IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI G.S. PANNU, HON'BLE VICE PRESIDENT

AND

SHRI CHALLA NAGENDRA PRASAD, HON'BLE JUDICIAL MEMBER

ITA NOS. 794, 795, 796, 797, 798 & 799/DEL/2017
A.YRS. : 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

ACIT, CENTRAL CIRCLE-8, NEW DELHI	Vs.	M/S ADVANTAGE FASHION PVT. LTD., 220, OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI – 110 020 (PAN: AAFCA1607F)
(Appellant)		**(Respondent)**

AND

C.O. NOS. 35, 36, 37, 38, 39 & 40/DEL/2022
A.YRS. : 2006-07, 2007-08, 2008-09, 2009-10, 2010-11 & 2011-12

M/S ADVANTAGE FASHION PVT. LTD., 220, OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI – 110 020 (PAN: AAFCA1607F)	Vs.	ACIT, CENTRAL CIRCLE-8, NEW DELHI
(Appellant)		**(Respondent)**

Assessee by	Shri M.P. Rastogi, Adv. & Shri Deepak Malik, Adv.
Department by	Sh. H.K. Choudhary, CIT(DR)

Date of Hearing	09.11.2023
Date of Pronouncement	30 .11.2023

ORDER

PER G.S. PANNU, VP:

The captioned are six Appeals filed by the Revenue and six Cross Objections filed by the Assessee against the separate orders of the

Ld. CIT(A)-24, New Delhi pertaining to assessment years 2006-07 to 2011-12 respectively.

2. At the time of hearing, it was a common point between the parties that the issues involved in the captioned six appeals of the Revenue are substantively common and otherwise, covered by the decision of the Coordinate Bench in one of the group companies of the assessee. For this purpose, reliance has been placed on the decision of the Tribunal in the case of SEH Realtors Ltd. vide ITA No. 2686 to 2692/Del/2017 & Others dated 20.04.2023 for assessment years 2007-08 to 2013-14, a copy of which has been placed on record.

Assessment year 2006-07(Revenue's Appeal)

3. In order to appreciate the controversy and the relevant facts, we first take up the Appeal of the Revenue which is against the order of the CIT(A) dated 29.11.2016 for the Assessment Year 2006-07 wherein, the solitary issue relates to an addition of Rs. 5,75,00,000/- made by the Assessing Officer on account of unaccounted interest, which has since been deleted by the CIT(A). Hence, the appeal of the Revenue before us.

3.1 Briefly put, the relevant facts are that a search and seizure action under section 132(1) of the Act as well as Survey action under section 133A of the Act was carried out in the premises of one Vatika Group of Cases on 16.01.2013 wherein certain incriminating documents were found and seized. Notably, on a prior date in 2011 search and seizure as also survey actions were also carried out by the Department in the premises of a Group styled 'Sh. KS Dhingra, GS Dhingra & others' and / or UK Paints

Group, wherein also certain documents were seized / impounded. The Assessee before us is a concern belonging to the group known as Dhingra Group or the UK Paints Group. In the impugned proceedings, the sum and substance of the case made out by the Income Tax Department is that on the basis of the seized documents, it emerged that the assessee company alongwith the other group entities had actually entered into the loan agreements with the entities of Vatika Group, whereas such transactions were otherwise camouflaged as transactions of sale and purchase of properties. The Assessing Officer has referred to such seized / impounded materials at some length in the assessment order and has ultimately come to a finding with respect to two deals styled 'NH Deal' and 'Jaipur Deal', that the same were not in the nature of property transactions, but were loan transactions from which assessee had suppressed income to the tune of Rs. 5.75 crores for the period relevant to the assessment year under consideration.

3.2 Pertinently the assessee and other entities in the Group had reflected such transactions as purchase and sale of land attracting capital gains. The impugned assessment was initiated by the AO by issuance of notice under section 147/148 of the Act on 30.03.2013 and thereafter finalized the same on 28.03.2014 whereby the addition of Rs. 5.75 crore has been made to the returned income.

3.3 The assessee carried the matter in appeal before the CIT(A) who has since affirmed the position as canvassed by the Assessee. The CIT(A) considered the question as to whether the AO had any evidence relating to the transactions between the assessee and the Vatika Group which could prove that the transactions were not really

property purchase transactions, but lending transactions, on which interest has been earned by the assessee. The CIT(A), in a detailed order, concluded that none of the evidences referred to by the AO, either individually or collectively can be said to indicate that the transactions between the assessee and Vatika Group were actually loan transactions. The relevant discussion of the CIT(A) reads as under:-

> *4.2.1.4 I have considered the contents of the assessment order and the submissions of the appellant. At the outset, it may be noticed that the A.O. has noted in the assessment Order that four parties viz., UK Paints Pvt. Ltd., SEH Realtors Pvt. Ltd., Uttam Enterprises P. Ltd and the appellant have entered into transactions with Vatika Landbase Pvt. Ltd ("Vatika") by way of separate agreements. Even the dates of agreements are different. It would be useful to consider the terms of the agreement between the appellant and Vatika, as it is the terms of the agreement entered into between two parties that would primarily throw light on the actual nature of the transaction intended between them, and then to see whether the seized material/statements relied upon by the A.O. provide a view in line with the conclusion of the A.O.*
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> *4.2.1.5 In the appellant's case, it is seen that it entered into an agreement with Vatika on 11.06.2005, called "Memorandum of Understanding". This agreement involves the appellant and the Vatika group, and makes no reference to any other party of either Span group, Shahi group of U.K. Paints group. Even the date of the agreement is different from the dates of agreements entered into by the other parties with Vatika. The key features of this agreement are as follows :*
>
> *(i) It is entered into between Vatika as the "Seller", the appellant as the "Buyer" and Sanskar Buildtech P. Ltd & Nakshatra Properties P. Ltd as "Confirming Parties". The "Confirming Parties" (which are wholly owned by the Vatika Group) are owners of certain tracts of land near Jaipur, and have given the "seller" the exclusive rights to*

develop, sell and market the residential/commercial plots and flats on the said land in the name of "Vatika City".

(ii) Detailed development plans for the project have been submitted for securing of sanctions, and that the requisite sanctions were expected to be received within 3 months.

(iii) The seller is willing to sell residential plots, which are free of all encumbrances, to the appellant @ Rs.3400/- p. sqyd, inclusive of development charges and license fees. Accordingly, the parties agreed that the appellant would purchase 44,120 sq. yds, valued at Rs. 15,00,00,000/-

(iv) Rs. 15,00,00,000/- was paid by the appellant by cheque dated 11.06.2005.

(v) Each of the residential plots purchased by the buyer totalling 44,120 Sq. Yards shall be of such measurement location as may be identified, preferred and communicated by the purchaser, and that communication shall be form part of this MOU.

(vi) It was irrevocably and unconditionally agreed that, at the option of the purchaser (the appellant), the seller (Vatika) would, at the end of 2 years, purchase back the plots @Rs.5100/- . In case Vatika fails to discharge this obligation, the appellant had the right to seek specific performance of the same.

(vii) However, if the value of the property increases beyond Rs.5100/- p. sqyd., the appellant had the right to sell the property to any party as per its own will (subject to the restriction that this option could be exercised only 4 months after the plans were sanctioned).

(viii) In case the appellant chooses to pick up "preferential location" plots, it would have to pay an additional Preferential Location Charges (PLC), subject to a maximum of 15% of the land area.

(ix) The appellant would receive all deeds, documents, agreements, conveyance, mutual records etc evidencing title of the property.

(x) In addition, Vatika would offer as collateral security, a different tract of land admeasuring 15 acres having

market value of Rs. 15,00,00,000/- to securitise the sum of Rs.15,00,00,000/-. These title deeds would be released upon the appellant (i) taking the option of retaining the plots after 2 years (ii) handing over the plots at the surrender price of Rs.5100/- after 2 years or (iii) selling 20% or more of the area after the 2 years period to the outside party

(xi) Initially, Vatika has offered 25.596 bighas to secure Rs. 15,00,00,000/-;

(xii) Possession of plots would be handed over upon completion of development, latest by 31.3.2006

(xiii) In the event of Vatika failing to carry out the development of these plots the entire sum of Rs.15 crores plus 25% interest till date of re-payment would be payable to the appellant.

4.2.1.6 Subsequently, on 5.06.2007, on the request of Vatika, all the parties to the MOU dated 11.06.2005 entered into an "MOU extending the date of re-purchase", wherein the last date of re-purchase date was changed to 10.06.2009. If Vatika were to repurchase the plots at any time on or before 10.06.2009, the revised rate payable was agreed @ Rs.9,250/- p. sqyd. A new provision was inserted i.e., the appellant had the liberty to sell the plots to any outside party even before 10.06.2009. All other terms and conditions remained unchanged. The sale of the plots to the appellant was additionally confirmed by Vatika and well as the owners of the land. The exact plots which were subject matter of the agreement were identified in this schedule to this extension MOU.

Subsequently, vide an agreement dated 11.06.2009, on the request of Vatika, the re-purchase date was again extended to 10.06.2009, as Vatika could not arrange the funds. The re-purchase price was re-fixed at the price of Rs.41,83,74,760/- plus 18% calculated on annualized quarterly compoundable basis till the date of actual re-purchase, so as to compensate the buyer (appellant) to any delay in completing the transaction. It is mentioned that the appellant has made full and complete payments of the cost of the plots (including preferential location

charges). It was further agreed that till 10.06.2010, the appellant has full liberty to sell/dispose of / transfer the said plots to any other third party, as the agreement did not limit its liberty to dispose of the plots. To secure its obligation, Vatika also provided PDCs dated 11.06.2010 for the amount of sale value of Rs. 49,89,19,326 is @ Rs.9,250/-. Vatika's obligations were further secured by a personal guarantee of Sh Anil Bhalla, along with a PDC for Rs. 49,89,19,326/- (being the previously agreed price @ Rs.9250/- p. sq.ft plus 18% calculated on annualized quarterly compoundable basis till 18.5.2010). The appellant agreed to execute the necessary documents to transfer the property to Vatika and / or its nominees on receipt of the final sale amount. In the event of dishonor of this cheque, Vatika would be liable to pay the amount mentioned in the cheque plus payment of delayed interest of 24% p.a.

