,000	560
2017-18	1,01,50,000	45,40,800	2,03,000
2018-19	1,35,50,000	3,24,74,940	2,71,000
Total	11,27,78,221	11,24,28,904	22,55,564

20. Thus, the AO determined unaccounted income from trading and commission as undisclosed income of the assessee.

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

22. The Id. CIT(A) vide order dated 13.08.2021 has confirmed the addition made by the AO to the tune of the peak credits and deleted the addition equivalent to the amount which is the rotation of the monies. Thus, the addition made of the difference between the receipts and payments of Rs.59.23 Cr. was re-determined by the Id. CIT(A) resorting to the peak theory and determined the undisclosed amount to Rs.19.86 Cr. While doing so, the Id. CIT(A) considered the entire receipts at Rs.157,48,09,680/- and payments of Rs.144,00,97,270/- as against the receipts determined by the AO of Rs.65,65,41,090/- and payments of Rs.6,41,94,456/-.

23. Aggrieved with the order of the Id. CIT(A), the assessee as well as the Revenue filed appeal before us.

24. During the hearing before us, the Id. DR relied the order of the Assessing Officer and the Id. AR supported the order of

the Id. CIT(A) to the extent of relief accorded. Heard the arguments of both the parties and perused the material available on record. The Id. AR reiterated the submissions taken up before the Id. CIT(A). The crux of the arguments is as under:

- (i) *Alleged data or excel sheets allegedly retrieved from the personal laptop of Saurabh Gupta found from the premises of his in-laws, but wrongfully recorded in the Panchnama drawn of Premises of Saurabh Gupta at 3031/I, 3rd Floor, Old Ranjeet Nagar, Street No 4. Delhi, does not belong to the appellant company and the data contained therein also does not pertain to the appellant company. The alleged data, excel sheets is incorrect, inflated, corrupt. manipulated or may be recorded in haphazard manner with malafide intention. The alleged retrieved soft data / excel sheets breakup into 1 to 48 parties/ledgers attached at Pages 66 to 166 of the notice dated 30.10.2019 given to the appellant to explain, had been created, arranged, categorized by the Department and is not the verbatim data or transactions contained in excel sheets allegedly retrieved from the personal laptop of Saurabh Gupta and thus not reliable. It contained various duplicate and multiple entries which exaggerate the amount of receipts and payments column of party wise breakup of soiled data multiple times.*
- (ii) *The appellant also furnished detailed explanation in respect of each and every party-wise ledger forming part of the said notice along with all the documentary evidences wherever applicable. The appellant further submitted that amount, figure mentioned in receipts and payments column in 48 ledgers cannot be added as income in the hands of the appellant company as the appellant has never received or paid any alleged amount(s) outside its books of account in cash. The appellant also requested the Ld. AO to provide an*

opportunity of cross examination of the concerned persons to the appellant before drawing any adverse inference in the case of the appellant.

- (iii) *The AO during the course of hearing asked the appellant that proposed addition vide notice u/s 142(1) dated 30.10.2019 reduced by entries which are duplicate and banking transactions already recorded in the books of account of the appellant and worked out remaining consolidated balance of receipt and payments at Rs. 164.78 cr. and Rs.161.96 cr, respectively and asked to show cause why the same should not be added to the income of the appellant. The appellant vide various replies submitted that it had already filed all the details, documents in respect of all the 48 party-wise ledgers. The appellant refuted, disputed and did not admit the alleged data/excel sheets allegedly retrieved from the personal laptop of Saurabh Gupta and without prejudice to above contention, the appellant has also submitted vide its letter dated 31.12.2019 Affidavits of Shri Sanjay Singhal and M/s Rajyog Buildtech Private Limited confirming the fact that no cash was/ is either paid to or received by them from the appellant.*
- (iv) *The Assessing Officer erroneously held that the appellant did not cross-examine Saurabh Gupta whereas Shri O. P. Gupta, Director of the appellant company, personally appeared before the learned assessing officer on the said date i.e. 24.12.2019 while Saurabh Gupta failed to turn up for cross-examination and also without considering the Affidavits of concerned parties filed by the appellant confirming that no such cash was paid to or received from M/s OPG Securities Private Limited.*
- (v) *The impugned assessment has been completed de-hors any incriminating material/ document found/seized during the*

course of search conducted in the case of the appellant, which is contrary to the very concept of assessment of search under section 153A of the Act. The impugned assessment order has been passed by merely relying upon ex -party details/ data belonging to third party, that too, without allowing opportunity of cross-examination the appellant. Addition has been made on account of alleged receipt of cash, merely on the basis of suspicion, that too, on the basis of unsubstantiated/ unreliable/ unauthentic third-party data, not corroborated by actual movement/receipt of cash. Allegation or unaccounted investment/expenditure, too, is on basis or suspicion, not corroborated by actual movement/ payment of cash.

(vi) Alleged soft data/ excel sheets which are the sole basis of making addition in the hands of the appellant—

a) not an incriminating material which was found & seized during the course of search at the premises of the appellant

b) neither pertain to the appellant company nor alleged personal laptop of Shri Saurabh Gupta belongs to the appellant company.

(vii) The alleged laptop was found from the premises of in-laws of Shri Saurabh Gupta, but recorded in the Panchnama drawn of Premises. of Saurabh Gupta at 3031/ 1, 3rd Floor, Old Ranjeet Nagar, Street No 4, Delhi. Hence, the alleged laptop was a personal laptop or Shri Saurabh Gupta (who is/was not a cashier/ accountant of the company) and does not belong to the appellant company and contents of the said laptop do not pertain to the appellant company.

(viii) Since the alleged personal laptop of Sh. Saurabh Gupta was seized from the premises of his in-laws, wrongly recorded in the Panchnama drawn of Premises at 3031/ 1, 3rd Floor, Old

Ranjeet Nagar, Street No 4, Delhi, the alleged transactions / entries mentioned in the party-wise break-up, categorized by the AO at Pages 66 to 166 of the notice, are best known to Sh. Saurabh Gupta and the same can be explained by him only.

