

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**VIRTUAL HEARING**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 139 to 144/Jodh/2022**

**(ASSESSMENT YEARS- 2012-13, 2014-15, 2016-17, 2015-16, 2017-18 &  
2018-19)**

Mewar Hospital Pvt. Ltd., Bedla Road, Priyadarshani Nagar, Udaipur	Vs	The Asstt. Commissioner of Income Tax, Central Circle-02, Income Tax Department, Sub- city Centre, Savina, Udaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AADCM 7804 L</b>		

**ITA Nos. 167 to 169/Jodh/2022**

**(ASSESSMENT YEARS- 2016-17 to 2018-19)**

The Asstt. Commissioner of Income Tax, Central Circle- 02, Income Tax Department, Sub-city Centre, Savina, Udaipur	Vs	Mewar Hospital Pvt. Ltd., Bedla Road, Priyadarshani Nagar, Udaipur
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AADCM 7804 L</b>		

<b>Assessee By</b>	Shri Amit Kothari-C.A.
<b>Revenue By</b>	Shri Lovish Kumar, CIT-DR
<b>Date of hearing</b>	03/08/2023
<b>Date of Pronouncement</b>	12/10/2023

**ORDER**

## PER BENCH

These are cross appeals filed by the assessee and revenue which are directed against the order of the Id. Commissioner of Income Tax (Appeals)-2, Udaipur [hereinafter referred to as (Id. CIT(A)] dated 23.09.2022 which in turn arise from the order dated 05.12.2019, 06.12.2019 passed under section 143(3) read with section 153A of the Income Tax Act, by the DCIT, Central Circle-02, Udaipur.

2. Since, the issue involved in all these appeals are related to the one assessee and the facts are almost similar related to the search assessment. Therefore, with the consent of both the parties the matter were heard together and are disposed with this common order.

2.1 The grounds of appeal taken by the assessee in ITA No. 139/Jodh/2022 is as under :

*"1. Under the facts and circumstances of the case and in law, the Ld. CIT (Appeals)-II, Udaipur has erred in affirming the order of the Ld. Assistant Commissioner of Income Tax, Central Circle-02, Udaipur, passed u/s 143(3) r.w.s. 153A of the Income Tax Act, 1961, is bad in law & illegal.*

*2. Under the facts and circumstances of the case and in law, Ld. CIT (Appeals)-II, Udaipur has erred in rejecting the books of account u/s 145 of the IT Act and directed to Ld. AO to work out the GP for the year under consideration by considering the average GP of last 3 years and after*

*applying the same to total turnover. Where as in appellant's case GP is not applicable, as it is in medical profession/business, therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted."*

3. *The appellant prays for justice and the appeal deserves to be allowed.*

4. *The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.*

2.2 The grounds of appeal taken by the assessee in ITA No.

140/Jodh/2022 is as under :

"1. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-II Udaipur has erred in affirming the order of the Id. Assistant Commissioner of Income, Central Circle-2, Udaipur, passed u/s 143(3) r.w.s 153A of the Income Tax Act, 1961, is bad in law & illegal.

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 2,93,000/- made by Ld. AO on account of anesthesia payment to consulting doctors, therefore, action of Ld. CIT (Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

3. The appellant prays for Justice and the appeal deserves to be allowed.

4. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing."

2.3 The grounds of appeal taken by the assessee in ITA No.

141/Jodh/2022 is as under :

"1. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-II Udaipur has erred in affirming the order of the Id. Assistant Commissioner of Income, Central Circle-2, Udaipur, passed u/s 143(3) r.w.s 153A of the Income Tax Act, 1961, is bad in law & illegal.

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 35,79,859/- made by Ld. AO on account of handmade cash vouchers related to petty payments, therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

3. The appellant prays for Justice and the appeal deserves to be allowed.

4. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.”

2.4 The grounds of appeal taken by the assessee in ITA No. 142/Jodh/2022 is as under :

“1. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-II Udaipur has erred in affirming the order of the Id. Assistant Commissioner of Income, Central Circle-2, Udaipur, passed u/s 143(3) r.w.s 153A of the Income Tax Act, 1961, is bad in law & illegal.

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 4,38,200/- made by Ld. AO on account of anesthesia payment to consulting doctors, therefore action of Ld. CIT(Appeals)-II, Udaipur is erroneous & bad in law and liable to be deleted.

3. The appellant prays for Justice and the appeal deserves to be allowed.

4. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.”

2.5 The grounds of appeal taken by the assessee in ITA No. 143/Jodh/2022 is as under :

“1. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-II Udaipur has erred in affirming the order of the Id. Assistant Commissioner of Income, Central Circle-2, Udaipur, passed u/s 143(3) r.w.s 153A of the Income Tax Act, 1961, is bad in law & illegal.

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 677848/- on account of commission payment to various persons in the course of business, therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

3. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 645300/- on account of anesthesia payment to consulting doctors made by the Ld. AO, therefore action of Ld. CIT (Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

3. The appellant prays for Justice and the appeal deserves to be allowed.

4. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.”

2.6 The grounds of appeal taken by the assessee in ITA No. 144/Jodh/2022 is as under :

“1. Under the facts and circumstances of the case and in law, the Ld. CIT(Appeals)-II Udaipur has erred in affirming the order of the Id. Assistant Commissioner of Income, Central Circle-2, Udaipur, passed u/s 143(3) r.w.s 153A of the Income Tax Act, 1961, is bad in law & illegal.

2. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 52,69,505/- made by Ld. AO on account of anesthesia payment to consulting doctors, therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

3. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 86,70,725/- made by Ld. AO on account of commission payment made to

various persons in the course of business, therefore action of Ld. CIT(Appeals)-II, Udaipur, is erroneous & Bad in law and liable to be deleted.

4. Under the facts and circumstances of the case and in law, Ld. CIT(Appeals)-II Udaipur has erred in affirming the addition of Rs. 64,900/- made by Ld. AO on account of amount given to third person for incurring expenses on behalf of appellant, therefore action of Ld. CIT(Appeals)-II, Udaipur is erroneous & Bad in law and liable to be deleted.

5. The appellant prays for Justice and the appeal deserves to be allowed.

6. The appellant craves leave to add, alter, amend and modify any grounds of appeal on or before the date of hearing.”

3. Whereas the grounds of the appeal taken by the revenue in appeal No. 167/Jodh/2022 reads as follows:

*“1. The learned CIT(Appeal) has erred in law and on facts in granting relief to the assessee.*

*2. Whether on the facts and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 1,60,28,120/- made on account of discount allowed on this bills of patients for treatment. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case of Sumati Dayal v. CIT (1995) 214 ITR 801(SC) & CIT v. Durga Prasad More (1971) 82 ITR 540 (SC).*

*3. Whether on the facts and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 30,02,385/- made on account of suppression of x-ray receipts. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case Sumati Dayal v. CIT (1995) 214 ITR 801 (SC) & CIT v. Durga Prasad More (1971) 82 ITR 540 (SC).*

4. *The appellant craves leave or reserves right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3.1 The grounds of the appeal taken by the revenue in appeal No. 168/Jodh/2022 reads as follows:

"1. *The learned CIT(Appeal) has erred in law and on facts in granting relief to the assessee."*

2. *Whether on the fact and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 1,71,15,498/- made on account of discount allowed on this bills of patients for treatment without appreciating the fact that this is the year in which direct evidences of discount amount on the bills were found and seized during search thereafter the assessee change his accounting practice by showing gross receipts including the so called discount and claimed discount in P & L account separately. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case of Sumati Dayal v. CIT(1995) 214 ITR 801(SC) & CIT v. Durga Prasad More(1971) 82 ITR 540 (SC)."*

3. *Whether on the facts and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 35,26,425/- made on account of suppression of x-ray receipts. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case Sumati Dayal v. CIT(1995) 214 ITR 801(SC) & CIT v. Durga Prasad More (1971) 82 ITR 540(SC)"*

4. *Whether on the fact and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in law in deleting the addition of Rs. 1,84,36,500/- made on account of cash deposit during demonetization period."*

5. *The appellant craves leave or reserves right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

3.2 The grounds of the appeal taken by the revenue in appeal No. 169/Jodh/2022 reads as follows:

*"1. The learned CIT(Appeal) has erred in law and on facts in granting relief to the assessee."*

*2. Whether on the fact and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 1,83,34,291/- made on account of discount allowed on this bills of patients for treatment without appreciating the fact that this is the year in which direct evidences of discount amount on the bills were found and seized during search thereafter the assessee change his accounting practice by showing gross receipts including the so called discount and claimed discount in P & L account separately. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case of Sumati Dayal v. CIT(1995) 214 ITR 801(SC) & CIT v. Durga Prasad More(1971) 82 ITR 540 (SC)."*

*3. Whether on the facts and circumstances of the case for the assessment year under consideration the Id. CIT(A) is justified in Law in deleting the addition of Rs. 30,39,039/- made on account of suppression of x-ray receipts. The Ld. CIT(A) ignored the principle of preponderance of human probability as laid down by Hon'ble SC in the case Sumati Dayal v. CIT(1995) 214 ITR 801 (SC) & CIT v. Durga Prasad More (1971) 82 ITR 540(SC)"*

*4. Whether on facts and in circumstances of the case the Hon'ble ITAT is justified in deleting the addition of Rs. 15 lakh made on protective basis."*

*5. The appellant craves leave or reserves right to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of this appeal."*

4. The fact as culled out from the records is that a search and seizure operation was carried out at the residential and business premises of Mewar Hospital Group of Udaipur on 23.01.2018 and

thereafter as per warrant of authorizations issued. Various assessee & their various premises were covered in search and seizure action. Warrant of authorization containing name of the assessee was also executed. Consequent upon the search and seizure action, jurisdiction over these cases was assigned to the DCIT/ACIT, Central Circle-2, Udaipur U/s 127 of I.T. Act vide order no. 36/2017-18 dated 20.03.2018 u/s 127 of I.T. Act, 1961 by the Pr. Commissioner of Income Tax- Udaipur.

4.1 Mewar hospital Pvt. Ltd., (earlier known as Mewar Orthopedic Hospital Pvt Ltd up to 08.07.13) the Assessee filed its income tax return u/s 139 on 30.07.2012 declaring total income of Rs. 88,86,020 Notice u/s 153A was issued in the case on 20.07.2018 which was duly served on the assessee on 20.07.2018. Assessee filed its income tax return u/s 153A on 28.08.2018 declaring total income of Rs. 88,86,020/-. Notice u/s 143(2) was issued in the case on 20.02.2019 which was duly served on the assessee on 20.02.2019.

**ITA NO. 139/Jodh/2022**

5. First we would like to take up year wise appeal filed by the assessee. The relevant facts in ITA No. 139/Jodh/2022 for A. Y. 2012-13 is that based on the seized material Id. AO noted that page no. 5 of exhibit 7 of Annexure As seized from the premises at 56, New Fatehpura, Udaipur it was noted that there is suppression of turnover by the assessee. Statements of Shri Manish Chhapparwal director of the assessee company was also recorded during the search at the same premise. In the reply of question no. 8 of the statement on oath during search he clearly admitted that all the cash/jewellery/documents etc. found at this premise belongs to them only. Similarly in the reply of question no. 25 of the same statement he admitted that page no. 1 to 5 of exhibit 7 is operational data. During his statements in search, he or any other director of the assessee company never challenges the authenticity of the seized paper. In the seized paper gross revenue of FY 2008-09 to FY 2011-12 is clearly mentioned out of which gross receipt of FY 2008-09 and FY 2009-10 are tallied with the ITR but gross receipt of the FY 2010-11 and FY 2011-12 does not tally with receipt shown in ITR. In FY 2010-11 & 2011-12 there is suppression of gross revenue in ITR as compared to seized paper to the extent of Rs. 22,81,6451- & RS 1,67,54,824/- respectively. Further, as per law, if

any loose paper/document founds from the premise of assessee, it is presumed that it belongs to assessee and transactions appearing therein are correct and pertain to assessee unless it is proved otherwise by the assessee. In this case it is also the responsibility of assessee to prove the same (seized papers) as otherwise to rebut the presumption but assessee failed to do so. Argument of unsigned and undated and unnamed document is not acceptable since there is no dispute that contents on the seized papers pertains to the assessee company which have details of receipt of Assessee Company from FY 2008-09 to FY 2011-12. The argument of the AR that the contents of paper are projections/estimates/targets etc. is also not acceptable in absence of any supporting evidence. Argument of AR regarding formula error of excel on the basis of audit report is also not acceptable in absence of supporting evidence as well as in the light of fact that audit report is being prepared by the auditors on the basis of books/documents produced by the assessee before the auditor. In this case seized paper in question was not part of regular books of accounts hence, the same may not have been considered by the auditors while preparing audit report as probably the same paper may not have been produced by the assessee before the auditors. Hence

this argument is also not correct. It is very clear from the above discussion and material available on record that gross receipt appearing in the seized paper are more than as appearing in ITR. Hence it is a clear case of suppression of gross receipt. Further argument of the AR that the gross receipt cannot be taxed as income is also not acceptable because the entire gross receipt has not been taxed as income in the assessment rather only difference of gross receipt is considered as suppression of receipt. Since all the expenses have already been claimed by the assessee in ITR, therefore, entire receipt suppression needs to be taxed unless assessee produced bills and vouchers of additional expenses. Case laws referred to by the AR have different facts of this case. Hence reply of AR is not satisfactory. It is further to clarify that addition was made on this issue in AY 11-12 also in assessment order u/s 147. In the appellate order for AY 11-12 Ld. CIT(A) even though granted relief to the assessee due to reason (mistake in total) but branch wise figures were duly accepted by Ld. CIT(A). Authenticity and data of branch wise gross receipts were duly accepted by Ld CIT(A) also. It is also worthwhile to mention in that order of AY 11-12 Ld CIT(A) has also clearly mentioned that gross receipt of the assessee in AY 12-13 was of Rs 10,38,94,812/-. But as

per ITR &P &L of AY 12-13 it was shown only of Rs 87139988/-only. Hence, the Id. AO noted that he left with no other option but to understand that there is sale suppression of Rs 1,67,54,824/- (10,38,94,812 - 87139988). Since all expenses are already claimed by assessee, the sale suppression of Rs 1,67,54,824/- was added back to the total income of the assessee.