4.2.1.7 Ultimately, the appellant entered into an "Agreement to sell" dated 10.05.2010 with ESPO Developers P. Ltd. (ESPO"), transferring its rights in the said plots admeasuring 44,120 sq yds to ESPO, for a consideration of Rs.22,50,12,000/- @Rs. 5100/- p. sq yd. The total consideration was payable by ESPO by 30.09.2010 (In fact, it was actually paid completely on 8.9.2010, as can be seen from the assessment order).

4.2.1.8 The A.O. points out that the promise of assured return, and issue of PDCs in the agreements itself shows that the transaction is of a loan and not a sale transaction. However, it can be seen from the discussion in the preceding paras, that the key agreement between the parties is the first agreement dt. 11.6.2005, called a "Memorandum of understanding". All subsequent agreements are merely extension agreements of the same, with some extra rights of sale being provided to the appellant. The nomenclature of the agreement itself does not help us in deciphering the nature of this agreement. To determine the real meaning of the contract and to ascertain the intention of the parties thereto, we must fall back on judicially settled principles of interpretation of contracts between parties. Interpretation can be analysed from the perspective of four principles which can usefully be applied to the

construction of a contract. These principles are (i) Giving effect to the intention of the parties as found in the words they use; (ii) Repugnancy of an exclusion clause; (iii) The Contra Proferentem Rule; and (iv) Standard form and exclusion clauses. The last three principles deal with exclusionary clauses of a contract, and are not relevant for our purposes in the case under discussion. It is now settled law that in construing the intention of the parties from the contents of a contractual document between them, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole. The dichotomy therefore can be resolved only through a complete harmonious reading of the agreement in a manner which does not render any part of the agreement as invalid or would lead to an absurd conclusion.

4.2.1.9 It can be seen from the very first agreement itself, that it is clearly an agreement to sell the plots to the appellant. There is not even a whisper of any loan or any whisper of any interest receivable on the sale consideration unless there is failure on part of the seller to hand over the plots to the buyer. There is a clause of a resale to Vatika, at a pre-determined rate. However, the appellant is not bound to sell to Vatika, and has the right to sell to any outside party. The completion of re-sale is at the option of the appellant solely, in case the actual market price of the land exceeds the agreed resale price. This clause indicates that the resale clause is to only secure an assured return on investment to the appellant, but the appellant is free to realize a higher return. The introduction of a guarantor and PDCs too is only an instrument to secure its minimum assured return from Vatika. In my opinion, a promise of assured return upon a re-sale to which only Vatika is bound, does not prove that the transaction is one of loan. In any case, the appellant was not bound to sell the property to Vatika, but had the unhindered right to sell to an outside party. In fact, vide the amendatory agreement dated 05.06.2007, the appellant had the liberty to sell the plots to any outside party even before the due date of exercising the option to re-sell i.e.10.06.2009. If it were a loan transaction simpliciter, Vatika would not have agreed to such a condition.

4.2.1.10 It would also be seen that the agreement dated 11.06.2005 and subsequent agreements thereto have been entered into in the normal course of the appellant's activities. Seizure of these agreements does not automatically make them incriminating documents to be held against the appellant in assessment proceedings u/s 153A. What has to be seen is that whether the department has unearthed any evidence related to the transaction between appellant and Vatika group, which would prove or even indicate that the transaction was not really a purchase transaction but one of loan, on which interest has been received/receivable. The details of the assessment order have been discussed in the preceding paras of this order. To my mind, none of the other evidence referred to by the A.O., either individually or collectively, can be said to indicate that the specific transaction between the appellant and Vatika was actually a loan transaction. The evidence relied upon by the A.O. are individually discussed below.

4.2.1.11 The fact that UK Paints group, in an internal email communication (extracted from seized hard disk A8 from the U.K. Paints group), has grouped an amount (Rs.43,00,00,000/-) given to Vatika as an "ICD", cannot be held against the appellant, especially when it does not detract from language of the agreement between the appellant and Vatika, nor does it mention any rate of interest on such an "ICD" or even interest received/receivable. On the other hand, the document extracted from the seized hard disk A-66 from Vatika premises, which is a detailed chart of agreements entered into by Vatika with the appellant, SEH Realtors P. Ltd, UK Paints India P Ltd and Uttam Enterprises P. Ltd., shows that the parties are Purchasers/Lenders., and depict the agreement thereon as a sale agreement. There is no indication of any interest @25% payable on the consideration, except "if refundable". Clearly, the transaction is a sale transaction, and would be subject to a penal interest @ 25% as the fall-back option, in case the primary transaction of sale does not go through. It is noteworthy that the re-sale price in the agreements is not @ 25% p.a. of the consideration paid, thus indicating that 25% is only a penal rate of interest, and not the regular interest payable on the sum of Rs.15,00,00,000/-

4.2.1.12 Extrinsic evidence to determine the effect of an instrument is permissible where there remains a doubt as to its true meaning. In case of doubt, evidence of the acts done under it, is a guide to the intention of the parties in such a case and particularly when acts are done shortly after the date of the instrument. {Abdulla Ahmed vs Animendra Kissen Mitter dt 14.03. 1950 (1950 AIR 15, 1950 SCR 30)}. Thus, the conduct of the parties after signing of the agreements is not a conclusive tool of interpretation of a contract, and does not override the express terms of the contract. Nevertheless, it would be seen that even in the balance sheet of the appellant-company for the A. Y. 2006-07 to 2011-12, (i.e. period over which the agreement was extended repeatedly) the appellant has constantly in its audited balance sheet depicted this amount under the head "Property booking Vatika Landbase P. Ltd (Under Loans & advances"). It has not reflected any interest receivable in its books. This is quite indicative of the commercial understanding that the parties to the contract had. It is also seen that although Vatika had provided PDCs, no TDS was actually deposited in government accounts at any point of time over the entire period from A.Y. 2008-09 to 2011-12, neither has Vatika debited any interest on the sum of Rs. 15 crores in its books during this period. This is also clear indicator of the commercial understanding between parties. Even in the extension agreement dated 05.06.2007 the actual plots for sale were identified, thus establishing conclusively the rights of the appellant as a purchaser of the plots; allotment of these plots would, as per the specific terms of the MOU dated 11.06.2005, related back to the date of the MOU dated 11.06.2005. Even the subsequent payment of extra consideration for preferential plots on 25.04.2006 in pursuance of and as part of the MoU dated 11.6.2005 is evidence of the true nature of the transaction. Therefore, it is clear that not treating the transaction as a loan transaction by the appellant in its accounts from the very beginning is not an afterthought.

4.2.1.13 Even the document (seized as Annexure A-12, page 79 from Vatika premises) being a note dated 28.10.2010 prepared by Sh. Manmohan Mehra of Vatika

group for the perusal of Sh. Gautam Bhalla, Director named "Jaipur Plots buy back Deal", shows that the note relates to the buy-back deal between Vatika group and the lenders group; as per the note, ESPO Developers Pvt. Ltd. has been introduced into the transaction to perform the obligations of Vatika to buy back the plots. This too does not contradict the appellant's claim

4.2.1.14 I have also gone through the statements of Sh. Navin Choudhary,CFO of Vatika group and Sh. Harish Ahuja, MD of the Shahi group relied upon by the A.O. (and reproduced in the assessment order). I am of the considered opinion that that none of these depositions too support the view that the transaction was actually an interest-bearing loan transaction, and not a transaction of sale (with a provision for buy-back). There is neither any admission therein, nor even any indication that it is so, insofar as it relates to the transaction between Vatika and the appellant.

4.2.1.15 It would also be seen that the agreement dated 11.6.2005 and subsequent extension agreements have been entered into in the normal course of the appellant's activities and that the entries in the balance sheet reflect outcome of the agreement. A seizure of these agreements does not automatically make them incriminating documents to be used against the appellant nor do they, as discussed above, constitute incriminating material. What has to be seen is that whether the department has seized/unearthed any evidence related to the transaction between appellant and Vatika group, which would prove or even indicate that the transaction was not really a purchase transaction but one of loan, on which interest has been received/receivable. The details of the assessment order have been discussed in the preceding paras of this order. To my mind, none of the other evidence referred to by the A.O., either individually or collectively, can be said to indicate that the specific transaction between the appellant and Vatika was actually a loan transaction. Even the fact that in an internal email dated 08.10.2010 of the U.K. Paints group, sent by Sh. Vinod Kaushik to Sh. Naveen Choudhary, CFO of the U.K. Paints group, amount of Rs. 43 crores shown as due to U.K. Paints P. Ltd. for a similar

transaction with Vatika Ltd. is classified as an 'ICD', cannot be held against the applicant.

4.2.1.16 Finally, it is necessary to examine the view of the A.O. that since the property was never registered in the name of the appellant, the appellant cannot be said to be the owner of the plots and consequently, the transfer of the land to ESPO cannot be said to be a sale which is exigible for capital gain. Section 45 defines profits and gains arising from any "Transfer" of a "capital asset". The term "capital asset" is defined in section Sec 2(14) of the Income Tax Act as "property of any kind", (subject to some exclusions, which are not relevant in the present case). This definition widens the scope of the term so as to include tangible and intangible assets and also any benefits, rights and actionable claims that a person may obtain in respect of such assets. Thus, the term 'property' is a word of widest import and it usually signifies every possible interest which a person can possibly hold and enjoy. "Property" may be said to be a bundle of rights of all kinds to a person. In the case of CIT Vs Tata Services Ltd (122 ITR 594), the hon 'ble Bombay High Court has held that the word "property" used in Sec 2(14) is a word of the widest amplitude and any right which can be called property will be included in the definition of capital asset. It held that since a contract for sale of land is capable of specific performance and is also assignable, a right to obtain conveyance of immovable property is also clearly a capital asset contemplated u/s 2(14) of the Income Tax Act. The word "transfer" in Sec 2(47) has also been defined to not only include a regular sale, but also any transaction that results in any extinguishment of any right in the property or any relinquishment of the same. Thus, the definition takes into its ambit not only cases where a person gives up his rights in the property voluntarily but also instances where he gives up his rights in favour of another person in consideration of the other person fulfilling his part of the obligations as per the contracted terms. In the present case, while the property in question has not been registered in the name of the appellant, it has entered into an agreement with the seller and as a consequence had absolute rights of disposal over them, and its rights were vested to the

exclusion of all persons. Thus, it was the owner of the property for the purpose of Sec.45, and therefore at the point of transferring the plots to ESPO, capital gains accrued to the appellant.