- (ix) Further, as regards authenticity of the alleged soft data / Excel worksheets allegedly retrieved from the personal laptop of Saurabh Gupta, the appellant submitted that on verification of the said soft data/excel sheets provided to the appellant company, it is seen that one of the excel sheets named "Ledger" was found to be modified on 15th November, 2017 12:20:08 AM i.e., before the start of search action on 15.11.2017 in the early morning around at 7 A. M. at the premises of the appellant company. This clearly shows that the alleged laptop was in the possession of Shri Saurabh Gupta or any other person and the excel sheets/ data alleged to be pertaining to the appellant company, were modified by him or by someone else in the midnight of the 15th November, 2017.*
- (x) The alleged laptop was never in the control and/or custody of any of the Directors of the appellant company and it is emphatically denied that any entries were made or directed to be made by Shri O.P. Gupta and/or Shri Sanjay Gupta, Directors of the appellant company. It is a matter of fact that Shri O P Gupta is aged more than 76 years and he does not know how to operate computer system/ laptop, so the statement of Shri Saurabh Gupta, is factually incorrect and hence, not reliable and the appellant company disputes and denies the contents of the data as recorded in the alleged laptop and the said alleged data does not pertain to the appellant company.*
- (xi) The AO vide Summons dated 20.12.2019 issued under section 131 of the Act to the appellant company offered the*

opportunity for cross-examination of Saurabh Gupta at 4 P.M. on 24.12.2019 at his office. Sh. O P Gupta, Director of the appellant company in compliance of the said Summons duly attended the office of the Ld, AO on the given date which can be verified from the visitor register maintained at the entry gate. However, Shri Saurabh Gupta was not present there for his cross-examination. Hence cross examination of Saurabh Gupta could not take place/materialize. However, the AO in the impugned assessment order mentioned that "Cross Examination of Sh. Saurabh Gupta has been provided to the assessee but the assessee did not turn up on the appointed date to cross examine Sh. Saurabh Gupta" which is factually incorrect and wrong. It is also pertinent to mention here that no opportunity for cross-examination was thereafter given to the appellant by the AO. The AO was also the jurisdictional assessing officer of Shri Saurabh Gupta and was well aware of the tact that Sh. Saurabh Gupta had sought an adjournment on medical ground on the given date i.e., 24.12.2019 by filing a letter dated 24.12.2019 before the AO. The said fact confirmed by Sh. Saurabh Gupta to the appellant company.

- (xii) *On verification of the soft data of the alleged excel sheet provided to the appellant company, it was noticed that they contained various working / noting in different manner in various excel sheets of the same amount and dare. This clearly shows that there are various multiple and duplicate entries/ working/ noting of the same amount and on same date in various excel sheets of the said alleged personal 'Laptop of- Shri Saurabh Gupta. Thus, it is evident that the data retrieved from the personal laptop of Shri Saurabh Gupta, must be his own working for his own purpose and the said data is corrupt, manipulated or is recorded in haphazard manner with malafide intention and therefore it is not reliable / unauthenticated data.*

- (xiii) *On going through certain entries categorized into party-wise break-up on Page Nos. 66 to 166 of the notice dated 30/10/2019 compared with original soft data of excel worksheets allegedly retrieved from the personal laptop of Shri Saurabh Gupta provided to the appellant company, it appears that the some contains various duplicate / multiple entries which highly inflate the amount mentioned in receipts and payments column alleged to be received and paid by the appellant company, outside its books of account.*
- (xiv) *Even Sh. Saurabh Gupta in his letter dated 26.12.2019 filed during his assessment proceedings under sections 153A/143(3) of the Act, himself clarified that the laptop was that of his minor on and he took the same to office for virus removal, thereby, admitting that the data therein was corrupted and unreliable.*
- (xv) *The AO had sought explanation from the appellant company in respect of transactions mentioned in 48 parties / ledgers categorized by him on the basis of alleged Excel worksheets by mentioning different amounts in the same notice dated 30.10.2019.*
- (xvi) *The alleged amount mentioned in receipts and payments column on pages 66 to 166 of the notice dated 30/10/2019. the nature of the amount mentioned in receipts payments column has not been described/ specified by the AO i.e. whether the said alleged unaccounted receipts/payments were made by / to the appellant company in the nature of profit/ loss or bank / cash or trading / margin or balancing figure / transaction amount, etc*
- (xvii) *The said assertion made by the AO is factually incorrect as Shri Sanjay Gupta in his statement recorded under section 131(1A) of the Act on 12.06.2018 has not admitted "that*

some of the transactions found in the excel sheets pertained to him or his group companies" rather he stated that these transactions appear to be office related expenses of OPG Securities Private Limited.. Further, on first instance after seeing printouts taken by the Department of these excel sheets, Shri Sanjay Gupta given the same answer in response to several questions that these transactions appear to be office related expenses of OPG Securities Private Limited, which are in the nature or day to day expenses.

(xviii) It is settled principle when a document / evidence / statement is being relied upon, a portion of it cannot be disregarded on the whims and fancies of a person. Reliance was placed upon following decisions:

a) Provash Chandra Dalui v. BisIrvanath Banerjee AIR 1989 SC 1834 (SC)

b) Commissioner of-income Tax v Sodra Devi [1957] 32 1TR 615 (SC)

c) Glass Lines Equipment Co. Ltd. v Commissioner of income Tax [2002] 253 1TR 454 (HC – Gujarat)

d) Prabhudayal Agarwal v. Assistant Commissioner of Income-Tax [2007] 11 SOT 50 (Hyderabad)(URO)/[2006] 104 TTJ 574 (ITAT - Hyderabad)

e) Narayan Prasad Vijaivargiya v Commissioner of Income tax [1976] 102 TTR 748 (HC – Calcutta)

(xix) As per provisions of Section 132(4A) / 292C of the Act, the presumption can only be postulated in respect of that person in whose possession the seized material were found. Therefore, in the instant case. the alleged personal laptop from which alleged data / excel sheet were retrieved, was in exclusive control and possession of Shri Saurabh Gupta, so presumption drawn in the case of appellant company that the said alleged personal laptop belonged to the appellant

company and Excel Sheet/ data allegedly retrieved from said laptop pertaining to the appellant company, is bad in law and not sustainable more specifically, when Saurabh Gupta himself admitted vide his letter dated 26.12.2019 filed during his assessment proceedings under sections 153A/143(3) of the Act that the said laptop was purchased by him for his personal use and education of his child.