5.1 Aggrieved from the order of the DCIT, assessee preferred an appeal before the Id. CIT(A). A propose to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:

“7.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The AO, on perusal of page no. 5 of Exhibit-7 seized during the course of search, observed that total turnover in the FY 2011-12 relevant to AY 2012-13 was of Rs. 10,38,94,812/- but as per ITR it was only of Rs. 8,71,39,988/- and therefore there was suppression of sale of Rs. 1,67,54,824/- made by the assessee. The argument of the Ld. AR of the assessee that the aforesaid document does not bear any signature of any director or any officer of the appellant and that the paper alongwith other anomalies is of projection and estimate only was not found acceptable by the AO. The AO observed that the issue is based on account of suppression of turnover based on seized material and the statement of Sh. Manish Chhapparwal, Director of the assessee company recorded during the course of search. He has placed reliance on question no. 8 of this statement wherein Sh. Chhapparwal has clearly admitted that all the cash/jewellery/documents etc. found at this premises belongs to them only and that neither he nor any other director of the assessee company challenged the authenticity of the seized paper.

(ii) The AO observed that in the seized paper, gross revenue of FY 2008-09 to FY 2011-12 is clearly mentioned out of which gross receipts of FY 2008-09 & FY 2009-10 are tallied with the ITR but gross receipts of the FY 2010-11 & FY 2011-12 does not tally with receipts shown in the ITR. It was held that in FY 2010-11 & 2011-12, there is suppression of gross revenue in ITR as compared to seized paper to the extent of Rs. 22,81,645/- and Rs. 1,67,54,824/- respectively. The argument of unsigned and undated and unnamed document was not found acceptable by the AO owing to the fact that there is no dispute that the contents on the seized papers pertain to the assessee company which have details of receipts of the assessee company from FY 2008-09 to FY 2011-12. The AO observed that the seized paper in question was not part of the regular books of account and therefore the same could not have been considered by the auditors while preparing the audit report. The AO considered it to be a clear cut case of suppression of gross receipt and all the expenses were considered to have been claimed by the assessee in the ITR, therefore the AO taxed the entire receipts as the suppressed receipts in the hands of the appellant and accordingly made an addition of Rs. 1,67,54,824/-.

(iii) Before me, Ld. AR of the appellant has submitted that similar addition was made in AY 2011-12 which has been deleted by Ld. CIT(A). It was contended that since there was an error in FY 2010-11 relevant to AY 2011-12 in the turnover as observed by the Ld. CIT(A)-2, Udaipur, this piece of paper had no value. The Ld. AR of the appellant argued that the said document contains figures for AY 2012-13, AY 2011-12, AY 2010-11 & 2009-10 and the figures of AY 2009-10 to 2011-12 exactly tallies with the audited financial statements and on the basis of these figures, a projection was made for the subsequent period as two new branches had been opened during the AY 2012-13 and therefore there is difference in projected figures and actual figures of revenue as well as expenditure as detailed in its submissions reproduced supra. It was further contended that in the case of the hospital, complete records of all patients are required to be maintained. Most of the patients are also insured or under some ITA No CITA-Udaipur-2/10356/2019-20 Government Scheme and payments are received through cheques and from insurance and therefore the receipts are fully verifiable and accordingly requested to delete the addition so made by the AO.

(iv) I have considered the arguments of the appellant as well as the relevant findings of the AO and have also perused the order of Ld. CIT(A) for the AY 2011-12. On perusal of the seized page no. 5 of Exhibit -7 of Annexure AS vis-à-vis Profit & Loss Account statement for the period ended on 31 March, 2012, it is observed that there is suppression of gross revenue in ITR as compared to the seized papers to the extent of Rs. 1,67,54,824/-. It is observed that the seized document first notes the branch wise gross receipts for FY 2010-11 & 2011-12 and thereafter a "Total" column for FY 2008-09 to 2011-12 has been noted. The branch

wise gross receipts for the FY 2010- 11 and FY 2011-12, as noted in the seized document, are tabulated below:

Branch	Gross receipts noted in seized document in FY 2010-11 (in Rs.)	Gross receipts noted in seized document in FY 2011-12 ( in Rs.)
Udaipur	4,28,86,921/	7,10,44,106/-
Bhilwara	1,01,70,877/-	1,49,67,947/-
Modasa	29,06,036/-	73,19,547/-
Neemuch	-	82,81,566/-
Ujjain	-	22,81,646/-
Total	5,59,63,834/-	10,38,94,812/-

Whereas in the "Total" column in the seized document, the yearwise gross receipts are

FY	2010-11	2011-12
Total receipts noted in seized document in (total Column)	5,82,45,480/-	1.02E+08

However, in the "Total" column in the seized document the year wise gross receipts are noted for the FY 2008-09 to 2011-12 and in respect of total receipts noted in the seized document in respect of FY 2011-12, the same is mentioned as 1.02E+08.

(v) Since, in the seized documents in the "Total" column, gross receipts for FY 2011-12 are noted as Rs. 10,38,94,812/- whereas in the audited accounts, the gross receipts are shown as Rs. 8,71,39,988/-, the AO has held that the assessee has suppressed the gross receipts for the AY 2012-13 by Rs. 1,67,54,824/- and has therefore, made the aforesaid addition to the total income of the appellant.

(vi) It is observed that the document has been seized from the premises of the appellant and therefore it is presumed that it belongs to the appellant and the contents of the document are correct unless it is proved otherwise by the appellant. Further, I find that the appellant has been unable to rebut the presumption that the same does not belong to the appellant. Moreover, on perusal of the statement of Sh. Manish Chhapparwal, Director of the appellant company, it is observed that he admitted that page no. 1 to 5 of Exhibit-7 is the operational data and neither he nor any of the other directors of the appellant company have challenged the authenticity of the seized paper. I find that the gross receipts for the FY 2008-09 to 2010-11 as mentioned in the seized document tallies with the respective ITR's but the gross receipts for the FY 2011-12 relevant to AY

2012-13 does not tally with the receipt shown in the ITR. Therefore the contention of the appellant regarding the authenticity of the seized document is not found acceptable in view of the fact that the assessee has itself argued that the branch wise figures noted in the seized document are actual branch wise figures which has also been accepted in the appeal proceedings for the AY 2011-12. As regards the argument of the AR that the contents of paper are projection /estimates is also not found acceptable in absence of any supporting documentary evidence filed by him either before the AO or before me. Further the argument of the appellant that the seized document is unsigned, undated and unnamed is also not found acceptable since the contents of the seized documents tally with the audited accounts of the appellant for the AY 2009-10 to 2011-12 which has also been admitted by the Ld. AR of the appellant. Thus the content and veracity of the seized document remains undoubted. Therefore in totality of facts, I find that the appellant has suppressed its gross receipts by Rs. 157,54,824/- for the year under consideration.

(vii) However, I concur with the submissions of the appellant that the gross receipts cannot be taxed as income of the appellant. I am of the opinion that the entire gross receipts of Rs. 1,67,54,824/- could not have been added as income of the appellant for the assessment year in question but it will be appropriate to apply the gross profit rate on the aforesaid gross receipts as I find that the estimation of income out of such receipts is required to be computed as the receipts cannot, as it is, be added and it is only the profit earned /embedded in the gross receipts which needs to be taxed.

(viii) In the above context, reliance is placed on the judgment of the Hon'ble M/s Mewar Hospital Private Limited (viii) Gujarat High Court in the case of Commissioner Of Income-Tax vs President ITA No. CITA-Udaipur-2/18356/2019-20 Industries on 20 April, 1999 wherein it has been held as under:-

"The entire sales could not have been added as income of the assessee for the assessment year in question but only to the extent the estimated profits embedded in the sales for which the net profit rate was adopted entailing addition of income on the suppressed amount of sales. There is no material on the record to suggest that the assessee made any investment outside books of accounts to make alleged unaccounted sales in respect of the aforesaid appellate order.

It cannot be a matter of an argument that the amount of sales by itself cannot represent the income of the assessee who has not disclosed the sales. The sales only represented the price received by the seller of the goods for the acquisition of which it has already incurred the cost. It is the realisation of excess over the cost incurred that only forms part of the profit included in the consideration of sales. Therefore, unless there is a finding to the effect that investment by way of incurring cost in acquiring

goods which have been sold have been made by the assessee and that has also not been disclosed. In the absence of such finding of fact the question whether entire sum of undisclosed sole proceeds can be treated income of the relevant assessment year answers by itself in negative. The record goes to show that there is no finding nor any material has been referred about the suppression of investment in acquiring the goods which have been found subject of undisclosed sales."

This view is fully supported by the judgement of Hon'ble Supreme Court in the case CIT vs. President Industries reported in 225 ITR Page 47 and also by various other courts.

(ix) It is also well settled position of law that tax can be levied only on the net income/profits and not on gross receipts for which reliance is placed on the judgement of Hon'ble Supreme Court in the case of CIT vs. Gujarat vs. S.C. Kothari (1971) 82 ITR 794 wherein it has been held that-

"...the tax collector cannot be heard to say that he will bring the gross receipts to tax. He can only tax profits of a trade or business. That cannot be done without deducting the losses and the legitimate expenses of the business..."

(x) In Man Mohan Sadani vs. Commissioner of Income-tax [2010] 188 Taxman 277 (Madhya Pradesh), the Hon'ble Madhya Pradesh High Court, held that "the total sales could not be regarded as the profit of the assessee. The net profit rate had to be adopted and once it was adopted it could not be said that there was perversity of approach. Whether the rate was low or high would depend upon the facts of each case."

(xi) Thus, once it is established that the result declared by the appellant are not correct, provisions of Sec. 145(3) are applicable which the AO has failed to invoke. The Act provides coterminous power to CITIA's as are available to the AO and by using those powers, I hereby invoke the provisions of Sec. 145(3) in this case and reject the trading result declared by the appellant. After rejection of the books of accounts, a fair and honest estimation of income is required to be deduced. The Hon'ble Rajasthan High Court in the case of CIT Vs. Amrapali Jewels Pvt. Ltd. 65 DTR 196 has held that it is the discretion of the taxing authorities as to what should be the percentage of profit that should be applied and that the discretion should be exercised on settled practice.

(xii) In view of these facts, after the rejection of books of accounts u/s 145, the income of the appellant is required to be estimated on best judgement basis. It is also a settled proposition that while estimating the income of the assessee, the average of past history of GP declared by the assessee is considered as a proper and reasonable basis for estimation of income. Accordingly, the AO is directed to work out the GP for the year by considering the average GP of last three years and after applying the same on the total turnover, the AO is directed to work out the GP for the

year under consideration. Accordingly, the addition to that extent is confirmed and the balance is directed to be deleted. In view of the above, the ground of appeal no.4 is treated as partly allowed.”

5.2 As the assessee did not receive favor in full and feeling aggrieved from the order of the Id. CIT(A) preferred this appeal in ITA No. 139/Jodh/2022 raising the two grounds one relating to the legality of the assessment and the another challenging the addition on merits. Apropos to the grounds so raised challenging the assessment on ground that the assessment relating to the year under consideration is completed one the assessee submitted that the page that the revenue place reliance to make the addition is not in the nature of any incriminating material. Therefore, while issuing notice u/s. 153A for the year under consideration and making the additions de hors any material deserves to be deleted. To support the view so advanced the Id. AR of the assessee has relied upon the following judicial precedent.

- Reliance placed on following decisions.
  - PCIT vs. Abhisar Buildwell P. Ltd. (2023) 332 CTR (SC) 385
  - LMJ International vs. DCIT 119TTJ 214 (Kol)
  - Suncity Alloys P. Ltd. vs. CIT 124 TTJ (Jd) 674
  - CIT vs. Kabul Chawla (2015) 281 CTR (Del) 45
  - Meghmani Organics Ltd. vs. DCIT 129 TTJ 255 (Ahd)
  - Anil Kumar Bhatiya vs. ACIT (2010) 1 ITR (Trib) 484 (Delhi)
  - Anil Mahavir Gupta vs. ACIT 182 TTTJ (Mum) 265
  - Smrutisudha Nayak vs. UOI (2021) 5 NYPCTR 951 (Ori)
  - PCIT vs. Bhadani Financiers P Ltd (2021) 5 NYPCTR 771 (Delhi)
  - CIT vs. Deepak Kumar Agarwal (2017) 299 CTR (Bom) 62
  - CIT vs. SKS Ispat Power Ltd. (2017) 398 ITR 584 (Bom)
  - Jai Steel vs. ACCIT (2013) 259 CTR (Raj)

As regards the merits the Id. AR of the assessee submitted that the addition was made on the basis of seized document at page 5 of Exhibit 7. This addition was also made in A.Y. 2011-12, in which the same was deleted, and the ITAT also approved such deletion. One document was found which contained actual figures of some years, and on the basis of the same, projected figures were also mentioned. This was just a projection. This does not even contain any name of details to which it belongs. The seized documents also contains projections and project report. The Id. CIT(A) allowed part relief in this ground and held that gross receipts cannot be taxed and only Average Gross Profit of last 3 years to be applied on suppression of receipts. There is no suppression of any receipts as such is proved and therefore even addition for Gross Profit as held by Id. CIT(A) is not justified and the entire addition may kindly be deleted. To support this view the Id. AR of the assessee placed reliance on following decisions:

- CIT vs. S.C.Kothari 82 ITR 794 (SC)
- CIT vs. M/s Shoorji Vallabhdas & Co. 46 ITR 144 (SC)
- Poona Electric Supply Co. Ltd. vs. CIT 57 ITR 521 (SC)
- CIT vs. Balchand Ajit Kumar 263 ITR 610 (MP)
- ITO vs. Liyakat Ali 83 TTJ 769 (Jd)
- Balaji Textiles vs. ITO 49 ITD 177 (Bom)
- Acit vs. Rakesh M. Shah 86 TTJ (Mum) 288

5.3 On the other hand, the Id. DR supported the findings recorded in the orders of the lower authorities and prayed to sustain the addition to the extent confirmed by the Id. CIT(A).