4.2.1.17 The A.O. also mentions that there is no reason why the appellant should agree to take sale consideration which is less than the principal plus accrued interest amount. This is a valid suspicion, but I am afraid it is nothing more than that. This suspicion, if corroborated by any evidence, would lead to a suitable inference. But by itself, this suspicion does not make any case for the inference that the appellant has actually received an undisclosed amount, over and above the sale consideration. No businessman can be compelled to maximize his profit. The A.O. cannot put himself in the shoes of the assessee and see how a prudent businessman would act. The authorities must not look at the matter from their own viewpoint but that of a prudent businessman CIT v. Dalmia Cement (B.) Ltd. [2002] 254 ITR 377(Del). Given the long-standing business relationship between the parties, there could be any commercial expediency (including an inability of the appellant to sell the plots to an outside party at the price of Rs.9,250/- p. sqyd. at that point of time, or any other market condition) for the appellant agreeing to not insist on the higher rate agreed to with Vatika. In any case, in spite of search conducted on both the parties, there is no evidence to support a view that a higher consideration has indeed passed to the appellant. In fact UK Paints and been subjected twice to search action in 2011 and in 2013, without any evidence being unearthed that the transaction between Vatika and the appellant was actually had a loan transaction with an annual interest payable, and not a sale transaction.

4.2.1.18 The A.O. has also referred to the resale of property by the appellant to a buyer (ESPO) belonging to the Vatika group itself. It is also mentioned by the A.O. that the purchaser has been funded by Vatika itself, thus indicating its a sham transaction. Although this point appears attractive at the first blush, on a detailed examination, it does not bear support from a detailed reasoning. The property belongs to M/s Sanskar

Buildtech P. Ltd and Nakshatra Buildcon Pvt. Ltd. Vatika Ltd. merely had exclusive rights to develop and sale the property and was never the owner; any sale-back, at the option of the appellant, was agreed to done to Vatika or its nominee. Ultimately, the property was sold to a Vatika nominee. Even otherwise, as per the terms of the agreement, the appellant was under no compulsion to sell the plots to either Vatika or any other party of the Vatika group, or even to a nominee of Vatika. The Vatika group was under a contractual obligation to purchase back the plots, but only at the option of the appellant, within a period of two years from the date of the agreement, at the prevailing market rates. The Vatika group did not have any vested rights to get the properties back from the appellant. On the other hand, the appellant was free to sell the lands in the open market, and the fact that the appellant sold the properties/its rights thereon to a Vatika group company, is of no other consequence. If it were a loan transaction only, then Vatika would not have agreed to such a provision. In the agreement, allowing the appellant the rights to sell to any buyer of the appellant's choice.

4.2.1.19 I am therefore of the view, that the conclusion drawn by the A.O. in the appellant's case is erroneous. I hold that the appellant is liable for levy of Capital gains tax at the point of sale to ESPO (i.e., in A. Y.2011-12). The gain is Long term, as the exclusive holding of the property in the hands of the appellant commenced from 11.06.2005 as per the terms of the MOU dated 11.06.2005. The interest income added by the A.O. for the assessment year 2006-07 is deleted.

4.2.1.20 In view of my directions deleting the additions in respect of the Jaipur transaction, these grounds of appeal succeed."

4. In this background, we have heard both the sides. It was a common point between the parties that another Group concern namely M/s SEH Realtors Pvt. Ltd. had also entered into similar transactions with the Vatika Group of cases and in the said case also the findings of the AO qua such property transactions was

similar to those made in the instant assessment, and, in that case too the CIT(A) had disagreed with the Assessing Officer. Such findings of the Assessing Officer in the case of M/s SEH Realtors Pvt. Ltd. (Supra) came up before our Coordinate Bench and vide its order dated 20.04.2023 (Supra), the conclusion of the CIT(A) has been upheld by way of the following discussion:-

> ***"Jaipur Project***
>
> *37. The total loan was Rs.50 Cr. from four parties including SEH Realtors Pvt. Ltd. The ld. CIT(A) deleted the "unaccounted interest payment" brought to tax by the Assessing Officer. The reasons given by the ld. CIT(A) while deleting the addition are as under:*
>
> - *The parties executed documents of agreement to sale in respect of certain properties owned by Vatika at Jaipur. As per these agreements, a specific right was granted to the buyers that the plots, which were subject matter of the sale agreement, may be sold back by them to Vatika at a pre-determined sale consideration.*
> - *Additional payments of Rs.1,87,77,000/- was made by these parties for preferential plots allotted, as per existing agreement between the parties proves that the transactions were for purchase of plots but not a financial transactions in the nature of loan.*
> - *The agreements for sale have been entered by these parties with Vatika the "seller", on various dates in the month of May and June, 2005. Sanskar Buildtech P. Ltd. and Nakshatra Buildcon P. Ltd., who are the owners of the property, were the "confirming parties" to these agreements.*
> - *The parties made full and complete payments of the cost of the plots including preferential location charges.*
> - *The assessee has the exclusive rights of development of these properties.*
> - *Corporate guarantee agreements have also been entered into between parties. The Seller offered collateral security of immovable property which is distinct from the property which was the subject matter of the agreement.*
> - *Construing the intention of the parties from the contents of a contractual document between the, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole.*

- *A harmonious reading of the agreements reveal that the intention was to purchase the plots but not loans as same from thevary first agreement and the accounting treatment also proves the same.*
- *None of the evidences referred to by the A.O. either individually or collectively, can be said to indicate that the specific transaction between the buyer and the assessee was actually a loan transaction.*

38. Aggrieved with the deletion made by the purported unaccounted interest payment in the case of Jaipur Project, the revenue filed appeal before us. Similarly, in the case of NH8 Project, the revenue filed appeal against the deletion of the unaccounted interest payment in the case of SEH Realtors Pvt. Ltd. and the lender groups namely, U. K. Paints Pvt. Ltd., Span India Pvt. Ltd, S.S. Dhingra (HUF) and Smt. Heminder Kumari and the assessee filed appeal against the confirmation of unaccounted interest payment.

39. The arguments in writing of the ld. DR is as under:

"Sub: Written submission on merits in the above case - reg.

I. Addition on unaccounted interest on WHS Deal:-

Facts:-

1. During the course of search action u/s 132 and survey action 133A on UK Paints/Dhingra Group, Shahi Group, Span Group and Vatika Group and others on 16.01.2013. Various documents pertaining to money advanced by U.K. Consortium of lender viz. UK Paints/Dhingra Group, Shahi Group, Span Group, Harman Singh Dhingra Group together with Smt. Harminder Kumari entered into a financial deal with Vatika Ltd.

2. Brief description of seized documents relied by the Assessing Officer while making addition.

i. Initial separate loan agreement entered by various members of the consortium with Vatika Ltd. in 2005. One of such agreement is detailed as under: -

Lender	***Borrower***	***Date of execution***	***Pages No.***	***Annexure No.***	***Seized/impounded from premises***
U.K. Paints India Pvt. Ltd.	*Vatika Landbase Pvt. Ltd.*	*13.09.2005*	(1) *48 to 142* (2) *11 to 5*	(1) *A43* (2) *A4*	(1) *Vatika Triangle* (2) *19, DDA Commercial Complex, Zamrudpur, Kailash Colony, New Delhi on 16.09.2011*

ii. Guarantee Agreement:

Lender and Borrower group concerns have simultaneously entered with a guarantee agreement to secure the right of lender of the such guarantee agreement is detailed as under:

Lender	***Guarantor***	***Date of the agreement***	***Page No.***	***Annexure No.***	***Seized from***
U.K. Paints India Pvt. Ltd.	*Mark Buildtech Pvt. Ltd.*	*13.09.2005*	*141 to 134*	*A43*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*

iii. Personal Guarantee agreement:-

Lender and Shri Anil Bhalla (promoter of Borrower group) entered simultaneously in a personal guarantee agreement to secure the right of the lender and obligation of the borrower. One of such agreement is detailed as under:-3

Lender	***Date of the agreement***	***Page No.***	***AnnexureNo.***	***Seized from***
U.K. Paints India Pvt. Ltd.	*13.09.2005*	*137 to 133*	*A43*	*Vatika Triangle Sushant Lok-1, M.G. Road*

iv. The lender and Borrower then entered subsequently into an amendatory loan cum purchase agreement dated 31.03.2006 where the borrower was given option to purchase of residential plot. Various such agreements are detailed as under:-

Lender	***Borrower***	***Date of the agreement***	***Page***	***Annexure No.***	***Seized from***
Sohan Singh Dhingra	*Vatika Landbase Pvt. Ltd.*	*31.03.2006*	*125 to 116*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
U.K. Paints India Pvt. Ltd.	*Vatika Landbase Pvt. Ltd. Buzz Estates Pvt. Ltd.*	*31.03.2006*	(1) *107 to 99* (2) *158 to 149* (3) *48 to 10*	(1) *A41* (2) *A43* (3) *A4*	*(1 & 2) Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon* *(3) 19 DDA commercial complex, zamrudpur, Kailash Colony, New Delhi*

Heminder Kumari	*Vatika Landbase Pvt. Ltd., Wonder Developers Pvt. Ltd.*	*31.03.2006*	*55 to 46*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
Span India Pvt. Ltd.	*Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd.*	*31.03.2006*	*35 to 30*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*

v. The lender and Borrower group concern entered into again guarantee agreement to secure right of lenders and obligations of the borrower assumed in amendatory loan cum purchase agreement. Such agreements are detailed as under:-

Lender	***Borrower***	***Date of the agreement***	***Page No.***	***Annexure No.***	***Seized from***
Sohan Singh	*Vatika Landbase Pvt. Ltd.*	*31.03.2006*	*136 to 132*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
U.K. Paints India Pvt. Ltd.	*Buzz Estates Pvt. Ltd.*	*31.03.2006*	(1) *92 to 88* (2) *131 to 125*	(1) *A41* (2) *A43*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
Heminder Kumari	*Wonder Developers Pvt. Ltd.*	*31.03.2006*	*45 to 41*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
Span India Pvt. Ltd.	*Buzz Estates Pvt. Ltd.*	*31.03.2006*	*28 to 23*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*

vi. Extension Agreement to amendatory loan cum purchase agreement by which the date of loan and interest payable is extended upto 30.06.2007. The details of such agreement are as under:-