(xx) The work assignment of Shri Saurabh Gupta was to look after housekeeping & general maintenance of the appellant company. Therefore, it is quite unsustainable that his personal laptop was used by the Directors of the appellant company for their use. Hence, the said alleged excel sheets retrieved from his personal laptop, for whatsoever reason, could not be the basis to make addition in the hands of the appellant.

(xxi) The alleged diary was maintained by Gaurav Gupta., Accounts Executive of the appellant company and he might be used to record certain day to day noting for his reference. Thus the said diary of Gaurav Gupta contained day to day noting, jottings, to do job / work, contact no., e-mail ids, several other details etc, for his own use.

(xxii) When Saurabh Gupta and Gaurav Gupta both are real brothers and employees of M/s OPG Securities Private Limited, then why Shri OP Gupta and Sanjay Gupta, Directors of the appellant company used to call personal laptop of Saurabh Gupta, designated to general maintenance & housekeeping work of the appellant company, to copy financial data of their company instead of Gaurav Gupta who is an Account Executive and know the value of business and its proposed or executed financial transactions.

(xxiii) The AO to substantiated his contention that transactions reflected in the said alleged. Excel worksheets (retrieved

from the personal laptop of Saurabh Gupta) pertaining to the appellant company referred certain transactions (for the period 13.12.2016 to 25.10.2017) on the alleged Excel worksheets and Page no. 14, 45, 57, 79, 08, 111, 116 & 121 of Diary of Gaurav Gupta [refer pages 9 to 13 of the paper book] found from his residential premises and stated that several transactions recorded in diary of Gaurav Gupta matched with transactions recorded in Excel sheets. However, on perusal of the said pages, it appears to be containing rough noting / jottings etc, for own use or reference of Gaurav Gupta and no transaction were found to be matching exactly with the transactions referred of alleged excel sheets.

(xxiv) The appellant has not received or paid any amount in cash as mentioned in receipts and payments column of 48 parties / ledgers which were rearranged / regrouped / categorized by the AO/ Department. The appellant had also requested the AO to directly verify whether any receipts payment in cash from / to were made from concerned parties or not and if any contrary statement is given then provide the same for rebuttal and also afford an opportunity of cross-examination or the concerned parties to the appellant, however, no such exercise was carried out by the AO to rebut the claim of the appellant that it has not paid or received any cash as alleged by the AO.

(xxv) The laptop undisputedly belonged to Sh. Saurabh Gupta and not the appellant and therefore, it is only Mr. Saurabh Gupta who could have explained the purpose of maintaining the data and its authenticity. Moreover, even before referring to its content, the fundamental requirement was to examine whether or not the contents of the laptop are even worth referring too, much less relying upon the same to draw any adverse inference. This is more so, when the owner of the

laptop, Mr. Saurabh Gupta, himself stated that the laptop had virus and there were clear indications that the contents of alleged data/ excel sheets was corrupted/manipulated/tampered with.

(xxvi) Personal laptop of Saurabh Gupta and the alleged data in Excel work sheets retrieved from said computer as well as recreated 48 ledgers / parties does not qualify to admit as an "evidence" under section 65B of the Indian Evidence Act, 1872. Reliance in this regard was placed on the decision of the Hon'ble Apex Court in the case of CBI v. V.C. Shukla & Ors.: (1998) 3 SCC 410. Reliance was also placed on the decision of the Supreme Court in the case of Common Cause (A registered Society) vs. Union Of India: 394 ITR 220 (SC)

(xxvii) On considering Section 34 of the Evidence Act, it is evident that entries in the books of account is relevant only when the books of account regularly kept in the course of business While in the instant case, it is an admitted fact that the alleged laptop is a personal laptop of Saurabh Gupta and is not at all forming part of assets of the appellant company. Further, there is no corroborative evidence on record which could prove that the entries in said alleged Excel Sheet were kept or recorded by the appellant on regular basis in the course of business, therefore in absence of any clear finding that the transactions / entries in alleged Excel Sheet were regularly kept in the course of business of the appellant company cannot be admissible as evidence for making addition in the hands of the appellant company. The alleged data in Excel Work sheets and re-arranging/ re-grouping of the same into 48 ledgers / parties does not qualify any of the condition as mentioned in sub section (2) of Section 65B of the Indian Evidence Act, 1872.

(xxviii) Pre- requisite condition for invoking provisions of section 69A of the Act has not been met, being the appellant is not

found in possession of amount of Rs. 90,66,389/- alleged to be received in cash which was found during search in the form of cash money, bullion, and the AO has completely failed to adduce any corroborative evidence either found or seized during search or collected by conducting independent enquiry.

(xxix) The appellant in support of its claim that it has not paid or received any cash in respect of transactions with Sanjay Singhal (Paandan) has furnished affidavit of Shri Sanjay Singhal (Paandan) confirming that he or / and his family member neither received / nor paid any amount in cash from / to M/s OPG Securities Private Limited. The appellant also furnished affidavit of M/s Rajyog Buildtech Private Limited confirming that no cash was either paid or received by M/s Rajyog Buildtech Private Limited from the assessee and / or vice versa in respect of booking of Commercial space by the appellant company for which advance of Rs. 15.50 Crore was paid.

(xxx) The AO in support of his conclusion in Para No. 6 of the assessment order mentioned some arbitrary modus operandi alleged to be adopted by the appellant company and its associates regarding trading into securities by the appellant and its clients. The Ld. AO also alleged that the appellant is having un- natural advantages (co-location of servers, algorithmic trading facility etc.) by which the appellant was able to run a parallel unaccounted business merely on the basis of investigation of SEBI – Technical Advisory Committee (TAC) and the Deloitte report without considering the facts of the case of the appellant company. [Refer pages 3 & 4 of the Paper Book]. It is pertinent to note that the said alleged investigation I report for the period prior to 31.03.2014 and not for any other years thereafter. Further, during investigation, SEBI itself absolved the appellant from

most of the charges of undue advantage of collocation facility and for some charges the case is pending for adjudication at the forum of Securities Appellate Tribunal (SAT) till date, There is no 100% win – win Formula and risk of trading in securities is always there.. Therefore, as alleged by the AO that the appellant company is having unnatural advantage to run unaccounted business, is baseless, ill founded and un- sustainable in law. All the trade is transacted on electronic platform in real time and in open market on recognized stock exchanges over which there is no control of the appellant company.