5.4 We have heard the rival contentions, perused the material placed on record and also gone through the judicial precedent relied upon by both the parties to drive home to their respective contentions. The bench noted that the only issue in this case that the addition is made based on page number 5 of exhibit 7 of Annexure AS which was seized from the premises at 56, New Fatehpura, Udaipur. In the seized paper gross revenue of F. Y. 2008-09 to F. Y. 2011-12 is clearly mentioned out of which gross receipt of F. Y. 2008-09 and F. Y. 2009-10 are tallied with the ITR but gross receipt of the F. Y. 2010-11 and F. Y. 2011-12 there is suppression of gross revenue in ITR as compared to the seized paper to the extent of Rs. 22,81,645/- and Rs. 1,67,54,824/-. As argued by the Id.AR of the assessee that in this case the document contains figures for A. Y. 2012-13, A.Y. 2011-12, A. Y. 2010-11 & 2009-10. The figures mentioned are on single paper which also exactly tallied for A. Y. 2009-10 & 2010-11 this itself shows that the figure for the subsequent year is nothing but an estimate of

projection made as the assessee being corporate entity. It was also argued that the same has been prepared for subsequent period as two new branches opened up by the assessee and these two year based on the past performance nothing but a simple projection based on the past trend. As the assessee operates as corporate hospital it mentioned all the records in the computerized system of all OPD and IPD patient. No such records unearthed by the revenue to allege that the assessee is maintaining such records to account the unrecorded receipts and thereby the records of the patient. Thus, merely these one page cannot ignored the systematised records maintained by the assessee for the patient and thereby recording of the receipts. The receipts for all the patients are duly recorded and there is no contrary finding of maintenance of records of the patient by the assessee. The recording of figure like 1.02E+08 suggests that there is progressive formula based estimate for the subsequent two years. The revenue did not bring any records to justify the addition before us except that the receipts are more in the two years. Whereas the records of the patient and arguments of the assessee that based on the past two years performance projection of two years were made cannot be denied and the same is support the fact that past two years data exactly tallied

with the records. The revenue merely argued that the document found from the assessee the assessee has to justify the revenue receipt recorded. The arguments of the revenue has no support whereas the assessee justifies the arguments submitting that since the assessee opened up two more branch and being corporate assessee prepared projection as guideline based on the actual performance of last two year has force. During the search revenue did not find from that the records of the patient maintained and consequent there upon no receipt is offered. Considering that aspect of the case we also see that even the Id. CIT(A) erred in directing the Id. AO to compute the profit rate when the revenue clearly fails to justify that the impugned figure recorded on the loose paper is not an estimate but actual receipt of the assessee. Based on these observations the ground no. 2 raised by the assessee is allowed.

5.5 Apropos to the ground no. 1 the bench noted that as the year under consideration is completed assessment year and on account of the search the assessment was opened by issue of notice u/s. 153A of the Act, the addition de hors any material deserves to be deleted as held in the case of Principal Commissioner of Income Tax, Central-3

Vs. Abhisar Buildwell P. Ltd. The relevant finding of the apex court is reproduced here in below:

14. In view of the above and for the reasons stated above, it is concluded as under:

- i) that in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for block assessment under section 153A;
- ii) all pending assessments/reassessments shall stand abated; CA No. 6580/2021 Etc. Page 55 of 59 [www.taxmann.com](http://www.taxmann.com)
- iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and
- iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The question involved in the present set of appeals and review petition is answered accordingly in terms of CA No. 6580/2021 Etc. Page 56 of 59 [www.taxmann.com](http://www.taxmann.com) the above and the appeals and review petition preferred by the Revenue are hereby dismissed.  
No costs.

5.6 Since, there is no finding in the order of the lower authority as to why the page based on which the addition is made is in the nature of incriminating material and in the absence of clear explanations of the assessee that the impugned page show the figure for the year under

consideration is the estimate based on the past two year actual and against this explanation revenue failed to justify the addition. Based on the said explanation of the assessee we are of the considered view that since the page is not in the nature of incriminating material addition cannot be made considering the decision of the apex court in the case of Abhisar Buildwell (Supra). In the light of the discussion so recorded we allow ground no. 1 raised by the assessee.

In the result the appeal filed by the assessee in ITA no. 139/Jodh/2022 is allowed.

#### **ITA NO. 140/Jodh/2022**

6. The ground no. 1 raised in ITA No. 140/Jodh/2022 is similar to the ground no. 1 raised by the assessee in ITA No. 139/Jodh/2022 and the decision taken by the bench in ITA no. 139/Jodh/2022 shall apply mutatis mutandis in ITA No. 140/Jodh/2022 as the facts and the issue being similar in nature and bench does not feel to repeat the related facts. Based on these observations the ground no. 1 raised by the assessee in ITA No. 140/Jodh/2022 is allowed.

6.1 In ground no. 2 the assessee has challenged the confirmation of addition of Rs. 2,93,000/- made by Id. AO and confirmed by the Id.

CIT(A). Apropos to the grounds so raised the relevant finding of the Id.

CIT(A) is as under :

“(iii) I have considered the arguments of the Ld. AR and the assessment order passed by the AO, and it is observed that the AO has disallowed the anaesthesia payments made in cash upon which no TDS was deducted by the appellant. It is further observed that the AO has not disallowed the entire anaesthesia expenses claimed by the appellant but has only disallowed the cash expenses which could not be got verified. Therefore, the claim of the appellant that the payments are related to business expenditure and without such anaesthesia, surgery cannot be performed does not appear to be justified fully. During the course of appellate proceedings, the Ld. AR of the appellant has produced sample vouchers related to payment of M/s Mewar Hospital Private Limited anaesthesia charges to various doctors, on perusal of which, it is observed that these are cash payment vouchers which does not contain complete entries related to the patient or the details related to the surgery performed alongwith the date of surgery. It is also observed that there is inconsistency in the amount of payment also since different amounts vis. Rs.1500, Rs. 2500, Rs.6500 etc. have been mentioned in these vouchers. The appellant has neither filed any affidavit or confirmation from these doctors to ascertain genuineness of such claim made by the appellant. It is also not ascertainable as to whether these cash payments have been declared by these doctors in their returns of income. No corroborative evidence has been filed by the appellant to justify his claim of payment of these charges in cash. Further the contention of the appellant that the group of consultants carry out the surgery and the charges of each of the consultants is normally fixed on the basis of which the patients are being charged and the fact that the visiting charges of each doctor and the charges of the hospital are also fixed, I find that the Ld. AR of the appellant has neither filed any agreement with these doctors nor any other cogent evidence to justify his claim, more so, when these charges were fixed. Here it is pertinent to mention that on perusal of the sample cash vouchers produced by the Ld. AR of the appellant in relation to the anaesthesia charges, it is observed that different amounts were written on these vouchers. Therefore, the contention of the appellant that fixed charges are paid to these doctors is contrary to the facts available on record. In view of the above facts, these cash payment vouchers appear to be self-serving documents, the credibility of which is not ascertainable in absence of cogent documentary evidences as the same have not been produced by the appellant in favour of his contention. The fact also remains that the TDS was not deducted on such payments and the Managing Director of M/s Mewar Hospital Pvt. Ltd. has himself offered an amount of Rs. 4,67,100/- to be disallowed in F.Y. 2017-18 relevant to A.Y. 2018-19 out of the non-verifiable cash payments related to anaesthesia,

and further, as the verifiability of these expenses could not be ascertained by the AO since the appellant failed to get verified the cash payments related to anaesthesia amounting to Rs. 2,93,000/- in AY. 2014-15, I am of the opinion that the anaesthesia charges amounting to Rs. 2,93,000/- pertaining to the year under consideration has been rightly disallowed by the AO. Accordingly, the addition of Rs. 2,93,000/- is confirmed and the Ground of appeal No. 4 is treated as dismissed.”

6.2 On the issue the bench noted that the year under consideration is completed assessment. The addition is made on the expenditure which are de hors the seized material. No where it is stated by the assessee that the expenditure is not genuine. As held by the bench in ground no. 1 that no addition can be made on the completed assessment without support of any incriminating material, the revenue has merely stated that the assessee has paid the cash to doctors and no TDS is made. In the search assessment no such addition can be made as held in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell P. Ltd(Supra). In the light of this discussion ground no. 2 raised by the assessee is allowed.

### **ITA NO. 141/Jodh/2022**

7. The ground no. 1 raised in ITA No. 141/Jodh/2022 is similar to the ground no. 1 raised by the assessee in ITA No. 139/Jodh/2022 and the decision taken by the bench in ITA no. 139/Jodh/2022 shall

apply mutatis mutandis in ITA No. 141/Jodh/2022 as the facts and the issue being similar in nature and bench does not feel to repeat the related facts. Based on these observations the ground no. 1 raised by the assessee in ITA No. 141/Jodh/2022 is allowed.

7.1 In ground no. 2 the assessee has challenged the confirmation of addition of Rs. 35,79,859/- made by the Id. AO and confirmed by the Id. CIT(A) being the handmade cash vouchers for petty payments. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is as under:

“(v) I have considered the arguments of the Ld. AR as well as the assessment order and I find that these cash vouchers suffer from various infirmities on the basis of which not only the CFO but even the Managing Director of the appellant company admitted for such disallowance. It is observed that these vouchers are prepared by the same person and are stereotype and do not contain any signature of the recipient. No corroborative evidence has been filed by the appellant to justify his claim of payment of these charges in cash. I find that the Ld. AR of the appellant has neither filed any details with reference to these expenses nor any other cogent evidence to justify his claim. In view of the above facts, these cash payment vouchers appear to be self-serving documents, the credibility of which is not ascertainable in absence of cogent documentary evidences as the same have not been produced by the appellant in favour of his contention. Therefore, the expenditure of Rs. 35,79,859/- disallowed by the AO is confirmed and the Ground of Appeal No. 4 is accordingly treated as dismissed.”

7.2 On the issue the bench noted that the year under consideration is completed assessment. An addition is made on the expenditure

which are de hors the seized material and part of regular books of account of the assessee company. No where it is stated by the assessee that the expenditure is not genuine. As held by the bench in ground no. 1 that no addition can be made to the completed assessment without support of any incriminating material. The revenue has merely stated that the assessee has paid the cash, suffers from various infirmities. The Id. DR relied on the statement of the CFO based on these observation of the revenue who admitted for disallowance of the expenditure as the same are stereotype and some of them do not contain the signature. We find from the perusal of record on this observation the revenue not placed on record any corroborative material in the nature of incriminating so as to disbelieve the claim of expenditure which are maintained in the regular course of business of the assessee. Merely on some vouchers the signature are missing and paid cash, the book result cannot be disbelieved and in the search proceeding no such addition are called for. The bench also noted that the assessee is corporate entity, and the book of the entity audited under the income tax Act and under the companies act. There is no whisper of the auditor about the bogus claim of expenditure by the assessee. The book results were not rejected and the assessment

has been order u/s. 143(3) of the Act and not u/s. 144 of the Act. Thus, considering the CBDT's instructions after the decision of the apex court in the case of Abhisar Buildwell directing the officer to follow the decision and not to take make the addition without supporting of the incriminating material. Thus, the expenditure which are duly recorded in the books cannot be disturbed without any support incriminating material found or unearth by the revenue. Thus, in the search assessment no such addition can be made as held in the case of Principal Commissioner of Income Tax, Central-3 Vs. Abhisar Buildwell P. Ltd(Supra). In the light of this discussion ground no. 2 raised by the assessee is allowed.

#### **ITA NO. 142/Jodh/2022**

8. The facts and grounds raised by the assessee in ITA no. 142/Jodh/2022 is similar to the facts and grounds raised by the assessee in ITA no. 140/Jodh/2022 relating to the addition of Rs. 4,38,200/- being the anesthesia payment to consulting doctors. Therefore, we feel that it is not imperative to repeat the facts of the case in ITA no. 142/Jodh/2022 and the decision taken by the bench in

ITA No. 140/Jodh/2022 shall apply mutatis mutandis in ITA No. 142/Jodh/2022 as the facts of the case on hand and the issue being similar in nature and bench does not feel to repeat the related facts and findings. Based on these observations the appeal filed by the assessee in ITA No. 142/Jodh/2022 is allowed.

### **ITA NO. 143/Jodh/2022**

9. Apropos to the ground no. 1 the bench observed that the assessment year under consideration is A.Y. 2017-18. The assessee has filed the return of income for the year on 28.08.2017 and as on the date of search time limit to issue the notice u/s. 143(2) was not expired and therefore, ground no. 1 raised by the assessee challenging the validity of the assessment is not sustainable and thus, the ground no. 1 is dismissed.