Lender	***Borrower***	***Date of the agreement***	***Page No.***	***Annexure No.***	***Seized from***
Sohan Singh Dhingra	*Vatika Landbase Pvt. Ltd. as confirming part*	*30.12.2006*	*130 to 128*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*

U.K. Paints India Pvt. Ltd.	*Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd. as confirming part*	*30.12.2006*	*86 to 84*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
Heminder Kumari	*Vatika Landbase Pvt. Ltd., Wonder Developers as confirming part*	*30.12.2006*	*40 to 38*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*
Span India Pvt. Ltd.	*Vatika Landbase Pvt. Ltd., Buzz Estates Pvt. Ltd. as confirming part*	*30.12.2006*	*22 to 20*	*A41*	*Vatika Triangle Sushant Lok-1, M.G. Road, Gurgaon*

vii. Subsequently the extension agreement was entered between the lender group namely SEH Realtors Pvt. Ltd., U.K. Paints India Pvt. Ltd., Span India Pvt. Ltd., Sohan Singh Dhingra (HUF), Harminder Kumari which is seized documents during Search conducted at 16.01.2013 page 127, 83, 37 and 19 of annexure A-41 (seized from Vatika Triangle, Sushant Lok, MG Road, Gurgaon) which extended the terms of repayment upto 30.03.2007.

viii. Lender and Borrowers concerns entered into another extension agreement which were seized from during the course of Search detailed as under:-

Lender	***Borrower***	***Date of the extension***	***Page No.***	***Annexure No.***	***Seized from***
SEH Realtors Pvt. Ltd.	*Vatika Ltd. and Wonder Developers Pvt. Ltd. as confirming party*	*29.06.2007*	*160 to 157*	*A41*	*Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon*
Sohan Singh (HUF)	*Vatika Ltd. and Wonder Developers Pvt. Ltd. as confirming party*	*30.06.2007*	*115 to 112*	*A41*	*Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon*

U.K. Paints India Pvt. Ltd.	*Vatika Ltd. Buzz Estates Pvt. Ltd. as confirming party*	*30.06.2007*	*80 to 77*	*A41*	*Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon*
Span India Pvt. Ltd.	*Vatika Ltd. Buzz Estates Pvt. Ltd. as confirming party*	*29.06.2007*	*17 to 14*	*A41*	*Vatika Triangle, Sushant Lok-1, M.G.Road, Gurgaon*

The following were some of the features of this extension agreement/MOU:

Lender	***Extended period of loan and the right of the lender group concern to exercise the option of purchasing the land, upto***	***Extended period of the right o the lender group concern to re-sell the land so purchased to the seller (borrower group)***
SEH Realtors Pvt. Ltd.	***31.12.2007***	***31.12.2008***
Sohan Singh Dhingra (HUF)	***31.12.2007***	***31.12.2008***
U.K. Paints India Pvt. Ltd.	***31.12.2007***	***31.12.2008***
Span India Pvt. Ltd.	***31.12.2007***	***31.12.2008***

Similar extension agreements between Lenders group members and Borrowers was found were found in physical form or in hard drive during the Search action conducted on Vatika Triangle, Sushant Lok, Gurgaon.

ix. Further, excel documents extracted from Hard Disk Seized from the Vatika Triangle, Sushant Lok, Gurgaon reveals that these extension is and loan agreement evidenced from navigation path where H:\userleftADC & System Backup\legal\vivek\legal\shahi group\Gurgaon Loan Agreement Extension\KD extension\30.06.2007\corrected interest calculation 31.07.2007 xls.

x. The part of property of Vatika Group which was allotted to various lender group was repurchased by the group concern M/s Lincoln Developers Pvt. Ltd. of Vatika Group. Details of agreement of sale seized during the Search is tabulated as under:-

Intending Seller'	***'Intending Buyer'***	***Date of the agreement to sell***	***Page No.***	***Annexure No.***	***Seized from***
Span India Pvt. Ltd.	*Lincoln Developers Pvt. Ltd.*	*03.02.2011*	*74 to 71*	*A12*	*Vatika Triangle, Sushant lok-1, MG Road, Gurgaon*
U.K. Paints India Pvt. Ltd.	*Lincoln Developers Pvt. Ltd.*	*03.02.2011*	(1) *70 to 67* (2) *103 to 100*	(1) *A2* (2) *A30*	(1) *Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon* (2) *19, DDA Commercial Complex, kailash colony, zamrudpur, New Delhi*
Sohan Singh Dhingra (HUF)	*Lincoln Developers Pvt. Ltd.*	*03.02.2011*	(1) *66 to 63* (2) *63 to 60*	(1) *A12* (2) *A5*	(1) *Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon* (2) *85 Golf Links, New Delhi*
SEH Realtors Pvt. Ltd.	*Lincoln Developers Pvt. Ltd.*	*03.02.2011*	*62 to 59*	*A12*	*(1) Vatika Triangle, Sushant Lok-1, MG Road, Gurgaon*

The fund flow was analyzed which showed that the fund used in repurchase the property from lender in the name of M/s Lincoln Developers Pvt. Ltd. is the fund of Validate tabulated as under:-

Date of receipt	***Amount***	***Receiving Company***	***Paying Company Lincoln***	***Ultimate Source***		
				Date	***Amount***	***Paying Company***
04.02.2011	*9,09,12,000*	*SEH*	*Lincoln*	*03.02.2011*	*9,09,12,000*	*Vatika Ltd.*
07.02.2011	*9,09,12,000*	*SEH*	*Lincoln*	*07.02.2011*	*9,09,12,000*	*Vatika Ltd.*
09.02.2011	*9,09,12,000*	*SEH*	*Lincoln*	*09.02.2011*	*9,09,12,000*	*VatikaLtd.*
14.02.2011	*7,50,00,000*	*UKPI*	*Lincoln*	*14.02.2011*	*7,50,00,000*	*VatikaLtd.*
21.02.2011	*7,25,00,000*	*UKPI*	*Lincoln*	*21.02.2011*	*7,25,00,000*	*VatikaLtd.*
24.02.2011	*7,50,00,000*	*Span India*	*Lincoln*	*24.02.2011*	*10,50,00,000*	*VatikaLtd.*
24.02.2011	*3,00,00,000*	*UKPI*	*Lincoln*			
08.03.2011	*2,40,60,000*	*Sohan Singh*	*Lincoln*	*08.03.2011*	*9,66,00,000*	*VatikaLtd.*
28.04.2011	*25,00,000*	*SohanSingh*	*Lincoln*	*01.04.2011*	*15,00,000*	*VatikaLtd.*
28.04.2011	*5,00,000*	*SohanSingh*	*Lincoln*			
31.05.2011	*1,00,00,000*	*UKPI*	*Lincoln*	*31.05.2011*	*1,10,00,000*	*VatikaLtd.*
02.06.2011	*1,50,00,000*	*SohanSingh*	*Lincoln*	*02.06.2011*	*1,50,00,000*	*VatikaLtd.*
06.06.2011	*1,00,00,000*	*SpanIndia*	*Lincoln*	*06.06.2011*	*1,00,00,000*	
08.06.2011	*1,00,00,000*	*SpanIndia*	*Lincoln*	*08.06.2011*	*1,00,00,000*	*VatikaLtd.*
10.06.2011	*1,00,00,000*	*SpanIndia*	*Lincoln*	*10.06.2011*	*1,00,00,000*	
14.06.2011	*1,00,00,000*	*SpanIndia*	*Lincoln*	*14.06.2011*	*1,00,00,000*	
15.06.2011	*1,00,00,000*	*SpanIndia*	*Lincoln*	*15.06.2011*	*1,00,00,000*	
Total	*62,72,96,000*				*69,93,36,000*	

AO concluded on the basis of these documents in page 16 & 17 of assessment order A.Y. 2007-08 that Vatika Group has camouflaged the agreement as sale and purchase agreement which was basically a loan agreement. Similar findings is given by the AO in various assessment years that the assessee has camouflaged the loan transactions into sale and purchase transactions. The assessee has paid unaccounted payment of interest to lender group at the rate of 24% per annum from assessment year 2006-07 to 2011-12.

Findings of CIT(A) in this issue:

CIT(A) passed common order for A.Y. 2007-08 to 2013-14.

CIT(A) has confirmed the action of the Assessing Officer in NH-8 deal treating the agreement as loan agreement simplicitor and has given final finding in para 4.4.1.18. In case of agreement with SEH Realtors Pvt. Ltd. has held it tobe a purchase agreement where as with other lenders, initial agreement was loan agreement and subsequent agreement was loan cum purchase agreement. The CIT(A) has analyzed the agreement with SEH Realtors Pvt. Ltd. and held the agreement to be purchase agreement as date of initial agreement is different from other agreements and dominantly it is purchase agreement. He has discussed the facts of SEH Realtor Agreement from para 4.4.1.19 to 4.4.1.26 and directed to delete the additions made on account of interest payable to SEH Realtors Pvt. Ltd.

Further, CIT(A) has held that unaccounted interest payable to the parties except SEH Realtors Pvt. Ltd. is taxable in the A.Y. 2011-12 for all interest computed from the date of initial agreement to final buy back of loan by one sister concern of M/s Vatika Ltd. which took place in A.Y. 2011-12, as all interest was accumulated and the CIT(A) enhanced the income of the assessee on such unaccounted interest in A.Y. 2011-12 after giving Show Cause.