(xxxii) There is no material to suggest that the appellant got alleged unaccounted cash while during the extensive search operation under section 132 of the Act which was carried out at more than 60 premises of the appellant, its group concerns and its associates and various other parties across 6 States and nothing was found & seized to suggest that the appellant is the owner of the alleged receipts in cash.

(xxxii) It was incumbent upon the AO to make inquiries in the matter to substantiate the veracity of the said alleged data / excel sheets allegedly retrieved from die personal laptop and bring on record cogent material / evidences to establish that any cash was received by the appellant. Reliance was place upon following decisions:

- a) D.C.I.T vs. M/s Angel Infra 2020 (3)TMI 1196(TT'AT – Ahmedabad)*
- b) Hon'ble Gujarat High Court in the case of Commissioner of Income Tax V. Maulikkumar K. Shah 2007 (7) TMI 267 (307 ITR 137)*
- c) Commissioner of Income Tax vs. Orissa Corporation, 159 VTR 7S (SC)*

*d) Riveria Properties (P) Ltd. v Income Tax Officer [2017]
ITA No. 250/Mum/2013, ITAT No.2748/Mum/2016(ITAT
Mumbai)*

(xxxiii) The AO has completely failed to adduce any cogent or substantive material on record which could prove that the alleged amount of Rs. 59.23 crore was received in cash and the appellant company is found to be in possession of the said alleged cash of Rs. 59.23 crore as per the provisions of Section 69A of the Act. Therefore, arbitrary addition of Rs. 59,23,46,638/- for all the seven assessment year (i.e. 2012-13 to 2018-19) and Rs. 90,66,389/- for the assessment year under consideration is bad in law and is liable to be deleted. Reliance was place upon following decisions:

- a) Commissioner of Income-tax v. Ravi Kumar [2008] 168 Taxman 150 (HC – Punjab & Haryana)*
- b) Income Tax Officer-19(3)(3) v Shri Parvez Mohammed Hussain Ghaswala 2015 (10) TM1 2575 (ITAT – Mumbai)*
- c) Dy. Commissioner of Income Tax v M/s. Karthik Construction Co. ITA No.2292/Mum./2016 (ITAT – Mumbai)*
- d) Commissioner of Income-tax v. Anoop Jain [2019] 112 taxmann.com 355 (HC-Delhi)*

(xxxiv) Shri Sanjay Singhal is a client of the appellant company who is having trading account with the appellant company in his own name and in the name of his partnership concern M/s Balaji Agencies as follows:

Client Name	Client code	PAN	Address
Sanjay Singhal	"CSAS"	ACTPA6039Q	9-10, Saraswati Kunj,8,Alipur Road, Civil Lines, Delhi - 110054
BalajiAgencies	"CBA"	AAJFB2465K	Shop No. A-1, Gupta Market, Piyau, Maniyarl, Kundli Sonupat, Haryana-

Profit aggregating to Rs. 5,63,30405/-- earned through trading in F&O by M/s Balaji Agencies, partnership firm of Shri Sanjay Singhal during the financial years from 2011-12 to 2017-18 on which huge taxes were paid to the Government authorities as under;

<i>GST/Service Tax @18% on exchange transaction charges and clearing charges (approx.)</i>		377,228	142,998	831	3,279	1,943,536	3,179,738	1,900,616	5,126,553
<i>Taxes paid for trading</i>	<i>C</i>	26,255,074	9,966,356	40,418	137,600	34,988,318	50,42,997	9,879,881	85,552,916
<i>Amount paid to Government Authorities</i>	<i>A+B+C</i>	31,351,484	11,557,594	(5,102,452)	1,381,869	20,677,324	95,168,201	(5,210,710)	103,166,269

Balaji Agencies, partnership firm of Shri Sanjay Singhal has earned profit of Rs. 5,63,30,4051/- on trading in F&O during the period of 7 years i.e. financial years 2011-12 to 2017-18 on which it had paid STT, Stamp duty, SEBI fee and GST /Service Tax amounting to Rs. 8,55,52,915/- which amounts to 152% (approx.) of the profit earned from trading in derivatives and also paid income @30.90% on profit earned from trading in derivatives / F&O. The appellant further submitted that no prudent person just to earn profit of Rs.5 crone would pay taxes to revenue authorities which comprising 152% of the profit earned and also paid cash of Rs. 53,37,84,581/- to the appellant company.

(xxxv) As regard to transactions mentioned in these e-mails exchanged between e-mails id of the appellant company and e-mail id of Sudhanshu Pradhan, employee of Sanjay Singhal in the impugned assessment order, it is submitted that "amount mentioned in attachment of these e-mails under the description "RECD" while trading into scrip "KDTWL" which alleged to be not found recorded in the books of account of Sanjay Singhal, it is submitted that the nature and reason of the same to non recording or these amount can be explained by Shri Sanjay Singhal only.

(xxxvi) *There was no evidence of any cash being received by the appellant. Independent/ corroborative evidence of actual movement of cash is necessary to make any addition. The Revenue having failed to discharge the heavy onus, which was on it, of proving actual payment or money, the additions made without independent/ corroborative evidence is not permissible in law [refer K.P. Verghese v ITO: 31 ITR 597 (SC)], Reliance was also placed upon following decisions:*

- a) *Supreme Court in the case of Lalchand Bhagat Ambica Ram vs. CIT: 37 ITR 288*
- b) *CBI vs. V.C. Shukla. &Ors.(supra)*
- c) *Common Cause vs. Union of India (supra)*

(xxxvii) *Reliance was also placed on the following decisions wherein it has been held that any allegation of movement of money must be corroborated by actual evidence supporting such allegation for making addition.*