9.1 As regards the ground no. 2.1, the assessee has challenged the addition of Rs. 6,77,848/- made on account of commission payment to various persons in the course of business or profession in which the assessee is engaged. Apropos to this issue the finding of the Id. CIT(A) is as under :

“(vi) I have considered the arguments of the Ld. AR and the assessment order passed by the AO. It is observed that the appellant has not been

able to prove the identity of the persons receiving the commission payment either before the AO or before me since no cogent evidence in this regard vis PAN or Aadhar details were filed by the assessee. Though mobile no. of such drivers was provided to the search team, however, when the details of such referral commission payments were cross checked by the search team from the drivers, it was denied by them. Further it is observed that the assessee does not maintain any documentary record in respect of these referral commission payments. These payments are made in cash and moreover no TDS is being made on them. Infact, on direct verification on the mobile nos. provided by the appellant during the search proceeding, these parties categorically denied having received any such payments from the hospital. It is observed that the assessee has neither been able to produce any cogent evidence or the party, as such, for verification before the AO or before me to justify his claim of payments. Further the fact remains that these referral payments amounting to Rs. 93,48,573/- for the AY 2017-18 and 2018-19 were offered for taxation by Sh. Manish Chhapparwal, M.D. as well as by Sh. Tejas Sanghvi, CFO of Mewar Hospital Pvt. Ltd. during the search proceeding. Thus, in totality of facts, I find that the assessee has failed to prove the genuineness of these expenses and therefore, the AO is found justified in disallowing an amount of Rs.6,77,848/- being ingenuine commission payments for the year under consideration. Accordingly, the addition of Rs. 6,77,848/- is confirmed and the Ground of Appeal No. 4 is treated as dismissed.”

9.2 The Id. AR of the assessee submitted that Id. CIT(A) has just reiterated the contention of the Id. AO and has not given any independent finding and simply holds that the assessee failed to prove the genuineness of these expenses of Rs. 6,77,848/- being the commission paid.

On this issue the Id. AR of the assessee submitted that the commission payment is being made to certain drivers and other persons who bring patients to the hospital from the accident site. This

is to reimburse their cost of transportation, conveyance, cleaning and other expenses plus their service charges. The details of such payments, name and mobile number were duly submitted. Certain sample vouchers which were submitted during the assessment are also enclosed in the paper book. Entries were duly found recorded in the regular books and source of expenditure not in dispute. Only on the basis of statements recorded during search the addition made. Even in the statement it was clarified that the expenses are being incurred and the purpose was also explained. Based on those arguments the Id. AR of the assessee supported the claim of expenses.

9.3 On the other hand the Id. DR relied upon the finding of the lower authority and supported the finding recorded therein.

9.4 We have heard the rival contentions and perused the material placed on record. The Id. AO in the assessment proceedings based on the records in the form of voucher found that the records maintained by the assessee unsatisfactory and the assessee failed to prove the genuineness of the expenditure. The Id. AO also noted that

the commission made to medical professional or related parties to soliciting patients is inadmissible expenditure. The director in the statement offered to disallow the expenditure. On the other hand, we found that the Id. CIT(A) confirmed the finding of the Id. AO. Whereas the Id. AR of the assessee submitted that the commission payment is being made to certain drivers and other persons who bring patients to the hospital from the accident site so this is not the expenditure which the Id. AO is referring to give the commission for medical professionals. The expenditure is for reimbursement for the cost of transportation, conveyance, cleaning and other expenses plus there service charges. The assessee has already filed all the details of such payments, name and mobile number were duly submitted. Based on that information nothing adverse was found and to justify that the claim of the assessee is not correct. The deficiency in such a voucher itself says that the same has been maintained during the business of the assessee by the employees. The source of this expenditure is not under dispute. The related receipt from the patient on admission is not under dispute. Entries were duly found in the regular books. Only because of statements recorded during the search the addition cannot be made, the lower authorities failed to appreciate that even in the

statement it was clarified that the expenses are being incurred and the same was justified in the statement. Looking to the nature of profession the assessee engaged it is normal practice to give such reimbursement or service charge. As regards the TDS the Id. AO failed to establish that the assessee has controverted the provision of TDS, even though all the details of the payment were made available to the Id. AO. The Id. AO has not found out what is the amount of the default. Considering the overall facts and considering the nature of the profession of the assessee we see no reason to sustain the addition as the assessee has already recorded the relevant receipt related to expenditure and thus, when the receipt is not in doubt the related expenditure cannot be disallowed merely based on one statement. In terms of this observation the ground no. 2.1 raised by the assessee is allowed.

9.5 In ground no. 2.2 the assessee has challenged the addition of Rs. 6,45,300/- made on account of anesthesia payment to various consulting doctors made by the Id. AO and sustained by the Id. CIT(A). On the issue the relevant finding of the Id. CIT(A) is as under :

“(iv) I have considered the arguments of the Ld. AR and the assessment order passed by the AO, and it is observed that the AO has disallowed the anaesthesia

payments made in cash upon which no TDS was deducted by the appellant. It is further observed that the AO has not disallowed the entire anaesthesia expenses claimed by the appellant but has only disallowed the cash payment of more than Rs. 20,000/- upon which there was no deduction of any TDS and therefore, these payments of Rs. 6,45,300/- were disallowed as per provisions of section 40(a)(ia) and 40A(3) of IT Act, 1961 during the year under consideration.

(v) For the sake of clarity, Section 40(a)(in) of the Act is reproduced as under:  
“Section 40. Notwithstanding anything to the contrary in Sections 30 to 38, the following amounts shall not be deducted in computing the income chargeable under the head “Profite and gains of business or profession” (a) in the case of any assessee-A) any interest, commission or brokerage, fees for professional series or fees for technical services payable to a resident, or amounts payable to a contractor or sub-contractor, being resident, for carrying out any work (including supply of labour for carrying out any work), on which tax is deductible at source under Chapter XVII-B and such tax has not been deducted or, after deduction, has not been paid during the previous year, or in the subsequent year before the expiry of the time prescribed under sub-section (1) of Section 200.

Provided that where in respect of any such sum, tax has been deducted in any subsequent bear or, has been deducted in the previous year but paid in any subsequent year after the expiry of the time prescribed under sub section (1) of Section 200, such mum shall be allowed as a deduction in computing the income of the previous year in which such tax has been paid.”

(vi) Legally speaking, Section 40(a)(ia) of the Income Act, 1961 provided that any specified payment (interest, commission, etc.) to a resident from which tax is deductible at source will not be allowable as a deduction if (a) the tax had not been deducted or (b) after deduction, had not been paid in time as provided therein. Thus, deduction of such sum is only allowed in the computation of income if tax is deducted, or after deduction, paid in any subsequent year in computing the income of that year. However, in the instant case of the appellant, it is observed that no such sum has been deducted from the anaesthesia payments made to the Doctors and therefore, the appellant is treated as assessee in default.

(vii) It is also observed that prospective amendment was brought by the Finance Act 2012 in the provisions of Section 40(a)(ia) of the Act by inserting the second proviso in sub-clause (in) of clause (a) of Section 40 by the Finance Act, 2012, w.e.f. 1-4-2013 which reads as under:

“Provided further that there an assessee fails to deduct the whole or any part of the tax in accordance with the provisions of Chapter XVII 8 on any much sum but is not deemed to be an assessee in default under the first proviso to sub-section

(1) of Section 201, then, for the purpose of this sub-clause, it shall be deemed that the assessee has deducted and paid the tax on such sum on the date of furnishing of return of income by the resident payee referred to in the said proviso"

(viii) Since provisions of Section 40(a)(ia) as amended by Finance Act 2012 is linked to Section 201 of the Act, so it is essential to know and understand the provisions of Section 201 of the Act, the relevant provisions of which are as under:

“(1) Where any person, including the principal officer of a company-

(a) who is required to deduct any sum in accordance with the provisions of this Act or

(b) referred to in sub-section (1A) of Section 192, being an employer,

does not deduct, or does not pay, or after so deducting fails to pay, the whole or any part of the tax, as required by or under this Act, then, such person, shall without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of such tax :

Provided that any person, including the principal officer of a company, who fails to deduct the whole or any part of the tax in accordance with the provisions of this Chapter on the amount payable to a resident or on the sum credited to the account of a resident shall not be deemed to be an assessee in default in respect of such tax if such resident-

(i) has furnished his return of income under Section 139;

(ii) has taken into account such sum for computing income in such return of income; and

(iii) has paid the tax due on the income declared by him in such return of income, and the person furnishes a certificate to this effect from an accountant in such form as may be prescribed:

(ix) However, in the instant case of the appellant, no such certificate from the accountant was furnished by the appellant either before the AO or before me in the appellate proceedings. Therefore, the appellant is treated as assessee in default and cannot escape from the rigours of the provisions of section 40(a)(ia) of the Act. Therefore the case referred by the appellant is distinguishable on facts.

(x) Therefore, the claim of the appellant that the payments are related to business expenditure and without such anaesthesia, surgery cannot be performed does not appear to be justified fully in view of the provisions of section 40(a)(ia) of the Act as the AO has not disallowed the entire anaesthesia expenses but has disallowed only the amount of such payments on which no TDS has been made under the provisions of section 40(a)(ia) of the Act.

(xi) As regards to the reliance placed by the Id.AR of the appellant on the case of Dr. T. A. Quereshi v CIT [2006] 157 Taxman 514 (SC), it is observed that the same is on differential facts and not related to the facts and circumstances of the case of the appellant. It is observed that the Hon'ble Supreme Court in the above referred case has held that Explanation to section 37 has no relevance in case of allowability of business loss. The assessee was a medical practitioner. Some heroin was seized from him which formed part of his stock in trade. The court held that once the heroin formed part of stock in trade, it follows that the seizure and confiscation of such stock in trade has to be allowed as a business loss. The Supreme Court further held that law is different from morality and a case is to be decided by courts on legal principles and not on one's own moral views. Thus this case has no relevance to the facts and circumstances of the instant case of the appellant.

(xii) In view of the above facts, I am of the opinion that the anaesthesia charges amounting to Rs. 6,45,300/- pertaining to the year under consideration has been rightly disallowed by the AO. Accordingly, the addition of Rs. 6,45,300/- is confirmed and the Ground of Appeal No. 5 is treated as dismissed.”

9.6 The Id. AR of the assessee in support of this ground submitted that the details of expenses were submitted during the assessment proceedings. All the expenses are fully verifiable including the source. Payments are related to business expenditure and without such Anesthesia, doctors of the assessee cannot perform surgery. In statements it was nowhere said that the expenditure is not genuine. The collection from patients for surgery carried out by a group of doctors is in fiduciary capacity and is being paid to them as an agent of the patient. TDS is only one mode of recovery, and even if the same is not deducted the payee has to pay his tax on his income. Where tax is paid directly by payee the assessee cannot be held even

assessee in default. Reliance is placed on Hindustan Coco Cola Beverages P. Ltd. vs. CIT 293 ITR (SC) 226. Section 40 starts with non obstante clause and refers to only section 30 to 38. The deduction of these expenses is under section 28 only where the income is to be taken. Application of section 40 will be only to expenses covered u/s 30 to 38. Based on that submission the Id. AR of the assessee prayed to delete the disallowance.

9.7 On the other hand Id. DR relied upon the detailed finding recorded in the order of the lower authorities.

9.8 We have heard the rival contentions and pursued the material placed on record. The bench noted that the apple of discord in making the addition of Rs. 6,45,300/- in this case is that the assessee has paid the payment in cash to the doctor who are experts in giving Anesthesia. The assessee expert doctors cannot perform the surgery on the patient without that. The assessee is merely an agent of the patient, and the expenditure is paid for and behalf of the patient. The only concern of the revenue is that the payment has been made in cash and the TDS has not been deducted by the assessee. On this

issue the bench noted that the assessee has paid the charges to the anesthesia expert as an agent of the patient. When the assessee has paid the expenditure as agent in providing service the assessee is not liable to deduct the tax as the same is merely paid as an agent of the patient. The revenue has not doubted the role of the assessee in fiduciary capacity while making the payment to the expert. As regards the payment of TDS default the bench noted the appeal of the assessee for TDS default were decided in favour of the assessee in ITA No.404/Jodh/2018 for assessment year 2017-18. As revenue did not challenge those order where in the issue of TDS for the year under consideration has already been finalised and on the same very issue again no disallowance can be made. Based on that aspect of the case as the assessee has collected the money on behalf of someone else and there is no income on this aspect of the case. As regards the default of the assessee u/s. 40(a)(i) of the Act, the bench noted that as regards the TDS default the proceeding has already been completed and the revenue did not bring specific default, we see no reason to consider the disallowance on this aspect. Based on that aspect of the case we vacate the disallowance and ground no. 2.2 raised by the assessee is allowed.

9.9 The ground no. 3 & 4 raised by the assessee are general in nature and the same is not required to be adjudicated.

9.10 Based on these observation the appeal of the assessee in ITA no. 143/Jodh/2022 is partly allowed.

ITA NO. 144/Jodh/2022

10. The ground of appeal no. 1, 2, 3, 5 & 6 raised by the assessee in ITA no. 144/Jodh/2022 are similar to the ground no. 1, 2.1, 2.2, 3 & 4 raised by the assessee in ITA no. 143/Jod/2022. The bench does not feel imperative to repeat the related facts, grounds, and findings on the similar grounds in this appeal no. 144/Jodh/2022 and thus considering that aspect of the matter the decision taken by us in ITA No.143/Jodh/2022 equally apply to the grounds no. 1,2,3, 5 & 6 of the assessee in this appeal.

10.1 Apropos to the ground no. 4 raised by the assessee the relevant finding of the Id. CIT(A) is reproduced here in below :

“(iv) I have considered the facts of the case and the submissions of the appellant and it is observed that there is no dispute in the amount of payment made to third parties by the appellant company. It is also observed that the Ld. AR of the appellant has not been able to produce any cogent documentary evidence as regards to his contention that these payments have been made to the close relatives of the said doctors. Infact the Ld. AR of the appellant has also not been

able to justify even the purpose of payment to these third parties. Once a claim of deduction has been made by the appellant company then the burden of proving the same lies on it which has not been discharged. No proof of TDS on such payments could be provided by the appellant either before the AO or before me to prove his contention.