Arguments of Ld. AR:

Arguments of Ld. AR are summarized as under:

1. *There is no evidence of payment of interest by M/s Vatika Ltd. to the lenders of the group, while making the addition.*
2. *The Department has assessed the transaction as transfer of land transaction and addition added interest too.*
3. *Such expenditure which is impugned addition has never been recorded.*
4. *The Assessing Officer has given the finding that assessee has incurred liability of interest expenditure proceeded to invoke Section 69C to make addition.*
5. *Ld. CIT(A) has erred in confirming the entire addition for NH-8 deal for A.Y. 2011-12 without any evidence.*
6. *For unabated assessment, no addition can be made u/s 153A in absence of incriminating materials found as a result of search.*
7. *In enhancement notice CIT(A) has not quantified the enhancement notice.*

My submission on the issue of addition of interest in NH-8 are as under:

1. *All lenders have entered into agreement with advancing of money to the assessee initially as loan agreement except SEH Realtors Pvt. Ltd. where initial agreement is Loan cum Purchase agreement. In all other cases the initial lenders have entered into loan agreement and subsequently loan agreement was changed to loan cum purchase agreement.*
   However, in all cases material facts has remained same i.e. the advances are fully backed up by security agreement, guarantee agreement and obtaining PDCs at different times of extension of agreement.

For the sake of brevity following security for amount advanced were received by the lenders:-

1. *Collateral Security inform of immovable properties of M/s Vatika Group was offered vide guarantee agreement.*
2. *Personal guarantee of Sh. Anil Bhalla promotes of the company was offered by personal guarantee agreement. In the event of failure of payment of loan guarantor agrees for the repayment of loan and interest.*
3. *PDCs was given for the principal and interest.*
4. *There was provision of compulsory buy back by lender at the option of investor.*

In view of the above securities the advance given is fully secured not in terms of guarantee of immovable properties & personal guarantee but also liquid security in form of post dated cheques. Such security cannot be given in case of purchase transaction. In spite of fully secured advances along with interest, the property was bought back by Vatika Group either at principal values or at much lesser value compared to principal & interest till buy back, which clearly established that it was never a purchase transaction.

Further, the fund used for buy back is belonging to assessee i.e. M/s Vatika Ltd. as discussed in the assessment order. Still further, there is no registration of property in the name of lender. Therefore, entire transaction of option of purchase and buy back is nothing but colourable device to conceal the real transaction of loan on which unaccounted interest has been paid.

If it would have been a purchase transactions why there would be provision of buy back. The provision of compulsory buy back itself establishes that the transaction is basically financing and not a purchase transaction.

Further, the arguments of Ld. AR that there is no evidences of interest payment is not tenable as in spite of fully secured advance at three layer i.e. guarantee given in form of immovable property, personal guarantee of the promoters and total PDCs of value principal and interest, the buy-back prices were accepted by the lender either at principal value or at much lesser amount compared to the amount due principal plus interest. Such acceptance of lower buy back prices by the lender without any dispute proves the payment of unaccounted interest on principal.

Ld. ARs argument that the Assessing Officer has accepted the assessee's contention in assessment year 2011-12 that the transaction

is a purchase and sale transaction, therefore, there is contradiction in treating the transaction as loan transaction and payment of interest for same transaction. The revenue's stand is the payment of unaccounted interest which is not reflected and recorded in Books of Accounts. Therefore, unaccounted interest payments has no bearing in recorded transactions. If the transaction is held to be loan transaction and unaccounted interest payable is upheld, to the extent of change in work in progress due to buy back of property, set off can be given from the interest.

Ld. ARs argument that the section 69C has been wrongly involved by the Ld. AO is not tenable as from the conduct of assessee by accepting buy back value less than principal and interest at buy back proves the assessee has paid unaccounted interest and therefore such expenditure has incurred and section 69C can be invoked.

Ld. ARs argument that Ld. CIT(A) has enhanced the interest for A.Y. 2011-12 without any basis is also not tenable as CIT(A) has held that all interest was paid at the time of buy back when all the liability of assessee got discharged towards the lender.

Ld. ARs contention that CIT(A) has enhanced the unaccounted interest payment without quantifying the amount in enhancement notice has been dealt by Ld. CIT(A) that in enhancement notice, the principals of enhancement has been given namely total interest payable from date of advance of loan by lenders was paid at the time of buy back. From there exact amount of interest can be computed.

Another contention of Ld. AR's that there is no incriminating document found from A's premise therefore, for unabated assessment no addition can be made u/s 153A. Ld. CIT(A) conclude in Para 4.4.1.18 that the seized loan agreement constitute the primary evidence on the basis of which the addition emanates. This holds goods for all agreements for NH- 8 & Jaipur deal. CIT(A) has given the finding in respect of SEH Realtors & Jaipur deal that there was no incriminating material because he has treated the agreement as purchase agreement. If these agreement is treated as loan agreement as discussed in subsequent para, then these loan agreements become primary basis for making addition of unaccounted income & hence incriminating material to assess such unaccounted income. Other evidences found during search i.e. emails, statement etc only supporting evidences therefore, origin of the addition is based on seized documents, hence the theory of non availability seized documents for addition made u/s 153A for unabated assessment will not apply.

II.Submission in support of addition of unaccounted interest in NH- 8 deals by the assessee in case of lender M/s SEH Realtors P. Ltd. Revenue Appeal):

CIT(A) has analyzed the loan cum purchase agreement between the appellant and lender M/s SEH Realtors Pvt. Ltd for NH-8 project and in Para 4.4.2.19 to 4.4.1.26 and 4.4.2.1 to 4.4.2.18 and held that the agreement with SEH Realtors is a purchase transaction mainly on two grounds:

1. *Date of agreement in case of SEH Realtors Pvt. Ltd is different from date of agreement with U.K. Paints and others in the case NH-8 deal.*

2. *In case of SEH Realtors from the date of entering the agreement there was option to purchase the plots by the lender. In fact from the initial date of agreement, the loan and purchase agreements were simultaneously entered. Therefore, CIT(A) was of the view that these agreements were basically in the nature of purchase agreements where as in other lenders can in NH 8 deals initial agreements was a loan agreements. Accordingly Ld. CIT(A) deleted the addition of unaccounted interest made by the AO.*

My Submission against deletion of unaccounted interest in case of SEH Realtors Pvt. Ltd. (Revenue's Appeal):

In substance, the agreements between the assessee and U.K Paints & other are similar to agreements entered between the assessee & SEH Realtors Pvt. Ltd. Only change of date of agreements and initial agreement in the case U.K Paints Ltd. & other being loan agreements and loan cum purchase agreement in the case of SEH Realtors Pvt. Ltd will not change the basic character of the transaction. Basic Characters of the transaction are as under which are common in both transaction either with U.K paints & other with SEH Realtors Pvt. Ltd.

1. *In both the cases the amount of principle with interest is guaranteed by a guarantee agreement where immovable property of a group concern is offered as guarantee which can be utilised for securing interest plus Principals in case of default by leaders.*
2. *In both cases the personal guarantee has been offered the personal guarantee agreement by sh. Bhalla being promoter of the M/s Vatika Ltd.*
3. *In both Cases PDCs (Post dated Cheque) were given by M/s Vatika Ltd. cover principals & interest.*
4. *In both cases, there was option to purchase the plots of M/s Vatika Ltd. by lenders & lenders have acquired the plots but registration was done.*
5. *In both the Cases, there was provision of Compulsory purchase by borrower i.e. M/s Vatika Ltd. at the option of lenders.*
6. *Buy back price is at much lesser rate than principal plus interest. Mostly buy back price at the principal only.*

When the amount advanced alongwith interest in covered by So many guarantees as discussed above, why buy back prices was less then principals & interest without any dispute? This action of lenders & borrower cannot be explained by the principle of human probability. I rely on the decision of Sumati Dayal vs. CIT(1995) 80 Taxmann 89 (SC)/214 ITR 801 (SC).

In fact CIT(A) has upheld the addition in case of other lenders in NH-8 deals mainly on the above ground that buy back price is much less then principal plus interest [Para 4. 4.1.28 of CIT(A) order].

In view of the above CIT(A) ought to have upheld the unaccounted interest paid to by M/s Vatika Ltd. in case of M/s SEH Realtors Pvt. Ltd. too.

Issue of Jaipur deals:

Facts are Similar to the facts, of NH-8 deals except the first agreement that is loan agreement. In these case first agreement was of loan cum purchase agreement. Otherwise extension of agreement, PDCs,

personal guarantee agreement, guarantee agreement Seized materials & other facts are Similar.

CIT(A) Finding:

CIT(A) has given the relief to the assessee on the Similar ground that of SEH Realtors of NH-8 deals which has been discussed, in earlier paragraph.

My Submission:

My Submission is on same lines that of M/s SEH Realtors P. Ltd. in NH-8 deal Discussed Supra.

Issue of Interest of ICDs:

Facts

M/s Vatika Ltd. has received ICD from U. K. Paint Group of Companies SPAN Group & Shahi group of companies interest payments has been made ranging from 11-16% per annum in the books of accounts.

During the Course of search proceedings at 1st floor, 19, DDA commercial complex Zamrupin, Kailash Colony Extn., G.K.-I New Delhi in the group Case of U. K. Paints group on 24.11.2011, Various documents agreements & deeds of loan / ICD including the hand written dairy in the handwriting of Sh. Naveen Choudhary was seized from this cabin marked as annexure AA-1 & AA-2 respectively.

Contents of various pages of AA-1 & AA-2 has been analyzed by AO and where ever 'M / Material' is written, on such pages has been held as Cash interest paid by M/S Vatika Ltd. AO's finding in supported by interest calculation of interest which comes @ 36% per annum, 15% interest has been disclosed in the books of accounts and balance interest has been paid in cash by M/s Vatika ltd. Content of the seized documents of Page No. 12 of AA1, Page 52 of annexre-AA1, Page 53 of AA1, Page 12 of Annexure-AA1, Page 52 of Annex AA-1 which contains the interest calculation of loan advanced by lender group and interest Calculation is codified with 'M / Material' has been scanned & reproduced in the assessment.

Sh. Naveen Choudhary, CFO of U.K. Paints Ltd has accepted that the dairy is in his hand writing but gave evasive reply by saying that "I don't recall".

He subsequently stated that 'M' stands for material supplied by U.K. Paint to Vatika Ltd.& finally answer to question no 60 & 61 of statement to recorded during Simultaneously Search in Dhingra / U. K. Paint group, Sh. Naveen. Choudhary on 16.01.2013 on confronting the documents accepted that "M / Material" stands for Calculation of delayed interest on principal amount. These statements reproduced in the assessment order. Therefore 'M' is accepted as interest calculation written in the seized documents.