- a) *P V. Kalyansundaram: 282 ITR 259 (Mad.) affirmed in 294 ITR 49 (SC)*
- b) *Delhi High Court in case of CIT vs. Ved Prakash Choudhary: 169 Taxman 130*
- c) *CIT vs Sumeet Verma: 145 DLT 280 (Del)*
- d) *Amarjit Singh Bakshi (HUF) vs. ACIT: 86 ITD 13 (Del TM)*
- e) *ShankerlalNebnumal (HUF) V. DCIT: 80 TTJ 69 (Ahd.)*
- f) *Gujarat High Court in the case of DCIT V. Jivanlal Nebhumal (HUF):182 CTR370*
- g) *Kences Foundation (P) Limited: 289 ITR 509 (Mad)*
- h) *SP Goval vs. DCIT. 82 ITD 85 (Mum.) (TM)*
- i) *Nem Chand Dagar v. ACIT: [2004] 1 SOT 515 (Del)*
- j) *Dinesh K. Shah: 92 TTJ 109 (Bang.)*
- k) *Ramesh K. Shah v. DCIT: 82 TTJ 827 (Bang.)*
- l) *Calcutta Bench of the Tribunal in the case of T.S.Venkatesan v. Asst. CIT: 74 ITD 298*
- m) *Atul Kumar Jain vs. DCIT: 64 TTJ 786*

*n) Delhi Bench of the Tribunal in the case of Pioneer
Publicity Corporation v. DCIT: 67 TTJ 471*

*(xxxviii) AO failed to appreciate Affidavits of the concerned parties
furnished by the appellant confirming that no cash was
either paid to or received from the appellant, that too
without cross examining the deponents*

*(xxxix) Assessment merely relying upon ex-parte details/ data
belonging to third party and without allowing opportunity of
cross examination to the appellant is gross violation of
principle or natural justice and is legally unsustainable. No
addition/ adverse inference can be drawn against the
assessee on the basis of the ex- parte information received
from any third party unless an opportunity of cross-
examination is granted to the appellant. Reliance was also
placed upon following decisions:*

- a) Commissioner of Income Tax-7, New Delhi v. Odeon
Builders (P.) Ltd [2019] 110 taxmann.com 64 (SC)*
- b) Principal Commissioner of Income Tax v. Uni Packs (India)
[2019] 108 taxmann.com 454 (HC – Bombay)*
- c) H.R. Mehta v. Assistant Commissioner of Income-Tax,
Mumbai [2016] 72 taxmann.com 110 (HC - Bombay)*
- d) Andaman Timber Industries v Commissioner of Central
Excise, Kolkata -11 [2015] 62 taxmann.com 3 (Supreme
Court)*
- e) Commissioner of Income Tax v Sunil Aggarwal (2015) 64
taxmann.com 107 (HC-Delhi)*
- f) Commissioner of Income Tax v Jindal Vegetables Products
Limited [2009] 315 TTR 265 (High Court - Delhi)*
- g) Commissioner of Income Tax v Rajesh Kumar [2008] 306
ITR 27 (HC - Delhi)*
- h) Commissioner of Income Tax-Central, Jaipur v. Smt.
Sunita Dhadda 2017 (7) TMT 1164*

- i) Supreme Court in the Case of Union of India v Tulsiram Patel AIR 1985 SC 1416*
- j) A K Kraipak v Union of India AIR [1970] SC 150 (Supreme Court)*
- k) State of Kerala v K T Shaduli Grocery Dealer AIR [1977] SC 1627 (Supreme Court)*

25. The assessee vide reply dated 28.07.2021 furnished written submission before CIT(A) which is reproduced above. The primary arguments of the appellant are summarized below;

(i) Without prejudice to its earlier written submission, since the large number of credit and debit entries is unexplained and the Ld. AO also failed to adduce any cogent or substantive material on record which could prove that the same has been carried out by the appellant, peak credit theory may be applied in such case to avoid double addition. The basic idea behind the peak credit theory is to avoid double addition and to bring only the actual income of the assessee where there are large number of unexplained credit and debit entries and it is not possible to work out the exact quantum of undisclosed income by adducing some cogent or relevant material on record. Reliance was placed upon following judgments:

- a) Commissioner of Income-tax- III Vs. Tirupati Construction Co. [2015] 55 taxmann.com 308 (High Court of Gujarat)*
- b) Income Tax Officer, Delhi Vs. Shri Arun Kumar Tiwari; Asst. Yr 2007-08; (2011) 1TA NO. 4294(Del)/2010 (ITAT- Delhi)*
- c) Om Prakash Agarwal Vs, ACIT; (2016) IT A Nos. 721 to 726/JP/2015 [1TAT -Jaipur]*
- d) Income-tax Officer Vs. Bharat Plasto Chem (P.) Ltd. [2015] 58 taxman.com 296 (ITAT - Chandigarh)*

- e) *Assistant Commissioner of Income-tax. Central Circle-I. Baroda Vs. Jayesh Finance [2014] 41 taxmann.com 323 (ITAT - Ahmedabad)*
- f) *Commissioner of Income-tax -VI, Hyderabad Vs. Purushottam Jhadhav [2013] 40 taxman.com 533 (High Court - Andhra Pradesh)*
- ii. *The appellant furnished working of Peak credit after eliminating various entries reflected in ledger annexured as "E-24 Preet Vihar" and "504, Commonwealth Games Village" and various accepted entries by the Ld. AO in order dated 31.12.2019 along with reconciliation of total of receipts and payment column of Rs. 164,77,58,334/- and Rs. 161,96,48,112/- respectively as per show cause vide order sheet entry as Annexure-1.*
- iii. *The appellant claimed that benefit of telescoping of year wise balances should be allowed for calculation of peak working. The alleged data in Excel worksheets retrieved from the personal laptop of Saurabh Gupta which were categorized/ re-arranged by the Department/ AO into 48 ledgers / parties was having date-wise entries.*
- iv. *All debit and credit entries compiled together with running balance of net of debit & credit entries for calculation of peak credit / highest credit which runs into consecutive seven financial years, then in such circumstances for calculation of year wise peak credit, the peak offered in one financial year is to be given credit in next financial year as it has already been added as additional income in the last financial year, otherwise it will amount to double and / or multiple addition of the same amount which is bad in law.*