(v) Further during the search proceedings, the issue of payment to third parties was confronted to Sh. Manish Chhparwal, M.D. of Mewar Hospital Pvt. Ltd., who, it is observed did not raise any objection on this aspect as referred above by the AO. In view of the above discussion, I concur with the findings of the AO that the aforesaid amount of Rs.64,900/- has not been incurred for the purpose of business u/s 37 of the Act as the alleged parties have not rendered any service to the hospital Accordingly, an addition of Rs. 64,900/- so made by the AO to the total income of the appellant is sustained and the Ground of Appeal No. 6 is treated as dismissed.”

10.2 The Id. AR of the assessee in support of this ground submitted that the expenses incurred is not in dispute. The allegation of the Id. AO is that the payments had been made to a third party on behalf of the doctors. Payments are towards services rendered, and even if they paid to third party these are expenses of the assessee and are allowable.

10.3 On the other hand the Id. DR supported the orders of the lower authorities and based on that prayed to sustain the addition.

10.4 We have heard the rival contentions and pursued the material placed on record. The bench noted that the fact related to the issue is

that a survey proceeding on 23.01.2018 at Ajmer branch of the assessee made. In that proceeding per Exhibit 6 of Annexure A it is found that the assessee made payment of surgery and the payment of the same has been made to third party. During the proceedings the director submitted that the same has been paid as per the respective doctors instructions and he offered it to disallow the same in the statement. As the assessee did not explain the nature and purpose to the satisfaction of the Id. AO he has made the addition of Rs. 64,900/-. The Id. CIT(A) also confirmed the finding of the Id. AO. Before us the Id. AR of the assessee submitted that the payments had been made to a third party on behalf of the doctors. Payments are towards services rendered, and even if they paid to third party these are expenses of the assessee. We do not find any force in arguments of the Id. AR of the assessee, as the assessee failed to justify the reason as to why the payment of the surgery paid the person who are not authorized. Therefore, we do not incline to interfere in the detailed finding of the lower authority. Based on this observation ground no. 4 raised by the assessee is dismissed.

In the result the appeal of the assessee in ITA no. 144/Jodh/2022 is partly allowed.

11. Now, we take up the appeal filed by the revenue for the assessment years 2016-17, 2017-18 and 2018-19 in ITA No. 167,168 & 169/Jodh/2022. In all three appeals ground no 1 is general in nature and no specific arguments were raised. Therefore, on the said ground no 1 no adjudication is required.

12. Ground no. 2 raised by the revenue in all the three years is relating to the deletion of addition made on account of discount allowed on the bills of patient for treatment. Since issue is similar in all three appeals of the revenue, the Bench decided to deal with the ground No. 2 as common for all these years. For discussing the facts relating the addition and finding of the lower authority is taken up from the folder in ITA No. 167/Jodh/2022.

12.1 The fact related to the dispute is that the Id. Assessing Officer noted that during the search action u/s 132 of the Act, some bills related to the treatment of the patient were found. In those bills, discount on billed amount allowed by the hospital in favor of the

patients. Excel Sheets regarding bill payment containing discount amount (concession amount) were also found and seized and made annexure as Exhibit 41, 42, and 43 of Annexure-AS. On verification on phone by the search team, some persons informed that there was no discount allowed by hospital through bill amount which has been paid by Bhamashah Yojana and some persons told that due to complete or wrong/improper treatment discount was allowed in the financial year 2016-17 the assessee has claimed expenses under the head discount amounting to Rs. 1,71,15,498/-. The assessee was asked to submit details of discount expenses and justified the genuineness of the said expenditure. The Id. AR of the assessee in addition to the merits of the dispute submitted that since the assessment relates to search years and in the absence of any incriminating documents relating to the expenditure found, in the post search assessment addition can only be made relating to the seized material having nature of incriminating in nature. Whereas Id. AO noted that the addition is based on after search verification disallowed the expenditure claim. In the light of these facts the Id. AO made an addition to the extent of Rs. 1,60,28,120/- being the expenses on discount as wrongly claimed by the assessee.

12.2 Aggrieved from the said addition the assessee preferred an appeal before the Id. CIT(A) challenging the addition made by the Assessing Officer. A propose to the grounds so raised the relevant finding of the Id. CIT(A) is as under:-

“5.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) During the course of assessment proceedings, the AO observed that some bills of patients for treatment were found during the search action u/s 132 of the Act in the case of the appellant. In these bills, discount on billed amount was allowed by the hospital in favour of patients. Excel Sheets regarding bill payments containing discount amounts were also found and seized and made as Annexure AS Exhibit -41, 42 & 43. On verification on phone by search team, some persons told that there was no discount allowed by the hospital though this was the amount which has been paid by Bhamashah Yojana, whereas some persons told that due to incomplete or wrong/improper treatment, discount was allowed. In FY 2016-17, the appellant has claimed expenses under the head Discount amounting to Rs. 1,71,15,498/-. On that basis, details of discount were calculated by the AO on the basis of turnover for various years including the current year under consideration.

(ii) The claim of the assessee that the discount was calculated only on estimate basis and infact no discount has been claimed by the assessee during the year in audited accounts and the fact that a few persons admitted that discount was allowed was not found acceptable by the AO. The AO observed that at the time of search, evidences of discount amount on the bills were found and seized for FY 2016-17 and 2017-18 relevant to A.Y.2017-18 and 2018-19. It was also observed by the AO that the assessee has shown discount expenses in his Profit & Loss Account statement separately in the AY 2017-18 & 2018-19 only and that in the earlier years, no separate discount expenses were claimed. In view of the above, the AO held that in earlier years, the gross receipts shown by the assessee were net off of discount but when search team found direct evidences for discount for AY 2017-18 & 2018-19, the assessee changed his accounting practice by showing gross receipts including the s called discount and claimed discount in Profit & Loss Account separately. Since the assessee failed to provide the factual position related to discount, the AO estimated the discount for the year under consideration and made the impugned addition of Rs. 1,60,28,120/- in the year under consideration.

(iii) Before me, the Ld. AR of the appellant has contended that the Ld. AO has made the addition on the basis of his findings given in the assessment

order for AY 2011-12 wherein similar additions on account of discount allowed were made. It was brought to my notice that in first appeal in the AY 2011-12, the Ld. CIT(A) has allowed part relief by restricting the addition to 25% of the total addition. Subsequently, the Hon'ble ITAT has finally decided this issue in which the entire addition made has been deleted.

(iv) The Ld. AR of the appellant has also contended that even on merits the said addition was not called for. It was contended that the details of ledger copies of discount to patients and the year wise summary of discount booked in the books vis- à-vis the discount calculated by the AO /search team was also produced by him before the AO. It was contended that there cannot be any notional discount when the assessee has not booked any amount in the audited annual accounts and therefore no addition in the FY 2011-12 to 2015-16 can be made. It was contended that applying a standard rate on ad-hoc basis, when no amount was booked in the Profit & Loss Account was unjustified. It was further argued that some of the discount was on account of the fact that for certain treatment there was package which includes cost of operation, medicines, room charges or ICU etc. The separate bills were also raised even to these package patients and therefore the shortfall was transferred to discount account.

(v) It was further contended that the payment being received from such patients is verifiable from the account statement of these parties. For certain patients who were admitted for long duration, discount was being given on request being made by them and also considering the financial position of the patients. Some companies and insurances companies had approved list of price and they pay according to the price list already approved and therefore discount was being given, if there were certain charges in the bills which were higher than the price list approved by such agencies. The assessee had submitted details of all the bills, account statement and giving the justification of the discount given. There is no other material to suggest any such discount which is not genuine.

(vi) I have considered the arguments of the Ld. AR and the relevant findings of the Hon'ble ITAT in the case of the appellant for the AY 2011-12, wherein the issue of discount has been dealt which is based on the findings and the seized documents found during the course of search in the case of the appellant. The relevant findings of the Hon'ble ITAT are reproduced as under:-

"8. We also observed that there is no claim of discount as such, and the addition was based on estimated discounts. In case there is no claim of such discounts the question of disallowance of any addition is uncalled for. There is no case of suppression of receipts by showing lesser receipts. Further if the receipts are shown net of discount the same cannot be said to be not verifiable as the same is directly linked to the corresponding receipts. The addition being made only on the basis of suspicion, therefore, we direct to delete the same."

(vii) Thus it is observed that the Hon'ble ITAT has given a categorical finding on the merits of the case of the appellant for the AY 2011-12 based

on the same set of documents found during the course of search on the basis of which addition for the year under consideration has also been made. It has been observed by the Hon'ble ITAT that there is no claim of discount for the impugned AY 2011-12 and that the addition was merely based on estimated discounts. Therefore, it was held that in case there is no claim of such discounts, the question of disallowance of any addition is uncalled for and there is no case of suppression of receipts by showing lesser receipts.

(viii) It is observed that even in this year, the appellant has not made any claim of discount as evidenced in its Profit & Loss Account statement. Further the contention of the AO that the assessee has shown discount expenses in his Profit & Loss Account statement separately in the AY 2017-18 & 2018-19 only and that in the earlier years, no separate discount expenses were claimed, it is observed that the return of income for the AY 2017-18 was filed prior to the search conducted in the case of the appellant. Therefore, the contention of the AO that the appellant has changed its method of accounting after the search is contrary to the facts available on record. The fact also remains that the AO has himself admitted that the evidences of discount amount on the bills were found and seized for FY 2016-17 & 2017-18 i.e. AY 2017-18 & 2018-19. Therefore, based on the finding for the subsequent years and not pertaining to the year under consideration, the same cannot be applied for other years unless there is some material/basis found in each year which could establish that there was discount given to the patients. It is a well settled legal position that in post search assessment, addition can be made only for the period to which a particular unexplained seized document relates and no additions can be made merely on the basis of estimations, presumption, conjectures and surmises. Therefore, in absence of any evidence pertaining to the year under consideration, the AO is not found justified in notionally computing the discount allowed. Accordingly, respectfully following the judgment of Hon'ble ITAT Jaipur in the case of the appellant for the previous AY 2011-12, the addition of Rs. 1.60.28.120/- is deleted and the Ground of Appeal No. 2 is treated as allowed."

12.3 Feeling dissatisfied with the order of the Id. CIT(A), revenue challenged the findings of the Id. CIT(A) in ground No. 2. In support of the ground so raised the Id. DR heavily relied upon the findings of the Id. Assessing Officer recorded in the order of assessment. The Id. DR also submitted that the addition has been made considering wrong

claim and for that verification on test check was carried out by the Id. AO of the bills upon which the claim of discount was made. The result of the test check was not satisfactory. Therefore, the claim of the assessee rightly disbelieved. The fact in the earlier year the assessee was showing the receipt net (Reducing discount from gross). Whereas in this year the assessee has separately claimed, such expenditure so the fact of previous year which that of these years are different. Even the finding of the ITAT related to the showing income of net of discount. Therefore, the relief granted by the Id. CIT(A), considering the judgments of the Bench in assessment year 2011-12 is wrongly applied on facts in the year under consideration. In the year under consideration actual expenditure claimed by the assessee was added based on the test check result. The Id. DR also submitted that based on this actual differential fact the finding for the A.Y. 2011-12 is on different facts and did not cover the case for the year under consideration. Based on this argument the Id. DR prayed to sustain the disallowance made by the Assessing Officer.

12.4 On the other hand, the Id. AR appearing on behalf of the assessee submitted that it is not under dispute that in the assessment

year 2011-12 a similar issue was raised, and the appeal decided in favor of the assessee by the co-ordinate bench. The similar dispute involved in these years and considering the judicial precedent and that too in the case of the assessee be followed on consistently. The facts of this year are similar because in earlier year the discount was accounted net of receipt, whereas in these years the gross receipt is shown, and discount separately claimed as expenditure. The result of the test checks in the does not represent and it is just few person out of many persons. Hence, the issues which have already decided in favor of the assessee, there is no point in disallowance of the discount in the year under consideration. Based on these arguments he supported the order of the Id. CIT(A) submitting that it is a reasoned order, and no adverse interference is required to be withdrawn. The Id. AR of the assessee submitted that the claim of the expenditure is duly verifiable from the audited books of account maintained by the assessee and is supported by the bills of patient. The assessee already submitted the reasons for giving the discounts such as wrong duration of treatment, rates approved and decided with the insurance company, treatment package availed by the patient etc. The discount granted is accounted on regular basis based on the various aspects

and is duly accounted in the books of accounts. The discount given to the patient is even confirmed on the phone and patient have confirmed saying that it was on account of the incorrect treatment this it may be negative but even on that patient have confirmed to have received the discount. Once the assessee has already discharged the identity and test patient receipt duly recorded in the books of account merely on one or to instance where the confirmation were obtained behind the back of the assessee the expenditure claimed cannot be disallowed. The claim is supported by the bill, treatment taken and various aspect of the scheme framed by the assessee the same is given to the patient. Therefore, the claim is duly supported by the regular books of account and there is no such incriminating documents found in relation to the claim of expenditure. Hence in the search related assessment except the issue related to incriminating material no other issue can be taken up. The Id. AR of the assessee placed reliance on the following decision:-

- Hindustan Coca Cola Beverages P. Ltd. vs. CIT (2018) 402 ITR 539.
- CIT vs. Devayhi Beverages Ltd. (2008) 296 ITR 41 (Del)

12.5 We have heard the rival contention, perused the material available on record and gone through the judgment relied upon by

both the parties to drive home to their respective contentions advanced before us. The Bench noted that the assessee is a corporate serving the medical services and health related to services to the patient at various locations. The assessee is a approved hospital for various treatment under the medical insurance coverage and also undertake treatment on various scheme of government. Therefore, as per the scheme of the various treatment the assessee offers discount on the bills of the patient for the package, treatment duration, expenditure on surgery approved rates with the insurance company. All these aspects of the case is duly counted as receipts of the assessee. The assessee accounted the gross receipts and claimed separately the document given to the patient. We observe from the order of the lower authorities that so far as the receipt is concerned, the same is from the government, insurance company. The aspect of the discounts is in the regular course of business opted by the assessee in the past year also. The similar issue has already been decided by the coordinate Bench in the assessment year 2011-12 wherein the Bench also considered this issue and had held as under:-

“6. The next issue relates to addition for discounts. From perusal of the record, we found that the AO made addition for Rs. 18,81,845/- for discounts which was partly deleted by the Id. CIT(A) and 25% of the

disallowance to the extent of Rs. 4,70,461/- was sustained on which the assessee is in appeal. The AO made addition on the ground that in the search year it was found that the appellant had claimed certain discounts which could not be verified. The AO also observed that during search some persons accepted discount and some did not accepted. Though there was no claim of discount during the year, the AO estimated the discount at Rs. 18,81,845/- and made addition thereof.