Further during the search proceeding on 16.01.2013 at the residence of Sh. Naveen Choudhary, CFO of U. K. Paints group of these Jottings specially when 'M / Material' has been used in the documents Seized on 16-9-2011 Sh. Naveen Choudhary has sent brief for the opinion for

making disclosure to Sh. C.S. Agarwal (Annexure A-6 from hard disc of laptop of Sh. Naveen Choudhary).

Sh. C.S. Agrawal has advised U. K. Paints group (K.S. Dhingra / G. S. Dhingra) to Surrender the cash loan of 2.75 crores & interest Coded as material in Seized annexure, which is part of seized document.

AA-1 & AA-2. In fact hard dire contains the disclosure on the basis of contains in Annexure AA-1 & AA-II amounting the Rs.7,95,45,530/- in the hand of Sh.K. S. Dhingra.

CIT(A) after analyzing the entire evidence found during search of seizure operation has a funding tired, the addition of unaccounted, interest paid the U. K. Paints to be calculated @ 36% per annum after deducting the interest shown in the of accounts, b) addition of unaccounted Cash Loan for Rs 2.75 crore advanced by U.K. Paint Ltd. for A.Y. 2010-11.

CIT(A) has deleted the penal interest delayed interest delayed payment of interest as AO has not mentioned the manner by which it in computed & there is no seized documents in support of such penal interest.

Similarly CIT(A) has upheld the interest payable to on the Loan advanced by M/s Wang Investment Pvt. Ltd. @36%. after reducing the interest paid in the books of accounts.

CIT(A) has deleted the addition on unaccounted interest paid other lenders on the basis that in seized documents those investors name is not appearing.

Arguments of Id AR before Hon'ble ITAT:

Arguments of Ld. AR are broadly summarized as under:-

1. *The addition has been made by the AO on the basis of documents Seized from third parties without recording the Satisfaction notes & invoking provisions of Section 153C.*
2. *The documents relied for making addition namely AA-1, AA-2 from the premises of U.K. paints group are dumb documents.*
3. *No opportunity to cross examine the person has been given by the AO. Before utilizing the such statement.*
4. *During the present search, no incriminating documents were seized, therefore, no addition Can be made for non abated assessment u/s 153A relying on the decisions of Hon'ble Delhi in the case of Kabul Chawla.*

My arguments in support of additions made for unaccounted interest on ICDs Confirmed by (CIT (A) & against the arguments of Ld. AR:

1. Ld. AR has raised the issue of invoking provisions of Section 153C for utilizing the seized documents AA-I, & AA-2 seized from the premise of Zamrupur, from third party on U. K. Paint group on 24.11.2011 for invoking addition & argued, that without invoking provisions of See 153C, such evidences cannot be used.

The primary issue is whether during the present Search where M/s Vatika ltd & U.K. Paints, group were simultaneously searched on 16.01.2013 evidence for making the addition of unaccounted interest on ICD was found or not. During the present search

.evidence in form of emails & texts were found from the computer of Sh. Naveen Choudhary, CFO of U. K. Paint group inform of emails to Sh. C. S. Agarwal for opinion, opinion given by Sh. C. S. Agarwal on the entries on seized. Annerure AA- 1 & AA2 & finally a draft written statement of Sh. S. K. Dhingra , MD of U. K. Paints group for surrendering the amount of Rs.7,95,45,530/- on the basis seized document AA-I & AA-2 from earlier search. Therefore, in present search also incriminating evidences in form of subsequent correspondences on the basis of earlier Seized comments. AA 1 & AA-2 of U. K Paints group seized 24.11.2011 was found.

Therefore in present search also, evidences in form of incriminating materials was found. Hence earlier seized documents AA-1 AA-2 Corroborates the unaccounted interest Payment on ICDs. CIT(A) has given same funding in para 4.6.16 of this order. In view of the above, since the addition of unaccounted interest on ICDs emanates from Seized documents of present Search i.e. 16.01.2013 and seized documents AA-I & AA-2 of earlier search Corroborates the finding of unaccounted interest payment, separate proceedings u/s 153C is not required for utilizing the seized document AA-1 & AA-2 of earlier search u/s 153C.

Second issue is whether for utilizing the evidences obtained during the simultaneous search in UK Paints group i.e. on 16.01.2013, the proceeding u/s 153C is required or these evidences can be used in the proceedings u/s 153A. My submissions are as under: -

(i) In simultaneous search, there is a common satisfaction for issuance of warrant u/s132 where over lapping interest of various concerns are established or apprehend against various persons searched simultaneously. Therefore, once evidences is seized from one person which is connected to other person has to be used simultaneously in one hand recipient and in other hand payer. Like in present case in U.K. Paints group have accepted interest which is the unaccounted income and in vatika Ltd. how it is unaccounted expenditure. Hence, in simultaneous search, concept of third person will not apply because of unity of common business activities of all person's searched together.

(ii) If a view is taken that even simultaneous search, section 153C is required to be involved to use documents seized from one person in the hands of other person, then there will be multiplicity of proceedings u/s 153A and 153C. Further, comprehensive view of evidence gathered during search operation u/s 132 cannot be taken if each separate evidence is analyzed for undisclosed income separately, Such interpretation will jeopardies the operation of present search and assessment scheme u/s 153 A & 153C.

(iii) I rely on the decision of Hon'ble Supreme Court in the case of Sh. Vinod Gupta 2018-TIOL-350 (SC) Where Hon'ble Supreme Court has upheld the use of evidence gathered from one person in the hands of other person in simultaneous search.

In view of the above the contention of Ld. AR is not tenable that satisfaction should have been recorded u/s 153C & proceedings should have been taken u/s 153C before utilizing the seized documents of one persons in the hands of other

person when both person were simultaneously searched being part of same group by virtue of common satisfactions and proceedings are pending u/s 153A for same block period.

ii. Second arguments of Ld. AR is that these documents are dumb documents. These documents have been analyzed by the assessing officer Ld. CIT(A) in details in the assessment order. The contents of various pages in annexure AA-1 & AA-2 clearly indicate that against the word used 'material', there in calculation of interest as principal is multiplied by period and interest rate which comes interest rate of 36% as deciphered by Ld. AO and CIT(A). Further where the content of these papers was confronted to the written of the paper Sh. Naveen Choudhary has given evasive reply and wrong statement that it pertains to goods transacted when there was no goods transacted between UK Paints and vatika & other borrower. Ultimately Sh. Naveen Choudhary accepted that calculation against the words 'Material/M'is related the interest calculation for delayed interest/payment. The contents of Seized material is self-speaking and is nothing but interest calculation payable on ICD.

iii. The next arguments of Id. AR is that the documents relied by the assessing officer was never confronted to the assessee and persons whose statement has been relied was never allowed cross examination. In this regard it submitted that the content of seized documents relied was confronted to the assessee and scanned copy of such documents were part of show cause and assessment order, therefore, the contents of seized documents were being apprised to the assessee.

Further the statement of Sh. Naveen Choudhary has been reproduced who has given evasive reply on the contents of seized documents. Therefore, the issue of cross examination will not serve much purpose as the same is only used to corroborate the facts of the case.

iv. The Ld. AR's arguments that in assessee's premise no incriminating material was found, hence no addition can be made by applying the decision of Kabul Chawla cited supra. In present case, evidence of unaccounted interest received from assessee has been found and seized from the premises of recipient's M/s U.K. Paints group. Therefore, the decision of Hon'ble Delhi High Court in the case of Kabul Chawla should be interpreted as evidence seized at any premise of either of the parties of transaction. In present case evidence from external parties other than simultaneous search has not been used for making addition.

Submission against deletion of unaccounted interest on ICD to other parties (Revenue appeal):-

Ld. CIT(A) has confirmed the appeal on the issue of unaccounted interest on ICD case of M/s UK Paints Pvt. Ltd. and M/s Wang Investment Pvt. Ltd. but deleted the addition made for the interest paid on ICD in case of other lender of UK Groups, Shahi Group, Span Group.

The Ld. CIT(A) has deleted the addition in case of other lender for unaccounted interest on ICD on the ground that there is no evidences in case of another lender. Evidence is only for U.K. Paints and Wang Investment (Para 4.6.10 of CIT(A)'s order).

Hon'ble CIT(A) has over looked the findings of AO on page 49 for A.Y. 2007-08 which contains the scanned copy of page 81 & 82 of annexure A-13 seized during the search on page 49 & 50 of AO (for AY 2007-08). Scanned copies of page 49 & 50 shows that Sh. Naveen choudhary was in possession of interest cheques for M/Sarla fabrics Pvt. Ltd. (Shahi group), Span Holdings P. Ltd. (Span group) & Wang Investment & Finance P. Ltd. Similar findings in given for all AYs. Therefore, in seized documents for all three group of lenders namely U.K. Paints group, Spangroup and Shahi group, interest cheques are mentioned. Sh. Naveen Choudhary used to coordinate all lenders for interest on ICDS. Therefore, similar cash interest payment must have been made to all members of U.K. Paints group, Shahi group & Span Group. Accordingly it is prayed that unaccounted interest paid to all lenders as per assessment order, should be upheld.

V. ***Revenue Appeal for A.Y. 2010-11:***

Deletion of addition on account of (GND No. 9 & 10)

Cash receipt Rs. 45 crores.

Facts of the case:-

Vatika group and Shahi group, span Group & Dhingra Group entered into deal in F.Y. 2009-10 & 2010-11 where vatika group has agreed to sale land at sector 84 & 85 of Gurgaon land vide agreement to sale with Shahi group, span group & Dhingra Group. The details of such agreement is as under:-

'Buyer'/Group	*Total 'sales' Consideration (Amount Rs.)*	*Rate per sq. Yards (Amount Rs.)*	*Total area (sq. Yards) under 'sale'*
Scorpio Research & Consultants Pvt. Ltd./Dhingra Group	*35,00,00,000/-*	*8140/-*	*43000*
H.A. Realtors Pvt. Ltd. (Shahi Exports group)	*35,00,00,000/-*	*8140/-*	*43000*
Positive Buildwell Pvt. Ltd. (Span India group)	*35,00,00,000/-*	*8140/-*	*43000*

During search operation various mails were recovered from hard disc Annexure A-66 from 'Vatika Triangle" Shushant Lok-1 M.G. Road Gurgaon in respect of this transfer of land. Ld. AO has reproduced the contents of the following mails in the assessment order:

S.NO.	**Mail Date**	**From**	**To**
1.	02.01.2010	Sh. Anupum Nagalia	Sh. Anil Bhalla (promoter of M/s Vatika Group)
2.	13.01.2010	Sh. Bala Parameshwara	Sh. Anupam Nagalisa
3.	15.01.2010	Sh. Bala Parameshwara	Sh. Anupam Nagalisa

Copy marked to Naveen Choudhary, CFO, U. K. Paints group.