- v. *If the credit of previous year is not given in the current year then same amount will be added multiple times and aggregate amount of addition for all the seven years will be much more than the peak of Rs. 19,85,74,811/-, after eliminating various entries reflected in ledger annexured as "E-24 Preet Vihar" and "504, Commonwealth Games Village" and various accepted entries by the AO in order dated 31.12.2019, which is bad in law.*
- vi. *No separate addition was warranted in the case of application of fund while considering Peak Credit theory. The AO in the impugned assessment orders has given finding as regard to certain entries alleged to be unexplained investment / expenditure under section 69/69B/69C of the Act of Rs. 34,14,38,883/-, though in respect thereof himself has not made any separate addition being the same was treated as application of net amount of Rs. 59,23,46,638/- alleged to be received from transaction with certain parties as unexplained income u/s 69A of the Act and therefore, applied the theory of telescoping as both unexplained income and unexplained investment / expenditure represent only one income and since the AO had made addition on account of entire source of Rs. 59.23 crore, so he had not made addition on account of alleged application/ utilization of said fund into alleged unexplained investments / expenditure separately to avoid double taxation of same income.*
- vii. *When the peak credit theory is applied after considering all the unexplained debit and credit entries (i.e. inclusive of unexplained income and unexplained investment / unexplained expenditure) alleged to be found recorded in a personal laptop of Shri Saurabh Gupta which was found and seized from the premises of third person and is strictly disputed repudiated by the appellant as nor pertaining to it, so no separate addition warranted on account of addition of Rs. 34 cr. in assets /*

expenditure on account of application of unaccounted receipts which the AO himself has not added separately to avoid double taxation of same income. We rely on the judgment rendered by the Hon'ble High Court of Andhra Pradesh in the case of Commissioner of Income-tax -VI, Hyderabad v. Purushottam Jhawar [2013] 40 taxmann.com 533 wherein it has been held that when followed the peak credit concept, there is no need to make any separate addition.

viii. As regard to peak credit of Rs. 19,85,74,811/- (after eliminating alleged payment towards assets) while application of alleged unaccounted receipts in investment in assets/ expenditure shown in assessment order of Rs. 34,14,38,883/-, it is submitted that net amount of alleged application of fund is of Rs. 25,43,97,121/- instead of Rs. 34,14,38,883/- as alleged by the AO. Further, entries alleged to be in nature of expenditure have already been considered in calculation of peak credit, therefore, no separate addition warranted in the case of net amount of application of fund towards alleged expenses of Rs. 7,99,13,621/- and application of fund towards assets of Rs. 16,44,83,500/- and advance given to Best view Properties of Rs. 1,00,00,000/- aggregating to Rs. 17,44,83,500/- against peak credit of Rs. 19,85,74,811/- is quite justified and no further addition warranted in the case of appellant company.

ix. The AO alleged merely on the basis of investigation of SEBI - Technical Advisory Committee (TAC) and the Deloitte report without considering the facts of the case of the appellant company that the appellant is having un- natural advantages (co-location of servers, algorithmic trading facility etc.) by which the appellant was able to run a parallel unaccounted business. The above said alleged investigation / report is for the period prior to 31.03.2014 and not for any other years thereafter. Further, during investigation. SEBI itself absolved

the appellant from most of the charges of undue advantage of collocation facility and fixed some charges appeal against which is pending for adjudication at Securities Appellate Tribunal (SAT).

26. The assessee has submitted reply dated 03.08.2021 before CIT(A) which is summarized below:

- i. The AO had issued show cause notice dated 30.10.2019 wherein alleged soft data/ excel sheets retrieved from personal laptop of Saurabh Gupta during search action has been categorized/break up / regrouped into 48 ledgers /party-wise at Pages 66 to 166 of the said notice and were asked to be explained by the appellant which worked out to total receipts and payments of Rs. 176,09,76,572/- and Rs. 207,81,38,233/- respectively. The appellant again without admitting any of the contents of the alleged data recorded in Excel worksheets of the laptop found & seized from Saurabh Gupta, submitted that on verification of the soft data of the alleged excel sheet provided to the appellant company, it is noticed that they contained various working/noting in different manner in various excel sheets of the same amount and date. This clearly shows that there are various multiple and duplicate entries/ working/ noting of the same amount and on same date in various excel sheets of the said alleged personal laptop of Shri Saurabh Gupta. The AO on considering the claim of the appellant that it has contained various duplicate and banking entries has show cause with revised figure of receipts and payments of Rs. 164,77,58,334/- and Rs. 161,96,48,112/- respectively may not be added to the income of the appellant company.*
- ii. The appellant without admitting the entries in alleged excel data retrieved from the personal laptop of Shri Saurabh Gupta which was seized during search action stated in alternate that in case of unexplained credit and debit entries and nothing has*

been brought on record which could prove that the same has been carried out by the appellant, the peak credit theory may be applied by the department to avoid double addition. The appellant has furnished working of peak credit which worked out at Rs. 19,86,12,311/- after eliminating various entries reflected in ledger annexured as "B-24 Preet Vihar" and "504, Commonwealth Games Village" and various entries considered by the AO not pertain to the appellant company in the assessment order dated 31.12.2019 along with reconciliation of total of receipts and payment column of Rs. 164,77,58,334/- and Rs. 161,96,48,112/- respectively as per show cause vide order sheet entry has been enclosed vide written submission - 2.

iii. It is further submitted that all debit and credit entries compiled together with running balance of net of debit & credit entries for calculation of peak credit / highest credit which runs into consecutive seven financial years, then in such circumstances for calculation of year wise peak credit, the peak considered in one financial year is to be given credit in next financial year as it has already been added as additional income in the last financial year, otherwise it will amount to double and / or multiple addition of the same amount which is bad in law."

27. After considering the seized material, Assessment Order, arguments of the assessee, the Id. CIT(A) held that the excel sheets seized from laptop of Sh. Saurabh Gupta contained details of 48 parties. The Assessing Officer has excluded entries recorded in the case of 40 parties in most of which expenses recorded were more than the receipts. In respect of 48 parties, as per final show cause dated 12.12.2019, total receipts were Rs.164,77,58,334/- and total payments were Rs.161,96,48,112/-. The Assessing Officer made addition on

the basis of entries of only 7 parties whose total receipts were Rs.65,65,41,094/- and total payments were only Rs.6,41,94,456/- which tends to give a biased picture against the assessee. The Id. CIT(A) held that to arrive at the correct income of the assessee in respect of excel sheets seized from laptop of Sh. Saurabh Gupta, it is held that entries in respect of all 48 parties are required to be taken into consideration for arriving for a comprehensive picture and correct income of the assessee. The Id. CIT(A) held that in view of date wise details of receipts and payments being found recorded in the seized excel sheets, theory of peak is held to be applicable where subsequent cash receipts can possibly be explained out of cash/cheques given earlier. The Id. CIT(A) held that the total income of the assessee must be computed taking all unaccounted receipts and payments in totality, since all these unaccounted transactions are in cash, the possibility of cash being rotated cannot be ruled out.