7. We also found that the Id CIT(A) observed that in the search year it was observed that discounts was being allowed and in earlier year the receipts were net of discounts. The assessee had changed the method of account of discounts. However, on the basis of conclusion drawn in the search year the CIT(A) observed that disallowance deserves to be made but the same was restricted to 25% of the total addition and accordingly addition of Rs. 4,70,461/- was sustained and balance addition was deleted.

8. We also observe that there is no claim of discount as such, and the addition was based on estimated discounts. In case there is no claim of such discounts the question of disallowance of any addition is uncalled for. **There is no case of suppression of receipts by showing lesser receipts.** Further if the receipts are shown net of discount the same cannot be said to be not verifiable as the same is directly linked to the corresponding receipts. The addition being made only on the basis of suspicion, therefore, we direct to delete the same.”

Thus, considering that fact that the assessee has given discount to the patient based on the treatment, duration of treatment of patient, the scheme of the various treatment adopted by the assessee. All these receipts are duly accounted in the books of account. The respective services bills raised by the assessee is not under dispute and thus, there is no reason to disbelieve the related discount expenses claimed by the assessee based on the systematic approach as per corporate scheme of the assessee given to the patient from whom receipt is already accounted. The bench noted that in the case

of the assessee's own case the bench noted that the following observations of the bench

**“There is no case of suppression of receipts by showing lesser receipts.** Further if the receipts are shown net of discount the same cannot be said to be not verifiable as the same is directly linked to the corresponding receipts. The addition being made only on the basis of suspicion, therefore, we direct to delete the same.”

The Id. DR did not controvert the finding of the bench in the case of the assessee's own case and also not brought on record any other judicial precedent contrary to the same. Thus, respectfully following the rule consistency we do not find any merits in this ground raised by the revenue. In the light of this observations ground No. 2 raised in ITA No. 167/Jodh/2022 stands dismissed.

12.6 The revenue has taken similar ground ITA No. 168 & 169/Jodh/2022 that of in ITA no. 167/Jodh/2022. Therefore, bench feels that it is not imperative to repeat facts, grounds and finding of the bench again in ITA no. 168 & 169/Jodh/2022 and the decision taken by the bench in ITA no. 167/Jodh/2002 shall apply mutatis mutandis in the appeal of the Revenue in ITA No. 168 & 169/Jodh/2022 being on the similar facts and grounds of the case (supra). In the light of these

facts the ground no. 2 of the revenue taken in ITA No. 168 & 169/Jodh/2022 shall stands dismissed.

13. The ground no. 3 raised by the revenue in ITA No. 167 to 169/Jodh/2022 is common for alleged addition on account of suppression of receipt of X-ray for an amount of Rs. 33,02,385/-. The fact related to this ground as emerges from the assessment order for A. Y. 2016-17 in ITA No. 167/Jodh/2022 is that day to day X-ray register was found in the search operation. The said register was seized as Exhibit-4 of Annexure-AS. In that details of X-rays done during the period of 4 months from October, 2016 to January, 2017 were taken from the IT cell of hospital. On verification of details of X-rays done during the period it is noted that worked out to 3839 (including IPD & OPD). Whereas on perusal of the register produced by the X-ray department of the hospital, the total Xray films used during the period worked out to 4530. Thus, the Xray films used during the period were 691 excess than the Xray done during the period. Statement of Shri Jayant Dhariwal, Xray technician was recorded. He stated that for one Xray done one sheet is used and sometimes two X-ray sheet in each X-ray bundle gets damaged or not

came clear result. The Id. Assessing Officer was not convinced with the reason so advanced and hold that receipts of 691 X-rays were not recorded in the books of account which worked out to be 18% of total X-rays shown in the books of account. Based on that finding, the Id. AO made an addition of Rs. 33,02,385/- as suppression of receipts by the assessee.

13.1 Aggrieved from the order of the Assessing Officer, assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“6.2 I have considered the facts of the case and written submissions of the 2 appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The AO observed that during the course of search action in the case of the appellant, day-to-day X-ray register was found and seized as Exhibit-4 of Annexure-AS wherein details of X-rays done during the period of 4 months from October 2016 to January 2017 were noted. On perusal of the details of total X-rays done during the period worked out to 3839, including IPD & OPD, whereas on perusal of the register produced by the X-ray department of the hospital, the AO observed that the total %- ray films used during the period worked out to 4530. Accordingly, the AD opined that the X-ray films used during the period were in excess by 691 than the X-rays done during the period.

(ii) Further the AO also observed from the statement of Sh. Jayant Dhariwal, X-ray Technician that one X-ray sheet was used for one X-ray and on an average two X-ray sheets in each X-ray bundle gets damaged. Further the details of X-ray done at Mewar Hospital, Bedla, Udaipur were also provided by the technician. In view of the above, the AO found that receipts of 691 X-rays were not recorded in the books of account which worked out to be 18% of total X-rays shown in the books of account. Since the appellant and the staff of the hospital could not produce the X-ray register of previous year during the course of search, the AQ held that the

hospital is in practice of not reporting true and correct figure of X-rays done in its regular books of account. Since, during the FY 2016-17 relevant to AY 2017-18, the share of X-ray receipts in total revenue at 50.62 Crores of the company was 3,87 %, therefore on this basis, the AO worked out the unaccounted X-ray receipts for the year under consideration at Rs. 33,02,385/- and added to the total income of the appellant.

(iii) Before me, the Ld. AR of the appellant has contended that the Ld. AO has made the addition on the basis of his findings given in the assessment order for AY 2011-12 wherein similar additions on account of suppression of X-ray receipts was made. It was brought to my notice that in first appeal in the AY 2011-12, the Ld. CIT(A) has allowed part relief on this account. Subsequently, the Hon'ble ITAT has finally decided this issue in which the entire addition made has been deleted.

(iv) The Ld. AR of the appellant has also contended that even on merits the said addition was not called for. The appellant has justified its stand in its detailed submissions reproduced supra.

(v) I have considered the arguments of the Ld. AR and the relevant findings of the Hon'ble ITAT in the case of the appellant for the AY 2011-12, wherein the issue of suppression of receipts on account of X-rays done by the hospital has been dealt which is based on the findings and the seized documents found during the course of search in the case of the appellant. The relevant findings of the Hon'ble ITAT are reproduced as under:-

"4. We also found from the record that the contention of the assessee is that the entire basis for addition was not justified. Based on the X-rays done during the 4 months period from October, 2016 to January, 2017, cannot be any basis for the addition in the year. Even various factors of wastages had not been considered, error of technician, package charges, scheme charges etc. has not been considered. Sometimes films are wasted due to calibration & technical issues and even repeat X-Rays are done, if the same is not done properly. The assessee also relied upon some judicial decisions in support that the estimated addition cannot be made.

5. We also observe that the addition is not based upon any material or evidence for the year under consideration and even during search nothing has been found related to the year. There is no basis for estimation of suppression of X-Rays. Even the technician during the search proceedings had stated that in every bundle certain X-Rays gets damaged, and further there are various other reasons by which X-Rays films can get damaged. There is no allegation that some X-Rays having been done, and there is no receipts issued or there is any suppression of receipts. Therefore, in view of the above facts and circumstances of the case, we find no merit in the addition sustained by the Id CIT(A) at Rs. 3,12,338/-, hence we direct the A.O. to delete the same."

(vi) Thus it is observed that the Hon'ble ITAT has given a categorical finding on the merits of the case of the appellant for the AY 2011-12 based on the same set of documents found during the course of search on the basis of which addition for the year under consideration has also been

made. The Hon'ble ITAT has held that based on X-rays done during the 4 months period cannot be any basis for the addition in the year under consideration. Further the various factors of wastage, error of technician, package charges, scheme charges etc. have not been considered by the AO. It has also been observed that there is no allegation that some X-rays having been done, there is no receipt issued or there is any suppression of receipts.

vii) In view of the above facts, it is observed that the AO has himself admitted that The evidences of X-rays done were found and seized for 4 months period from October 2016 to January 2017 i.e. for the FY 2016-17 relevant to AY 2017-18 and not for the year under consideration. Therefore, based on the finding for a part of the year and that to not pertaining to the year under consideration, the same cannot be applied for other years unless there is some material/basis found in each year which could establish that there was suppression of receipts. It is a well settled legal position that in post search assessment, addition can be made only for the period to which a particular unexplained seized document relates and no additions can be made merely on the basis of estimations, presumption, conjectures and surmises. Therefore, in absence of any evidence related to the X-rays done pertaining to the year under consideration, the AO is not found justified in notionally computing the X-ray receipts considering to be suppressed receipts. Accordingly, respectfully following the judgment of Hon'ble ITAT Jaipur in the case of the appellant for the previous AY 2011-12, the addition of Rs. 33,02,385/- is deleted, and the Ground of Appeal No. 3 is treated as allowed.”

13.2 The Revenue has challenged the above findings of the Id. CIT(A) in ground no. 3. In support of the ground the Id. DR representing the Revenue submitted that possibility of human probability decided by the apex court in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 shall squarely covered the case of the assessee. The Id. DR submitted the detailed finding of the Id. AO recorded in the assessment order be confirmed. The Id. DR also submitted that the addition has been made based on the details submitted by the assessee and the same is not disputed. The Id. AO

has also considered the damage receipts and at the same time assessee did not provide the details to support the damage receipt claim. Thus, the addition made by the AO is based on the detailed investigations of the records and the suppression of receipt estimated by the Id AO is purely based on the data submitted by the assessee. Therefore, the Id. DR prayed to sustained the addition.

13.3 On the other hand, the Id. AR appearing on behalf of the assessee supported the order of the Id. CIT(A) which based on decision of ITAT in assessee's own case where in the similar addition was deleted by the Coordinate Bench in assessment year 2011-12. The fact of that year and the year under consideration being similar the judicial consistency should followed in this year also. The addition made by the AO is on an estimate basis whereas the receipt offered and accounted by the assessee is based on actual billing done. The Id. AR based on the detailed reasoning submitted by the assessee in the order of the assessment argued to consider the same while deciding the issue on hand, for the sake of convenience the said arguments raised before the Assessing Officer is reproduced here in below :-

- “a. The Standard SOC rate list of Mewar for Radiology is enclosed at annexure 16 for your reference. These rates are entered into the HMIS software Palash. These rates are always on the higher side as discounts and negotiations are done on these rates. This discount is mainly on account of treatment under package.
- b. There is a variation in charging of x-rays and other radiology services according to different center and markets and offers provided in marketing campaigns and tie-ups with TPAs and Bhamasha Yojna. Moreover, there are many kind of X-rays done which have price difference. Also emergency charges after office hours are also charged at different rates.
- c. To have effective control on the system, the rate list is controlled by software and all the patients revenue is booked through the software only.
- d. The type of patients who undergo x-rays and other radiology services are OPD patients/IPD patients/Follow-up patients/ICU patients and such other Walk in patients who only come for such services. All patients coming to OPD & IPD are given a bill which will separately reflect the x-ray charges as per the Schedule of charges on Palash software, subject to the discount. This excludes patients of BSBY Scheme which is Govt. Scheme, ESIC & Govt. Servants who get treatment as approved rate by State Govt.
- e. The patients who have to undergo repeat x-ray due to wrong angle taken by the technician mainly because patients are of Road side Accidents & Trauma are also not charged for the repeat x-ray, as it is fault of radiologist who have not properly followed instructions of treating doctors.
- f. There is a wastage of 4% due to semi exposure & the procedure where every bag of x-ray 4-5 films are wasted due to calibration & technical issues. Couple of articles from internet is placed at annexure 17, which mention that industry norm for wastage in X rays is around 8%. Mewar's wastage is 3% approx., which is well below the industry norm Please note that all the medical equipments in hospitals are daily required to be calibrated in order to check their standard output accuracy. Such exercise is done daily morning at all centers.
- g. Your goodself had obtained a copy of x-ray films revenue for last 9 months and also taken evidences of x-ray technician JayantDhariwal & reflected 18% revenue suppression based on the films consumed & the closing stock. Please note that for the above period after verifying our records we found 1006 patients from Government Scheme (BSBY/ESIC/Rajasthan Servants) which were counted for x-ray film consumption but no bill was produced from the system as it is a part of package given by the Govt./ESIC/BSBY. Please find the policy attached as annexure 18.
- h. We are also attaching sample bills for the same period to substantiate our above point at annexure 19.
- i. The total number of patients which are from the excluded list and were still consuming x-ray films & not a part of receipt is attached at annexure 20. On an average every patient undergoes 3-4 x-rays during common orthopedic procedure, whereas in trauma this can go up to 15-16 x-rays. The data has been picked from the system, the copy of which your

goodself have already taken as a software backup during the search. A detailed reconciliation of the X ray films is enclosed at annexure 21.

j. In view of above, the Search team has ignored the basic facts as detailed above and therefore their finding is erroneous and therefore addition on this account cannot be made.”