The above mails evidences that M/s Vatika Ltd. received unaccounted money of Rs, 45 crores on the above land deal & the AO has made addition of Rs. 45 crores.

Findings of CIT(A)

Ld. CIT(A)has considered the evidences in form of email relied by the Id. AO and held that the contents of mail is in proposal form and does not constitute evidence of payment for the agreement to sale under consideration. The Ld. CIT(A) has given his findings in para 4.8.7, 4.8.8 & 4.8.9 where he has deleted the addition mainly on 3 counts.

1. *In the emails the rate of sale for land are different. Therefore, the mails are in proposal form.*

2. *The figure mentioned in accounted payment in case of Scorpio research & consultant shows entire payment of accounted is 35 crores as per RTGS, as per seized mail there is accounted payment of Rs. 3 crore before 20.001.2010. Therefore, even accounted payment does not match hence email is a proposal only & not in respect of agreement to sale.*

3. *No statement was recorded u/s 132(4) in respect of these seized paper.*

My submission on this issue:-

1. Undisputedly M/s Vatika Ltd. has entered into 3 agreements of sale to 3 group companies of Shahi, Dhingra & Span group as tabulated in earlier paragraph of AO's findings. The period of such agreements of sale is Jan. 2010. In case of Scorpio research & consultants Pvt. Ltd. The date of agreements to sale is 20.01.2010.

2. All three mails are in the month of Jan 2010 i.e. date 02.01.2010. 13.01.2010 & 15.01.2010.

3. These emails are between promoters of M/s Vatika Ltd. & senior persons of Purchaser group or copy worked to them such as Sh. Anil Bhalla of M/s Vatika Ltd. Sh. Parmeshwara Arora, Sh. Naveen Chourdhary CFO of U.K. Paints group, Dhingra group.

4. Email dated 13.01.2010 has attached with documents named Vatika 100 crores NH 8 agreement word 1997 documents. Therefore, the name of documents clearly suggests

that the deal is regarding NH-8 land in respect of sector 85 & 86 of Gurgaon which matches with the agreements to sale. Further this attachment contains the Shahi funding, U.K. Paints funding & Span group funding reproduced in the assessment order (page 68 & 69). Still further the area sold for each group is 37556 sq. Yard & actual agreement to sale is for 40000 sq. Yard which almost matches.

5. In the attachment to mail dated 13.01.2010 total balance payment to be made in different group are as under: - Shahi Group-Rs. 33,33,31,900/- UK Paints Group Rs. 33,33,54,300/- SPAN group Rs. 30,33,29,708/-.

If we add 'A' as accounted from already paid in the group, total sale consideration comes to
SHAHI Group Rs.34,83,31,900/- (Rs.1,50,00,000/- +Rs.33,33,31,900/-)
'A' fund given already
UK Paint Group Rs.36,33,54,300/- (Rs.3,00,00,000/- +Rs.33,33,54,300/-)
'A' fund given already
SPAN Group Rs. 31,33,29,708/-(Rs. 10000000/- +Rs.30,33,29,708/-)
Accounted fund given already (AO page No. 67& 68)

The above figure almost matches with sale consideration shown in the agreement for sale which is Rs. 35 crore in each group.

In view if the above the data contained in these mails matches with agreement to sale entered by the parties.

Ld. CIT(A)'s finding that Rs. 3 crores account money received till email dated 13.01.2021 & 15.01.2021 in case of Scorpio Research & Consultant Pvt. Ltd. (UK Paints Group) is not supported by sale deed as accounted fund payment does not contain Rs.3 crore, it may be mentioned that Ld. CIT(A) himself in Para 4.4.8 on page 119 has noted that the consideration depicted in the agreement for sale is Rs. 35 crore paid by RTGS on 20.01.2010 where a ledger of Vatika Shows payment by cheque on 10.01.2010 for Rs 29,33,39,906/- & Rs.5,66,60,094/- on 21.01.2010 (RTGS). Therefore, entry in the books of accounts of M/s Vatika Ltd. does not match with agreement to sale. Hence on this basis above, the contents of mail cannot discarded.

In view of the above, the contents mentioned in the mail is not estimated figure but have a correlation with actual deal of agreement to sale between Vatika & three groups.

Now coming to figure 'B' which has been deciphered by black or unaccounted, there is a coherency in the mail

i) In the documents attached with the mail dated 13.01.2010. Total Black/unaccounted fund already given group wise as under:

a. SHAHI Group "B" Rs.1.50 crore

b. U.K Paint Group "B" Rs. 3.00 Crore
c. SPAN Group"B" Rs. 12.00 crore
(Page No. 68 & 69 of AO)

ii) In the documents attached the mail dated 20.01.2010. total black/unaccounted fund already given/to be given is as under:

a) SHAHI Group B 8.50 Crore
B+ - 6.50 crore (to be given)
b) . U.K paint funding
'B' - Rs. 7.00 crore
B+ - Rs. 8.00 crore(to be given)
c) . SPAN funding
'B' - Rs. 12.00 crore
B+ - Rs. 3.00 crore(to be given)
(Pg No 72 & 73 of AO)
Total comes to Rs. 45 Crore.
These fund already given or to be given is reduced from total costing to arrive at the figure for agreement to sale. In view of the above , total black/unaccounted fund already given or to be given as per record email dated 20.01.2022 should be considered as final black money correspondent which is Rs. 45 crore in the deal which is just a day earlier to date of agreement to sale. Since the wordings of seized material are quite clear & specific, the addition made by AO may be restored."

Sd/-
(H.K. Choudhary)
Commissioner of Income Tax (DR),
G-Bench, ITAT, New Delhi

40. The ld. DR argued extensively on various dates detailing the entire events of all the groups involved along with the M/s Vatika Ltd. He has taken us through the seized material pertaining to U.K. Paints India Pvt. Ltd. and the agreements thereof, the agreements with Sohan Singh Dhingra, Heminder Kumari, Span India Pvt. Ltd. and also SEH Realtors Pvt. Ltd. He has argued based on the fund flow showing that the fund used in repurchase of the property from the lender in the name of M/s Lincoln Developers Pvt. Ltd. is the fund of M/s Vatika Ltd. The table has been shown at page no. 6/7 of the written submission of the ld. DR which is reproduced above. The ld. DR has also argued based on the initial agreements, advancing the money, subsequent agreements, loan-cum-purchase agreement, collateral securities, personal guarantees and the PDCs. The ld. DR has also emphasized on the compulsory buy-back from the lender at the option of the investor lender parties. The ld. DR's main argument was that in view

of the securities, the advance given is fully secured and it can never be treated as a purchase transaction.

41. The ld. DR argued that the unaccounted interest payment had no bearing in the recorded transaction. It was argued that if the transaction is held to be a loan transaction and unaccounted interest payment is upheld, to the extent of change in the work-in-progress due to buy-back of property, set off can be given from the interest. The ld. DR disputed the contention of the assessee regarding erroneous, invocation of Section 69 and submitted that such contention is not tenable as from the conduct of the assessee by accepting buy-back value less than principal and interest at buy-back proves that the assessee has paid unaccounted interest and therefore such expenditure has indeed been incurred and hence Section 69C can be invoked. At this juncture, it is pertinent to mention that this interest has been held to be chargeable in the A.Y. 2011-12 by the ld. CIT(A) instead of A.Y. 2006-07. The ld. CIT(A) held that all the interest was paid at the time of buy-back and all the liability of the assessee got discharged towards the lender.

42. The ld. AR argued that the transactions with U.K. Paints Pvt. Ltd., Dhingra Group, Span India Pvt. Ltd. and Heminder Kumari are business transactions and there was no evidence that the assessee made any actual payment, be it A.Y. 2006-07 or 2011-12, in the case of NH8 Project. It was argued that the assessee received advance against the sale both in respect of Jaipur Deal and NH8 deal and that against such advances, the plots of land have been allotted, the same have been reflected in the regular books of accounts and then sold and offered to tax as income on the basis of percentage completion method. It was argued that the revenue has accepted the income so offered by the assessee while framing assessment, thus, accepting that the transactions have been accepted as that of sale. The ld. AR argued that notwithstanding the fact whether these transactions were loan transactions or advance received against sale of plots, the interest cannot be charged in the A.Y. 2011-12 as no evidence was found either as a result of search or even otherwise to indicate that the assessee actually made the payments. It was argued

that even the ld. DR during the arguments did not bring out any evidence to prove that any interest has been paid to the lender parties.

43. Heard the arguments of both the parties and perused the material available on record.

44. We find that the learned CIT(A) while summing up in para 4.3.3.18 has held that the conclusion drawn by the AO in respect of the appellant's transactions for the Jaipur deal are erroneous and thus interest income added by the AO for AY 2006-07 to A.Y. 2011-12 in respect of the Jaipur deal was deleted. With regard to Jaipur Deal, the ld. CIT(A) held that the parties executed documents of agreement to sale in respect of certain properties owned by Vatika at Jaipur. As per these agreements, a specific right was granted to the buyers that the plots, which were subject matter of the sale agreement, may be sold back by them to Vatika at a pre-determined sale consideration and additional payments of Rs.1,87,77,000/- was made by these parties for preferential plots allotted.The terms of the existing agreement between the parties prove that the transactions were for purchase of plots and not a financial transaction in the nature of loan. It was held that the agreements for sale have been entered by these parties with Vatika the "seller", on various dates in the month of May and June, 2005. Sanskar Buildtech P. Ltd. and Nakshatra Buildcon P. Ltd., who are the owners of the property, were the "confirming parties" to these agreements. It was a fact on record that the parties made full and complete payments of the cost of the plots including preferential location charges. We agree with the observation of the ld. CIT(A) that for construing the intention of the parties from the contents of a contractual document between them, the entirety of the contract must be construed and an effort must be made to harmonize the individual parts into the whole. The ld. CIT(A) has rightly inferred through the harmonious reading of the agreements that the intention was to purchase the plots and not to advance loans as terms of the very first agreement and the accounting treatment given in the books of the parties also proves the same. We affirm the finding of the CIT(A) that none of the evidences referred to by the A.O. either individually or collectively, can be said to indicate that the

specific transaction between the buyer and the assessee was actually a loan transaction.