28. In view of above facts, detailed arguments of the assessee as well as judicial decisions given above, the Id. CIT(A) held that benefit of peak is required to be given in the case of the assessee. Accordingly, peak amount taxable in the hands of the assessee and verified in person by the Id. CIT(A) and determined it to be Rs.19,86,12,311/-.

29. The year wise peak is held to be as follows:

A.Y.	Receipts	Payments	Cumulative Maximum Running Balance	Year wise break-up of Peak
AY 2012-13	94,27,839	3,72,500	90,92,839	91,30,339
AY 2013-14	7,99,23,940	7,29,18,701	3,66,49,681	2,75,56,842
AY 2014-15	9,11,71,860	8,20,21,844	3,71,01,329	4,51,648
AY 2015-16	54,52,18,839	50,05,88,755	7,65,78,368	3,94,77,039
AY 2016-17	29,30,25,443	20,28,17,056	19,85,74,811	12,19,96,443
AY 2017-18	39,18,69,615	40,12,21,900	17,30,08,376	N/A
AY 2018-19	16,41,72,153	18,01,56,518	16,00,20,841	N/A
Total (A)	157,48,09,689	144,00,97,274		19,86,12,311

30. The assessee has claimed that benefit of telescoping should be allowed to it. It was stated that all debit and credit entries compiled together with running balance of net of debit & credit entries for such circumstances for calculation of year wise peak credit, the peak offered in one financial year is to be given credit in next financial year as it has already been added as additional income in the last financial year, otherwise it will amount to double and/or multiple addition of the same amount which is bad in law. The claim of the assessee found to be correct by the Id. CIT(A) and the benefit of incremental peak was allowed to the assessee in view of facts and based on the decision of Hon'ble Kerala High Court in the case of K. P. Abdul Majeed Vs. ACIT [2019] 109 taxmann.com 385 (Kerala).

31. The Id. CIT(A) has applied the theory of peak credit and made peak amount taxable of Rs. 19,86,12,311/- in the hands of appellant by considering all the receipt and payment entries mentioned in excel sheets retrieved from the laptop of Saurabh Gupta categorized by Assessing Officer in 48 Heads.

32. The order of the Id. CIT(A) is affirmed on the determination of undisclosed income of Rs. 19,86,12,311/-.

33. The Id. CIT(A) has further dealt with the amount of Rs 34,14,38,883/- for which no separate addition was made by the AO. However, the Id. CIT(A) has made addition of certain expenditures of Rs 11,50,12,654/- out of total amount of Rs 34,14,38,883/-. Year wise details of which is as under:

Assess ment year	Addition confirmed					Total unexplained Expenditure
	Omega Securities	OFT/Option Fintech	Miscellaneous Office and Personal	Salary Payments	Vinay Jain	
2012-13	Nil	Nil	3,34,850	Nil	Nil	3,34,850
2013-14	1,22,000	Nil	30,51,097	6,76,883	Nil	38,49,980
2014-15	2,88,224	Nil	96,00,019	10,01,305	Nil	1,08,89,548
2015-16	7,36,115	Nil	(-)10,32,915	18,20,779	Nil	15,23,979
2016-17	5,60,423	25,77,500	81,15,396	21,26,855	Nil	1,33,80,174
2017-18	5,38,818	2,49,60,300	1,36,53,437	15,42,475	35,00,000	4,41,95,030
2018-19	60,000	2,81,22,500	1,05,93,933	5,62,660	15,00,000	4,08,39,093
Total	23,05,580	5,56,60,300	4,43,15,817	77,30,957	50,00,000	11,50,12,654

34. We find that the Id. CIT(A) has made addition of expenditure incurred by the assessee reflected in the same excel sheets wherein the receipts and payments have been found out. The excel sheets reflect receipts, payments and expenditure. The expenditure as found in the excel sheets as determined by the Assessing Officer and allowed by the Assessing Officer is as under:

S. No.	Particulars	Amount
1.	Investment in E-24	17,00,00,000
2.	Renovation of 504, common wealth games	41,88,000
3.	Expenses made in Mumbai & Kolkata Office	3,73,60,136
4.	Advance given to Best View Properties	1,00,00,000
5.	Payment to Omega Securities	23,05,580
6.	Payment to OFT / Option Fintech	5,13,60,300
7.	Misc Office & Personal + Office Personal Receipts/Payments	5,16,76,727
8.	Salary Payments	85,48,140
9.	Paid to Vinay Jain	60,00,000
	Total	34,14,38,883

35. We find that the investment in E-24 of Rs.17,00,00,000/- has been made in the name of Sh. Sanjay Gupta and the property has been duly registered in his name. The investment in property cannot be said to be a part of the expenditure incurred for earning of the income. Since, Sh. Sanjay Gupta is the owner of the property and all the documents are in the position of the revenue authorities, the same should have been rightly taxed in the hands of Sh. Sanjay Gupta. We make it clear that this amount of investment in E-24 cannot be considered as application of income or expenditure incurred for earning the unaccounted income.

36. Further, we have also been informed by the Id. AR that the amounts allegedly earned by different clients has also been taxed in the hands of different assessee namely, Kuber Securities, Sh. Sanjay Garg, Sh. Rajendera Gupta, Ms. Mamta Jain, Ms. Richa Arneja. The expenditure incurred at serial no. 2 & 3 as depicted in the table above pertains to Renovation of Flat No. 504, at Common Wealth Games Village which is an asset of the assessee company and Expenses made in Mumbai & Kolkata Offices are can be considered as unaccounted expenses made out of the unaccounted income earned and determined. Similarly, the payments made to Omega Securities, OFT/Option Fintech, miscellaneous office and personal, salary payments and payments made to Sh. Vinay Jain which are the part of receipts of Rs.157,48,09,680/- and payment of Rs.144,00,97,270/- stands interpolated in the determination of unaccounted income of Rs.19,86,12,311/-.

37. No separate addition on account of expenditure such as office maintenance, software expenses, salary payments made for earning of unaccounted income of Rs.19,86,12,311/- is

required to be made on account of expenditure. The order of the Assessing Officer is affirmed on this issue.

38. The arguments of the Id. AR of the assessee that the laptop from which alleged excel sheets were retrieved was found from the premises of in-laws of Saurabh Gupta and later on during the course of search and seizure operation carried out at the residential premises of Saurabh Gupta at 3031/1, Old Ranjeet Nagar, New Delhi it was annexurized as Annexure A-2. The Id. AR has drawn our attention to Pages 838 to 839 of Paper book of AY 2012-13 wherein Sh. Saurabh Gupta has filed letter dated 26.12.2019 during his assessment proceedings under sections 153A/143(3) of the Act, and clarified that the laptop was found from his in-laws and laptop was of his minor son and he took the same to office for virus removal, thereby admitting that the data therein was corrupted and unreliable. The Id. AR submitted that since Sh. Saurabh Gupta himself admitted that the said laptop was his personal laptop and data contained therein was corrupt, therefore addition made on the basis of excel sheets retrieved from personal laptop of Sh. Saurabh Gupta whose data was corrupt is bad in law and should not be sustained. The Id. AR has also drawn our attention to Pages 352 & 363 of Paper book of AY 2012-13 and vehemently argued that excel sheets on the basis of which additions was made cannot be qualified to as admissible evidence as the laptop from which the said excel sheets was found was the personal laptop of Saurabh Gupta as admitted by him and which is also evident from the fact that one of the excel sheets named "ledger" found to be modified on 15th November, 2017 12:20:08 AM i.e., before the start of search on 15.11.2017 in the early morning at 7 A.M. at the premises of appellant. The Id. AR has drawn our attention to Page No 36

of assessment order of AY 2012-13 and submitted that the data retrieved from excel sheets is corrupt and not reliable and not admissible as evidence which is evident from the fact that Assessing Officer himself stated on said page that the amount of Rs 40,00,00,000/- has been erroneously mentioned in place of an amount of Rs 4,00,00,000/-.

39. These arguments are found to be against the facts on record and the panchnama drawn. The panchnama drawn on the date of search clearly establish the seizure of material. This issue cannot be raised at this point in time before us. Hence, the technical grounds raised by the assessee are hereby dismissed.

Commission income:

40. The Assessing Officer held that besides the undisclosed income earned out of trading by the assessee, Short Term Capital Gains has been obtained by the assessee from normal accommodation entry operators and has given it back to its clients. In respect of such transactions, the assessee has acted as a facilitator for providing accommodation entry and commission as per prevailing market rate @ 2% of the amount is therefore taxed by the AO.

41. The evidences found and seized during the search are as under:

8,30,78,221	7,01,01,964	BKS
56,50,000	1,87,16,840	PRAVEEN JAIN
1,05,00,000	1,00,00,000	VIKAS JAIN/KSN
1,35,50,000	1,36,10,100	JAIN STEEL
11,27,78,221	11,24,28,904	Total

42. The AO held that the letters BKS stands for B. K. Sabarwal who was an entry operator. The revenue also alleged that the other names shown in the table were also entry operator and the scrips traded.

43. The amount commission Income earned by the assessee for facilitating normal accommodation entries as determined by the Assessing Officer is as under:

A.Y.	Receipts	Payments	Amount of Commission @2%
2012-13	-	-	-
2013-14	2,10,20,000	-	4,20,400
2014-15	-	26,00,000	-
2015-16	6,80,30,221	2,88,63,164	13,60,604
2016-17	28,000	4,39,50,000	560
2017-18	1,01,50,000	45,40,800	2,03,000
2018-19	1,35,50,000	3,24,74,940	2,71,000
Total	11,27,78,221	11,24,28,904	22,55,564

44. The Id. CIT(A) after considering the entire facts held that these amounts do not form the part of receipts of Rs.157.48 Cr. or payments of Rs.144.00 Cr. considered while determining the peak credit. The Id. CIT(A) invoked the provisions of Section 132(4A) and Section 292C of the Income Tax Act, 1961 while considering the contents of the seized material.

45. Before us, the Id. AR argued that since these transactions were also extracted from the laptop, the same ought to have been considered by the revenue authorities as part of the total receipts and payments. The Id. AR also argued that the addition has been made on ad-hoc basis and hence liable to be deleted.

46. Having gone through the facts, we find that these are the entries given by the assessee to various parties by utilizing the

services of different broker as mentioned in the seized material on account of short term capital gains which do not form part of the receipts and payments mentioned above which have been already considered separately. Hence, we hold that the commission charged by the Assessing Officer is not on ad-hoc basis but taking into consideration the prevailing market trend in providing such accommodation entries. Keeping in view the facts, we hereby affirm the order of the Id. CIT(A).

48. In the result, the appeals in

ITA No. 1818/Del/2021 : Asstt. Year : 2012-13
ITA No. 1819/Del/2021 : Asstt. Year : 2013-14
ITA No. 1820/Del/2021 : Asstt. Year : 2014-15
ITA No. 1821/Del/2021 : Asstt. Year : 2015-16
ITA No. 1822/Del/2021 : Asstt. Year : 2016-17
ITA No. 1823/Del/2021 : Asstt. Year : 2017-18
ITA No. 1824/Del/2021 : Asstt. Year : 2018-19

are partly allowed.

49. In the result, the appeals in

ITA No. 57/Del/2022 : Asstt. Year : 2016-17
ITA No. 58/Del/2022 : Asstt. Year : 2017-18
ITA No. 59/Del/2022 : Asstt. Year : 2018-19

are dismissed.

50. Owing to the decision of allowability of expenses, the penalty initiated and levied u/s 271(1)(c) by the Id. CIT(A) contested by the assessee in ITA Nos. 1204 to 1206/Del/2022 is liable to be obliterated.

Order Pronounced in the Open Court on 17/10/2023.

Sd/-

Sd/-

(C. M. Garg)
Judicial Member

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

Dated: 17/10/2023
Subodh Kumar, Sr. PS