13.4 The Id. AO failed to consider the above reasoning and has not dealt with the above reasoning while making the addition for the alleged suppressed receipts. The Id. AR also submitted that effect in each year is different and similar ratio cannot be considered for making receipts on estimate. To support the report, arguments the Id.

AR of the assessee has relied upon the following decisions:-

- DCIT vs. Bharat Trading Company in ITA No. 366 & 471/JP/1990.
- Omar Salary Mohamed Sait vs. CIT 37 ITR 151 (SC).
- Lal Chand Bhagat Ambica Ram vs. CIT 37 ITR 288.

13.5 We have heard the rival contention, perused the material available on record and gone through the judgment relied upon by both the parties to drive home to their respective contentions advanced before us. The Bench noted that the apple of discord in this ground is the estimation of the X-ray receipts, which is computed on the consumption of X-ray films viz-a-viz the receipts offered by the assessee. The Id. AO noted that in the year under consideration 691 X-ray films were either not billed or suppressed the receipt of the same. The Bench noted that to support the addition made by the

Assessing Officer that the assessee is corporate entity and has effected control on the system, the rate and list of various treatment provided by the assessee are at pre-determined rate. The assessee operates at various location and there is a variation in charging of X-ray and other radiology services according to different centre and markets and offers provided in marketing campaign and tie-ups with TPAs and Bhamasha Yojna. Therefore, merely the billed viz-a viz some X-ray suppression on receipts cannot be considered as unrecorded receipts of the assessee the books of account of the assessee are maintained in computer and there is no incriminating material relating to this aspect has been found in this search operation. In the absence of any incriminating material or any supporting evidences the addition made purely on the said information of consumption of X-ray sheet is not sustainable. The Similar view is taken in this case of the assessee by the Coordinate Bench in the assessment year 2011-12 and the relevant observation on this issue is reiterated here in below:-

“3. Ground No. 3 of the appeal relates to part addition sustained on account of X-Ray receipts. We have heard the rival contentions and carefully gone through the orders of the authorities below and found from the record that the AO made addition for Rs. 3,87,730/- which was sustained at Rs. 3,12,338/- and relief was allowed at Rs. 75,392/- by the Id. CIT(A). The AO observed that during the course of search, X-ray done during the period of 4 months from October, 2016 to January, 2017 it was

found that X-Ray receipts were for 3839 whereas X-Ray consumed was 4530, and as such there was excess consumption of 691 films. On these hypothesis it was observed that Xrays receipt in total was 3.87%. On these facts for the search year for financial year 2017-18 suppression of receipts was estimated at Rs. 3,87,7301-. The CIT(A) allowed deduction for 3% on account of wastages and allowed relief of Rs. 75,392/- and sustained balance addition of Rs.3,12,338/-.

4. We also found from the record that the contention of the assessee is that the entire basis for addition was not justified. Based on the X-rays done during the 4 months period from October, 2016 to January, 2017, cannot be any basis for the addition in the year. Even various factors of wastages had not been considered, error of technician, package charges, scheme charges etc. has not been considered. Sometimes films are wasted due to calibration & technical issues and even repeat X- Rays are done, if the same is not done properly. The assessee also relied upon some judicial decisions in support that the estimated addition cannot be made.

5. We also observe that the addition is not based upon any material or evidence for the year under consideration and even during search nothing has been found related to the year. There is no basis for estimation of suppression of X-Rays. Even the technician during the search proceedings had stated that in every bundle certain X-Rays gets damaged, and further there are various other reasons by which X-Rays films can get damaged. There is no allegation that some X-Rays having been done, and there is no receipts issued or there is any suppression of receipts. Therefore, in view of the above facts and circumstances of the case, we find no merit in the addition sustained by the Id CIT(A) at Rs. 3,12,338/-, hence we direct the A.O. to delete the same.”

As it is the normal practice in the medical profession that once the patient is admitted he may have to undergo for X-ray many a time and he may be billed accordingly. It is also happen that due to operator error the result not up to the mark or the angle is not correct the expert order to rework the X-ray and in that process there are also chances that the film gets damaged also. Hence, the conspectus explanation granted by the assessee is to be considered and therefore, the consumption of the X-ray film with that of the overall billed amount no

addition can be made. In the light of these fact and analysis of the various factual aspect of the case we respectfully the following decision of the Coordinate Bench in the case of the assessee for assessment year 2011-12 we do not find any force in the arguments of the Revenue and we are of the considered view that there is no fault in the detailed finding of the Id. CIT(A). Based on these observations ground No. 3 raised by the Revenue is dismissed in ITA no. 167/Jodh/2022.

14. The revenue has taken similar ground no 3 in ITA No. 168 & 169/Jodh/2022 as that in ITA no. 167/Jodh/2022. Therefore, bench feels that it is not imperative to repeat facts, grounds and finding of the bench again in ITA no. 168 & 169/Jodh/2022 and the decision taken by the bench in ITA no. 167/Jodh/2002 shall apply mutatis mutandis in the appeal of the Revenue in ITA No. 168 & 169/Jodh/2022 being on the similar facts and grounds of the case (supra). In the light of these facts ground no. 3 of the revenue taken in ITA No. 168 & 169/Jodh/2022 shall stands dismissed.

15. In ground No. 4 raised by the Revenue in ITA No. 168/Jodh/2022 is on account of alleged unaccounted cash deposit during demonetization period for an amount of Rs. 1,84,36,500/-. The fact related to this addition emerges from the assessment order is that in the assessment proceedings the Id. AO noted that the assessee company has deposited cash of Rs. 1,84,36,500/- in Axis Bank in A/C No. 912020060853932 during the period on 10.11.2016 to 30.12.2016. The demonetization currency deposited period the period is tabulated here in below :-

S. No.	Denomination notes	No. of notes	Amount
1.	1000	6113	61,13,000
2.	500	24647	1,23,23,500
		Total	1,84,36,500/-

On this issue the of deposit of demonetized currency, the managing director of the assessee company vide reply to question No. 31 to 34 of his statement stated that payment was received in demonetized currency from poor people and other people who could not have banking facility and new currency notes and old high denomination notes were received from the patient and deposited directly in assessee's Axis bank account along with patient's ID. The details of patients who received treatment in hospital along with their Pan card and aadhar Card were taken on record. In the assessment

proceedings, the assessee submitted that the amount was collected from the patients for medical treatment and for pharmacy and medicines that were sold based on the prescription of the medical doctors, when the patient is under treatment. The period was so under pressure that patients were confused and were facing the acute shortages of currency. As patient were coming from rural background and poor status of financial affairs, absence of changing facility even the hospital has as per relation guideline accepted the currency. The patients from whom money collected were critically ill, requiring immediate surgery/treatment for which all relevant documents were taken on record by the assessee and in most of the case the funds were deposited in the bank account either by them or duly supported by the Pharmacy bills. Thus, identity of patients is not under dispute as the relevant receipt and treatment taken is already on record. The assessee submitted the detailed statement of the SBNs deposited in relations to various patients for sale of pharmacy and for the medical bill were given vide Annexure-6 in the assessment proceedings. The simple affidavit of patients who had under gone treatment were also filed. The Id. AO considered the reply of the assessee but not found satisfactory and hold that the assessee did not discharge the burden

of proving the genuineness of claim of deposit of the SBNs. The details provided in the form of PAN and aadhar were not considered as reliable evidence. Based on these observation the Id. AO made an addition of Rs. 1,84,36,500/- as unaccounted of cash in the income of the assessee.

15.1 Aggrieved with the above addition, the assessee preferred an appeal before the Id. CIT(A) and on this issue the relevant findings of the Id. CIT(A) is reiterated here in below:-

“9.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The brief facts related to the issue are that during the search action u/s 132 of the Act, on perusal of cash book, it was found that cash balance as on 08.11.2016 was at Rs. 61,80,111/- whereas the assessee company has deposited cash of Rs. 1,84,36,500/- in Axis Bank during the period 10.11.2016 to 30.12.2016. It was further observed that 6113 number of notes of 1000 denomination notes amounting to Rs. 61,13,000/- and 24647 number of notes of 500 denomination notes amounting to Rs. 1,23,23,500/- totaling to Rs. 1,84,36,500/- were deposited in the aforesaid bank account.

(ii) In this regard, the Managing Director of assessee company Sh. Manish Chhapparwal in his statement recorded during the search stated that the payment was received in demonetized currency from poor people and other people who did not have banking facility and both new currency notes and old high denomination notes received from patients were deposited directly in the company's Axis Bank Account alongwith legal document of patient's ID. It was contended that the details of patients who received treatment in the hospital is available in the bank alongwith their PAN Card/Aadhar Card.

(iii) However the AO observed that during the demonetization period, Private Hospitals were not allowed to receive payment in old demonetized currency notes. The AO further contended that the assessee has neither filed any confirmation from any such patients who made the payment in old

currency notes nor produced any such patient for examination. The AO held that the assessee was unable to prove the genuineness of his claim and therefore treated the amount of Rs. 1,84,36,500/- as unexplained cash of the appellant chargeable to tax under section 115BBE of the Act.

(xiii) Before me, the Ld. AR of the appellant has contended that the amount of Rs. 1,84,36,500/- was received against the revenue receipts of the hospital and argued that the Ld. AO has given no reasonable basis for making this addition, despite all details of such deposits submitted during the assessment proceedings. It was contended that the entire amount so deposited was received from the patients who were treated by the hospital during the period when demonetization was in force and the entire deposits in the bank account is verifiable from the regular books of account. It was contended that the complete patient-wise details were submitted and there is no suppression of income.

(xiv) I have considered the arguments of the Ld. AR of the appellant and assessment order and I find that the assessee had furnished the details of cash deposited in the bank during the FY 2015-16 and 2016-17 before the AO which forms part of the assessment order, on perusal of which it is found that there is marginal variation in FY 2016-17 with reference to FY 2015-16 which is reproduced as under:

	Amount in Rs.	
	FY 2015-16	FY 2016-17
Cash Sales	453.7 mn	428.6 mn
Cash deposited	384.4mn	388.9mn
Cash used for business	69.2mn	39.7mn

Thus, on analysis of the above chart, I find that the cash sales during the demonetized period vis-à-vis cash sales in the earlier year has rather decreased in the year under consideration. Further, though the cash deposited during the demonetization period is slightly higher than the previous year, but it cannot be considered as being exceptionally high to be alarming. Lastly, the cash used for business has also decreased during the year under consideration when compared to the previous year. Accordingly, the contention of the AO that these cash sales are not real sales and the assessee has tried to introduce his own unaccounted money in the garb of cash sales does not appear to be justified.

(xv) Further, I find that the assessee has furnished complete details of the patients alongwith their complete identity in the form of PAN and Aadhar Card. The assessee has also submitted the Circular issued by the Government of India to the AO wherein the Pharmacies were allowed to accept the specified bank notes upto 24.11.2016 from the medicines sold on the prescription by the medical doctors. It was also brought to my notice that during the course of assessment proceedings, a detailed statement of SBNs deposited in relation to various patients for sale of pharmacy and for the medical treatment was submitted and the amount so received from the patients were duly supported by evidence in the form of affidavit from hospital and medical history, evidencing the fact that the patients were

critically ill and underwent treatment in the hospital. It was submitted that the cash deposited in the banks have been duly recorded in the books of accounts and taken in the revenue for the FY 2016-17. Thus as the amount has been recognized in the revenue, it automatically forms part as income in the Profit & Loss Account and therefore it cannot be considered that there is any leakage of revenue.

(vii) It is observed that the AO has treated the cash deposited in the banks during the demonetization period in demonetized currency as unexplained cash although the nature and source of the cash deposits being proceeds arising out of cash sales and treatment of patients etc. is patently evident from the entries in the audited books of account of the Assessee. It is not the case of the A.O. that the cash deposited in the bank during the demonetization period was in excess of what was available in the cashbooks. The fact that the cash deposits in banks were sourced out of cash sales and receipts from patients is evident from the entries in the cashbooks. The books of account of the appellant have been audited by an independent reputed auditor. The cash sales & receipts are duly supported by relevant bills, which were produced before the AO in the course of assessment proceedings, and nothing adverse in connection therewith was noted by the AO.

(viii) On perusal of the details filed by the appellant before the A.O., it is observed that all the books of accounts were produced by the appellant before the A.O. It is not the case of the A.O. that the appellant did not have the sufficient stock for making the pharmacy sales. The Id. AO did not make any enquiry on the material submitted by the appellant. He neither found any concrete and conclusive evidence of back dating of the entries of sale, evidence of bogus sales, evidence of bogus purchases, and non-existing cash in the books of account. Infact the AO did not even reject the books of accounts of the appellant under the provision of section 145(3) of the Act.

(ix) Thus the Ld. AO has not brought any material on record to establish that the cash deposited in the bank in demonetized currency was unexplained. I find that merely giving some finding that no confirmation of such patients was furnished by the appellant is not alone sufficient to justify the addition. There cannot be any reason for disbelieving the genuineness of the cash received from the patients by the appellant on the above reason. Further, I also find that cash receipts in the year under consideration is not of abnormal amount and is found to be commensurate with the past trends. I am of the view that the initial burden cast on the appellant is discharged and therefore it cannot be disputed that the appellant does not have all the necessary documents to prove the genuineness of cash deposits, and therefore, the income so assessed is not tenable in the eyes of law.

(x) In view of the facts of the case, it is evident that the appellant has duly substantiated its claim from the documentary evidence and also with the facts which are duly supported with its own previous history and trend. Further the books of accounts have not been rejected. Accordingly, the

action of the AO in holding that the appellant could not substantiate the cash receipts with documentary evidence is not based on correct appreciation of the facts. Therefore, I find that the AO was not justified in making an addition of Rs. 1,84,36,500/- and consequently the aforesaid addition is directed to be deleted. As regards applying the provisions of section 115BBE of the Act on the additions made, it is held that since the addition on account of alleged bogus cash deposits has been deleted by me, therefore no separate adjudication is required on this issue raised by the assessee as it will only be academic in nature. Accordingly, the Ground of Appeal No. 6 is treated as allowed.”

15.2 As the Revenue feeling dissatisfied with the above findings of the Id. CIT(A) has challenged the deletion of addition by the Id. CIT(A) by way of filing an appeal and taking ground No. 4. Apropos to this ground so raised by the Revenue the Id. DR submitted that the assessee submitted the PAN and Aadhar ID were not considered, as the period was covered under operation of clean money, and considering the period of demonetized currency notes and therefore, the assessee has deposited the SBN against policy and the purpose was the period is to unearth unrecorded SBNs. Therefore, the contention raised by the Id. AR of the assessee were even though backed by evidence were not considered by the Assessing Officer. Based on these argument Id. DR relied on the reasoned findings of the Assessing Officer and submitted that the addition deleted by the Id. CIT(A) should be reversed and the findings of the Assessing Officer be upheld.

15.3 On the other hand, the Id. AR appearing on behalf of the assessee submitted relied on the reasoned findings of the Id. CIT(A). He further submitted that while deleting the addition in the case of the assessee the Id. CIT(A) has rightly considered the evidence of treatment of the patient supported by Aadhar and PAN as supportive evidence. The Id. AR appearing on behalf of the assessee the Id. AO cannot be considered the cash receipts as income and demonetized money as in addition to that receipt already accounted upon which the Income Tax Act has already been charged. The same receipt cannot suffered double taxation one as receipt and other uncounted receipt. The Id. AO failed to appreciate that aspect of the case. The Id. AR of the assessee thus relied on the reasoning given before the AO as well as the finding of the Id. CIT(A) and detailed submission given before the lower authorities. The Id. AR summarily submitted that the cash receipts accounted during the demonetization period if compared to earlier year and the cash used in business decrease compared to last year. There are no observation of the Id. AO that the assessee has deposited the cash without placing on the record the relevant records and cash deposited is duly supported by the evidences. There are no observation of the high ratio of profit thereby it can be presumed that

the cash deposited by the assessee is unaccounted cash. There is no defect pointed out in the records and books produced by the assessee. The cash receipts accounted in the books is not under disputed then double addition cannot be made. The details relating to the treatment given read with the identity proof of the patients were submitted. Even the bills for pharmacy raised were also submitted that it is not under dispute that the assessee running of pharmacy also they were empower to receipt of SBNs not during the demonetization period. Thus, if all the facts put together once the revenue has not pointed any defects and accepted the income of the assessee making again the addition of SBNs in addition to what is accounted in the regular books of account cannot be a made as unexplained receipts. Therefore, the provisions of Section 69 of the Act cannot be invoked in this case and based on this arguments he supported the detailed finding of the Id. CIT(A).

15.3 We have heard the rival contention, perused the material available on record and gone through the judgment relied upon by both the parties to drive home to their respective contentions advanced before us. The apple of discord in this case cash deposited

by the assessee in the bank account of specified bank notes in the form of 500 and 1000 of Rs. 1,84,36,500/- whether the same is unexplained money or not. It is not under dispute that the assessee has considered the impugned amount received as cash receipts and there is no dispute on that receipt already offered by the assessee. The Bench also noted that the assessee is running of pharmacy unit and the government has released by the adversary that specified bank notes to this pharmacy units on account of purchase of medicines is permitted and other items on medical treatment. The Bench also noted that the assessee has furnished the details of bills raised along with identity of the patient who submitted SBNs. The details is supported in the form of PAN and Aadhar ID and the same is not under dispute. The Bench noted from the records that the assessee has already offered the said receipts in the accounts maintained by the assessee. The Bench also noted that the cash receipts in the form in the SBNs are not unusual as compared to the last years. The cash receipt for the similar period on comparison not reported any unusual transaction and no such allegation made by the lower authority doubting the cash receipt in the ordinary course of services rendered by the assessee. Even the identity and the

treatment given to the patient is duly recorded and there is no adverse observation on this in the regular books of account of the assessee. Revenue cannot tax twice the same receipts, as in the regular books of account this cash receipt is duly recorded as receipt. Based on these observations of the facts we are of the considered view that the amount deposited in the bank account through SBIs addition cannot be sustained also from the record that the books of account of the assessee are maintained and audited in the regular course of profession and in the absence of any default on this books addition is not sustainable. The Bench also noted that the Id. AO did not bring on record any concrete and conclusive evidence of back dating of entries of cash receipts or bogus receipt and not disclosing of the identity and treatment so offered. The Bench also noted that the books of account are regularly audited under the Company Act under the Income Tax Act. There is no adverse observation in the audit report and this audited of books of account had not been rejected u/s 145(3) of the Act. Therefore, we hold that the assessee has already discharged this burden and proved in the cash deposited in the bank account in the form of demonetization currency was received and explained the cash receipt for which the same has already been accepted by the

Revenue while finalizing the assessment of books of account without mentioning any default and the assessment has been completed u/s 143(3) r.w.s. 153A of the Act Therefore, we see no reason to pry in the detailed findings recording by the Id. CIT(A). In the light of these observation ground No. 4 raised by the Revenue in ITA No. 168/Jodh/2022 dismissed.

16. In ITA No. 169/Jodh/2022 vide ground No. 4, the Revenue has challenged the deletion of addition of Rs. 15,00,000/- being advance for outsourcing medical shop at Mandsour Center (MP) on protective basis. The relevant fact on the issue as emerges in the assessment order is that during course of search action u/s 132 of the Act at the residential premises of Shri Manish Chhapparwal cash amounting to Rs. 22,44,300 was found and Rs. 2,46,700/- was found from the bag of his wife Smt. Devashree Chapparwal. Thus, total cash of Rs. 24,91,000/- was found out of that cash amounting to Rs. 19,50,000/- was seized after considering the cash in the hands of Rs. 5,14,712/- Mewar Hospital Pvt. Ltd. and to meet out daily expenditure. The Id. AO made an addition of Rs. 15,00,000/- in the case of Shri Manish Chhapparwal however to protect the interest of the Revenue the

addition to the extent of Rs. 15,00,000/- also made in the case of the assessee as protective basis as it has been claimed to be related to Mewar Hospital Pvt. Ltd., against outsourcing of medical shop at Mandsour Center (MP).

16.1 Aggrieved from the said addition made on protective basis, the assessee challenged the addition before the Id. CIT(A). Apropos to this ground the relevant finding of the Id. CIT(A) is as under:-

“9.2 I have considered the facts of the case and written submissions of the appellant as against the observations/findings of the AO in the assessment order for the year under consideration. The contentions/submissions of the appellant are being discussed and decided as under:-

(i) The fact remains that during the course of search action, cash amounting to Rs.22,44,300/- was found from the residential premises of Sh. Manish Chhapparwal, M.D. of the assessee company and an amount of Rs. 2,46,700/- was also found from the bag of Smt. Devashree Chhapparwal, wife of Sh. Manish Chhapparwal. Thus, a total cash of Rs. 24,91,000/- was found out of which an amount of Rs. 19,50,000/- was seized, being treated as unexplained. Out of the aforesaid amount, Rs. 15,00,000/- was claimed to be related to Mewar Hospital Pvt. Ltd., by Sh. Manish Chhapparwal in his statement recorded during the course of search, against outsourcing of medical shop at Mandsaur Centre(M.P.). On this issue, an appropriate addition has been made by the AO in the case of Sh. Manish Chhapparwal on substantive basis and in order to protect the interest of revenue, addition to the extent of Rs. 15,00,000/- which was claimed to be related to Mewar Hospital Pvt. Ltd. has been made in the case of the assessee company.

(ii) Before me, the Ld. AR of the assessee has contended that the addition so made is on protective basis only and this addition has been also made in the hands of the Director, Sh. Manish Chhapparwal and therefore, this addition may be deleted here. The assessee has also furnished his submissions on merit in the foregone paras.

(iii) I have duly considered the submissions of the Ld. AR of the assessee and the facts available on record and it is observed that the assessee has not been able to explain the source of cash and has failed to reconcile it with the books of accounts. Further during the course of search, the

branches of the hospital of the assessee group were also covered under survey proceedings wherein it was admitted by the various branches that the cash collection was deposited by these branches in the local banks and the cash was not brought at Udaipur. In these facts and circumstances of the case, the cash of the branches cannot be considered to be available at the residence of Sh. Manish Chhparwal at Udaipur. Accordingly, during the course of search, no set off of the cash of various branches of the hospital, which were outside Udaipur, was given by the search team and only a set off of Rs. 5,14,712/- was given after considering the cash in hand of Sh. Manish Chhparwal and his wife. Further the contention of Sh. Manish Chhparwal that certain cash belonged to his mother is also an afterthought as no such explanation was given by him during the course of search and the fact being that his mother was not staying with him in his house. Further no evidence was found during the course of search which could justify the stand of Sh. Manish Chhparwal. Thus I find that Sh. Manish Chhparwal was not able to explain the source of the cash found and seized during the course of search with any cogent evidence, either before the AO or before me and therefore, the addition of Rs. 19,50,000/- made by the AO as unexplained cash was sustained by me in the hands of Sh. Manish Chhparwal, Director of the assessee company. Since the addition on account of cash found has been sustained by me in the hands of the Director of the assessee company, therefore, the addition of Rs. 15,00,000/- on account of the same cash found at the residence of the Director, made by the AO in the hands of the assessee company on protective basis, cannot survive. Accordingly, the protective addition of Rs. 15,00,000/- is directed to be deleted and the Ground of Appeal No. 7 is treated as allowed.”

16.2 As the Revenue is not satisfied from the findings of the Id. CIT(A) deleting the addition made in the case of the assessee on protective basis to the extent of Rs. 15,00,000/-. Revenue has challenged the action of the Id. CIT(A). In support of this ground the Id. DR representing the Revenue submitted that the appeal in the case of Shri Manish Chhparwal is pending before the ITAT. Therefore, he supported the detailed findings of the Id. AO and prayed to sustain the protective addition in the interest of justice.

16.3 On the other hand, the Id. AR appearing on behalf of the assessee submitted that no such addition can be made and sustained on protective basis at this stage. Once the same has already been considered in the case of Shri Manish Chhapparwal by the Id. CIT(A) and there is no reason to sustain the addition on protective basis in the hands of the assessee so the action of the Id. CIT(A) in deleting the addition is purely on considering all aspects of the case in the hands of the assessee. Based on these argument Id. AR supported the order of the Id. CIT(A).

16.4 We have heard the rival contention and perused the material available on record. The Bench noted that the addition under dispute is made on account of cash seized at the residence of the assessee for an amount of Rs. 24,91,000/- out of that addition to the extent of Rs. 15,00,000/- was made in the case of the assessee on protective basis, considering the fact that Shri Manish Chhapparwal has claimed that it relates to the outsourcing of medical shop at Mandsair Centre (MP). Even though based on the explanation the same has been considered in the case of Shri Manish Chhapparwal as unexplained. To

protect the interest of the revenue the same is also added on protective basis in the case of the assessee. As it is transpired that the revenue has already added the said amount on substantive basis in the case of Shri Manish Chhapparwal. Even in the proceeding before the Id.CIT(A) the said addition is confirmed in the hands of Shri Manish Chhapparwal. We also note that during the course search proceeding in the statement recorded of Shri Manish Chhapparwal has already submitted that the cash to the extent of Rs. 15,17,080 as appearing the books of the following entity:

Name of Person	Amount
M/s Mewar Hospital Private Limited	13,96,344
Dr. Manish Chhapparwal	1,17,000
Dr. Devashree Chhapparwal	3,636
Total	15,17,080

The Id. CIT(A) has sustained the addition in the case of Shri Manish Chhapparwal and since Shri Manish Chhapparwal has challenged the decision of the Id. CIT(A) before the ITAT we do not see any reason to sustain the protective addition in the case of the assessee at this stage. The Revenue has challenged the action of the lower authorities in case of the assessee which is the protective addition the concept of protective and substantive addition is not in the provisions of the Income Tax Act but generally the Revenue when the alternative claim

are being made the addition are made on protective and substantial basis so as to make the alive the issue. Here we note that till the second stage of dispute of the addition has been sustained by the Revenue in the case of Shri Manish Chhapparwal to the extent of Rs. 15,00,000/- and before us the Revenue did not bring anything contrary to the findings of the Id. CIT(A) in the case of Shri Manish Chhapparwal so as to support the reasons as to why the said protective addition in the case of the assessee should sustain. Once it is already considered at the two level at the Assessing Officer and the Id. CIT(A) that related to amounting pertains to Shri Manish Chhapparwal in absence of the revenue not demonstrating before us in support we confirmed the reasoned finding of the Id. CIT(A) and we see no reason to sustain the addition. Considering these observation, the ground no 4 in ITA no. 169/Jodh/2022 is dismissed.

In the result the appeal of the assessee in ITA No. 139 to 142/Jodh/2022 are allowed and ITA no. 143 and 144/Jodh/2022 are partly allowed. Whereas the appeal of the revenue in ITA No. 167 to 169/Jodh/2022 stands dismissed.

Order pronounced under rule 34(4) of the Appellate Tribunal Rules,  
1963, by placing the details on the notice board.

Sd/-

Sd/-

(Dr. S. Seethalakshmi)  
Judicial Member

(Rathod Kamlesh Jayantbhai)  
Accountant Member

Dated :12/10/2023

*\*Ganesh Kumar, PS*

Copy to:

1. The Appellant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR
6. Guard File

Assistant Registrar  
Jodhpur Bench