45. With regard to NH8 Deal, the five customers namely, UK Paints Pvt. Ltd., SS Dhingra (HUF), Span India Pvt. Ltd., M/s SEH Realtors Pvt. Ltd and Smt. Heminder Kumari have lent monies for purchase of space in NH-8 Gurgaon known as "Vatika India Next", which aggregate to Rs. 25 crores and learned CIT(A) had held that out of the five customers, amount advanced by four customers i.e. other than M/s SEH Realtors Pvt. Ltd., was on account of loan till the date of allotment of the plot and the amount advanced by M/s SEH Realtors Pvt. Ltd. was on account of purchase of space, as such, proportionate interest in respect of sum received as advance of Rs. 10 crores from M/s SEH Realtors Pvt. Ltd. was deleted. Whereas, the proportionate interest in respect of sum of Rs. 15 crores received from 4 customers/lenders has been sustained on the ground that transaction with such 4 customers/lenders was loan simplicitor till the date of allotment of plot. While concurring with the decision of the ld. CIT(A) pertaining to M/s SEH Realtors Pvt. Ltd. on the issue of deletion made on account of alleged interest paid, we are unable to agree with the decision of the ld. CIT(A) holding that transaction with such 4 customers/lenders was loan simplicitor for the following reasons. In respect of NH-8 deal qua aforesaid four customers, the ld. CIT(A) has held that initial agreements were loan agreements, as in such agreements there was no indication of any purchase of land.By entering into the amendatory loan cum purchase agreement, the original agreement is amended to extend the periodicity of loan with an additional amendatory clause giving an option to the lender to opt for purchase of plots. It was held that this clause only provide an option to purchase at future date, and same by itself does not convert the loan agreement to purchase agreement. It was held that subsequent extension agreements only change the date of tenure of loan and the amounts of PDCs, and all other conditions of the amendatory agreement continues in the extension agreement. It was held by the learned CIT(A) that it is only in the AY 2011-12 i.e. upon the exercise of the option to purchase the space, and allotment of plot thereafter, the loan agreement got

converted into purchase agreement and till the exercise of the option, nature of agreement continued as a loan transaction till the AY 2010-11. Such findings of ld. CIT(A) are not correct on facts as he has failed to appreciate that loan agreement was subsequently modified as "Amendatory Loan cum Purchase Agreement", under which the vendees had opted to convert the loan as purchase consideration for the purchase of plot of land which tenure was extended from time to time and plot of aforesaid land was indeed allotted to the lenders in AY 2011-12.

46. All the lender parties were allotted the same area of plot as was quantified in the Amendatory Loan cum Purchase Agreement without any further charges. That infact, it is only such amendatory agreement which had been acted upon when the vendees had also taken both constructive and physical delivery of plots allotted to them. Thus, the lenders have exercised their option to acquire the plots of land instead of accepting the amount of interest originally agreed to be taken from the assessee. This fact itself shows that the original loan agreements, at this juncture, were effectively converted into an agreement to sell/purchase of plots, and hence accrual of any interest does not arise at all. It is a fact that as per the terms of the Amendatory Loan cum Purchase Agreement, on exercise of the option to purchase the residential plot, the loan agreements and Amendatory Loan cum Purchase Agreement shall be deemed to be an agreement to sell and purchase of the residential plots. Under the loan agreements, Amendatory Loan cum Purchase Agreement and Extension Agreements, PDCs were given to the lender/customer in respect of principal amount and interest amount. However, since the lenders/customers never treated the agreement as loan agreement but always wanted to purchase the plot, as such, PDC's were never encashed. Had it been a case of loan instead of advance then obviously the allottees of the land, instead of taking the delivery of plots would have enchased the PDCs. The PDCs were given only as a security pending allotment so that the amounts are secured.

47. It is an undisputed fact that ultimately the plots were allotted to these parties as per Amendatory Loan

cum Purchase Agreement/extension agreements. The situation could have been different, had they not exercised the option to purchase the plots or the plots were not allotted to such lenders. Once the plots were ultimately allotted to such parties, the nature of the agreements changed from loan agreement to agreement to sell/purchase of the plots. It is also a fact on record that no evidence of payment of any such interest has been found, which itself proves that no such liability by way of interest has accrued to the assessee. Infact, neither in the assessment proceedings nor in the first appellate proceedings, any material has been brought on record to support the assumption that the assessee has incurred a liability by way of interest. There is noevidence, even, to suggest that the lenders have actually received any interest. Under these circumstances, the contention of the revenue that the assessee has paid the entire accrued interest till the date of allotment of the plots to the lenders, as agreed, but outside its books in cash is nothing but a figment imagination and based on mere suspicion and surmises.

48. Academically,if the statement of the revenue, that the assessee has paid unaccounted interest to the lender parties is considered as correct, in the backdrop of the fact that the principal amount received is accounted by the assessee as well as by the loan parties, the payment of interest from the books would be advantageous to the assessee to reduce their taxable income and hence we are not in a considered situation to accept the presumption of the revenue.

49. Further, we find that the agreements themselves show that the interest was not actually paid upto 27.08.2010 but accumulated and hence the question of payment of interest annually and disallowance of such interest by the revenue doesn't arise. And since the space was allotted by the assessee to these parties even the purported accumulated interest cannot be taxable in the A.Y. 2011-12. With regard to the allegation of the revenue that buy-back value is less than the principal plus interest proves that assessee has paid the unaccounted interest and is taxable u/s 69C of the Act is erroneous in the absence of any material found either from the premises of the assessee or from the

premises of investors that assessee has paid any unaccounted interest, as there can be none, since the investors were allotted the plot of land as was stipulated in the Amendatory Loan cum Purchase Agreement and Extension Agreements.

50. In the result, we decline to interfere with the order of ld. CIT(A) pertaining to the interest chargeable in case of SEH Realtors Pvt. Ltd. and unaccounted interest payment on account of Jaipur Project. With regard to NH8 Project, since the plots have been duly allotted as per the modified agreements and in the absence of any material found and seized/impounded suggesting interest payment in cash/unaccounted, we hold that no interest can be taxed on notional basis."

4.1 The aforesaid discussion brings out that our Co-ordinate Bench has affirmed the finding of the CIT(A) to the effect that evidences relied upon by the AO could not be considered to indicate that the property transactions between the Vatika group and the assessee were actually loan transactions. Thus, the Tribunal has upheld the action of the CIT(A) in deleting the addition made by the Assessing Authority on account of interest income as being misplaced. In view of the similarity of the case set up by the AO in the present case viz-a-viz that in the case of M/s SEH Realtors Pvt. Ltd, following the decision of our Coordinate Bench dated 20.04.2023 (Supra), we hereby affirm the findings of the CIT(A) on the issue in dispute and accordingly the Appeal of the Revenue for Assessment Year 2006-07 is hereby dismissed.

Assessment Years 2007-08 to 2011-12 (Revenue Appeals)

5. So far as the Revenue's appeals for AYrs. 2007-08 to 2011-12 are concerned, the dispute and the facts relating thereto stand on identical footing to those considered by us in the earlier paragraphs for AY 2006-07. As a consequence, our decision in the Revenue's Appeal for AY 2006-07 in the earlier paragraphs shall apply *mutatis mutandis* to the Appeals of the Revenue for Assessment Years 2007-08 to 2011-12. Accordingly, the appeals of the Revenue for the assessment years 2007-08 to 2011-12 also stand dismissed on the issue of interest income.

5.1 As regards the Ground No. 5 raised in Revenue's ITA 799/Del/2022 (AY 2011-12) which is relating to disallowance u/s. 14A of the Act amounting to Rs. 1,77,827/- is concerned, we find that Ld. CIT(A) has observed that there is no incriminating material unearthed during the search, on the basis of which, the said disallowance has been made by the AO. Therefore, Ld. CIT(A) has observed that facts of the case are squarely covered by the ratio of the judgement of the jurisdictional High Court in the case of CIT vs. Kabul Chawla (2016) 380 ITR 573 and respectfully, following the aforesaid precedent, the addition made u/s. 14A was rightly deleted by the Ld. CIT(A). In our view, in the absence of any material to dislodge the factual finding of the CIT(A) that the disallowance u/s.

14A of the Act is not based on any incriminating material found during search, the action of the CIT(A) in applying the ratio of the judgement of the Hon'ble Delhi High Court in the case of Kabul Chawla (Supra) cannot be faulted. Moreover, the judgment in the case of Kabul Chawla (supra) has since been approved by the Hon'ble Supreme Court in the case of PCIT vs. Abhisar Buildwell Pvt. Ltd. in Civil Appeal No. 6580 of 2021 vide Judgement dated 24.04.2023. Accordingly, the order of the CIT(A) on this issue is also affirmed, and the Ground No. 5 raised by the Revenue in AY 2011-12 is also dismissed.

6. Resultantly, the Revenue appeals for AYrs 2006-07 to 2011-12 stand dismissed.

Assessment Years 2006-07 to 2011-12 (Assessee's Cross Objections)

7. At the time of hearing, Ld. Representative for the Assessee submitted that the issues raised in the Cross Objections are not being pressed. In any case, the issues raised in the Cross Objections are not adjudicated being academic in nature, in view of our foregoing decision in the Appeals of the Revenue. Accordingly, the Cross Objections of the Assessee are dismissed.

8. Resultantly, the captioned Appeals of the Revenue and Cross Objections by the Assessee for AYrs. 2006-07 to 2011-12 are dismissed in the aforesaid manner.

The above decision was pronounced in the Open Court on 30.11.2023.

Sd/-	Sd/-
(CHALLA NAGENDRA PRASAD)	**(G.S. PANNU)**
JUDICIAL MEMBER	**VICE PRESIDENT**

"SRBhatnagar"

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi