

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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No.523/JP/2023
निर्धारण वर्ष/Assessment Years :2015-16

Prem Prakash Agarwal 429/7, Naya Bazar, Ajmer	बनाम Vs.	DCIT, Central Circle Ajmer, Jaipur Road, Ajmer
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: ACGPA 2972 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri C. M. Agarwal (CA)
राजस्व की ओर से / Revenue by: Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 02/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 04/12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by assesseeis arising out of the order of the Commissioner of Income Tax, Appeal, Jaipur-5 dated 07/08/2023 [here in after referred asld. CIT(A)] for assessment year 2015-16 which in turn arise from the order dated 24.05.2021 passed under section 143(3) r.w.s 153A of the Income Tax Act, by DCIT, Central Circle-Ajmer.

2. In this appeal, the assessee has raised following grounds: -

“Grounds of Appeal:

1. That the orders passed by the Ld CIT(A) and the Assessing Officer are opposed to law, natural justice, equity, weight of evidences, probabilities, facts and circumstances of the case.

2. That the Ld CIT (A) erred in law as well as on facts and circumstances of the case in confirming the absolutely illegal and arbitrary addition of Rs 5,81,081/ made by the Ld Assessing Officer u/s 69A of the Income Tax Act on account of alleged cash payment for purchase of property solely relying on the agreement found during the course of search which was renegotiated, and the confessional statement of the appellant which was retracted immediately after search any without corroborative evidences.

3. That the Ld CIT (A) erred in law as well as on facts and circumstances of the case in not giving any finding on the affirmation of sale price made by the sellers of the property in an independent verification made by the Ld Assessing Officer by issuing summons u/s 131 of the Income Tax Act to the sellers.

4. That the Ld CIT (A) erred in law as well as on facts and circumstances of the case in not considering that not only the terms of sale deed were different from the agreement to sale relied upon the LD AO but the parties to the sale deed and agreement were also not the same.

5. That the Ld CIT (A) erred in law as well as on facts and circumstances of the case in confirming the addition in the hands of the appellant whereas no adverse view of the said agreement to sale viz a viz the sale deed was taken by the Ld AO in the cases of the co purchasers having 94.59% share in the property against the mere 5.41% share purchased by the appellant.

3. Succinctly, the fact as culled out from the records is that the search and seizure action 132 of I.T. Act, 1961 was carried out on 12.09.2018 at the residential and business premises of R.P. Group of Ajmer. Various assets had been found at the time of search and some of them were also seized at various places of the group at the time of action u/s 132 of I.T. Act. Certain incriminating documents/Loose papers/Books of accounts etc.

were also found, inventorized and some of them also seized or impounded at the time of search/survey u/s 132/133A of the IT. Act.

3.1 During search proceeding statements of Shri Prem Prakash Agarwal were recorded. Shri Prem Prakash Agarwal was confronted with the agreement wherein he has stated that the land of 437 yards was purchased @ Rs. 50,000/- per yard and total amount of Rs. 2,18,50,000/- (437 yards @ Rs. 50,000/- per yard) was paid during the financial year 2014-15. He further stated that the above land was registered only at Rs. 1,11,00,000/- and the balance amount of Rs. 1,07,50,000/- (2,18,50,000/- - 1,11,00,000/-) was paid in cash from the undisclosed income. Therefore, he voluntarily surrendered an amount of Rs. 1,07,50,000/- for taxation for FY 2014-15 as per statement recorded.

3.2 During the course of assessment proceedings, the assessee was asked to give the explanation of all the exhibits seized at the time of search proceedings. In response the assessee, vide his submission dated 19.02.2021 has submitted the page wise description of all the exhibits. As regard exhibit-3 of Annexure-A page No. 1 to 13, the assessee submitted that the same deals with the details of the property sold and purchased by

the All-Agarwal Family. The assessee Shri Prem Prakash Agarwal indulged in property brokerage business and these papers relate to the said business. Accordingly, the assessee offered an amount of Rs. 24,00,560/- on account of brokerage income which was neither disclosed in the original return of income nor the return of income filed in response to notice issued u/s 153A of the I.T. Act for the A.Y. 2015-16. Therefore, an addition of Rs. 24,00,560/- made on account of undisclosed brokerage income and added to the total income of the assessee for A.Y. 2015-16.

4. 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)/NFAC is reiterated here in below:

“Conclusion: The appellant Shri Prem Prakash Agarwal and 2 other person were purchase parties in the agreement under question dated 18.05.2014. For the same property the appellant Shri Prem Prakash Agarwal and 5 other person were purchase parties in the registered agreement dated 27.08.2014. Thus the agreement found during the search has high evidential value and the rate specified in the original agreement is the true value of the property. Since same parties are involved in the agreements to sell found during the course of search and the sale deeds executed of the same property, therefore, it was proved that higher consideration was paid by the purchase parties. Thus, the contents of sale deed are very well valid. The contention of the appellant regarding dispute, chain of document etc have no evidentiary value as the same are without any supporting value. The appellant and others had executed a registered sale deed within 3 months, which is treated as valid transfer under section 2(47)(V) of the Act. Thus the agreement found during search was actually materialized within 3 months. Therefore, it is clear that time was the essence of the agreements and the argument put forth by the appellant is not sustained in this situation. The burden of proving actual consideration in such transaction is that of the revenue

and the revenue, in the present case, had discharge its duties correctly by founding such agreement and taking admission of higher rate of purchase price in the statement recorded during the search. The A.O. had to bring corroborative evidences on record before making the addition against the assessee. The sale deed clearly shows that higher amount is paid by purchase parties to purchase the property in comparison to what was mentioned in registered deed. Thus, such agreement which ultimately materialised and registered can be used as an evidence to draw an adverse inference against the appellant. Consideration of above facts, the 1st ground of appeal that the addition was made on the basis of agreement found during the search and on the basis of his presumption and suspicion only is hereby dismissed.

7. Ground No 2: Without prejudice to ground No.-1 above, on the facts and in the circumstances of the case the Id. AO has erred on facts and in law in making addition of Rs.1,07,50,000/- u/s 69A of the act on account of alleged cash payment for purchase of property at Civil Lines, Ajmer, on the basis of an agreement dated-18.05 2014, in the hands of the appellant assessee only, whereas the alleged agreement of purchase was made by three Individuals and the sale deed was ultimately executed and registered in the name of six purchaser Individuals, including the assessee .Therefore, the addition of the entire amount of alleged cash payment of Rs.1,07,50,000/- in the hands of the appellant may kindly be deleted.

7.1 The appellant has filed following submission on this ground: -

"It has held that where purported transaction of land between assessee seller & buyer did not materialize and land was not transferred to said buyer addition u/s 69 on the basis of seized against was not justified (2021) 127 tax Com 699) (Ahd. Trib.) ACIT VIS KarsanginBuddh Gin Goswami ITA 347/Ahd/2018 dt. 12.04.2021

Similarly it has been held

4.Shri Narendra Lakhi, Jaipur vs Dcit, Central Circle-3, Jaipur on 28 October, 2021 ITA No. 52/JP/2021

Before the tribunal, the Id. AR of the assessee has submitted that the Assessing Officer has accepted that the payment to the extent of Rs. 29,50,000/- apart from the cheque payment of Rs. 1,51,000/-pertains to the assessment year 2009-10 and the same cannot be added for the year under consideration. He has further submitted that the Assessing Officer has recorded this fact that the time period of payment of balance amount of Rs. 54,50,000/- is not known but the same is held to be unaccounted expenditure made by the assessee for the purpose of investment in the property during the current year. Therefore, the addition is made by the AO only on the basis of assumption and presumption of payment made by

the assessee during the year without any incriminating material. There was no material or basis to presume that against the agreement dated 30.04.2008 the assessee paid the alleged amount of Rs 54,50,000/- during the year under consideration. It is settled law that for the purpose of making addition on account of unexplained investment U/s 69 of the IT Act the burden to prove that such investment has been made and that too in a particular year is on the person who alleges so, Neither the AO nor the Id. CIT(A) has brought any evidence on record to effect that the investment of Rs. 54,50,000/- has been made by the assessee during the year under consideration. Thus the addition without any evidence and without discharging the burden to prove is unjustified and uncalled for and liable to be deleted. In support of this contention he has relied on the following decisions:-

PCIT Vs Vivek Prahladbhai Patel (2016) 237 Taxman 331.

CIT Vs Agile Properties (P) Ltd. (2014) 107 DTR 201. CIT VS Khandelwal shringi & Co. (2017) 159 DTR 59.

ACIT VS Govindbhai N. Patel (2015) 2015 Taxman 575

We have considered the rival contentions and perused the material available on record. There is no dispute that during the course of search and seizure agreement dated 30.04.2008 regarding purchase of the property by the assessee from one Shri Dayal Chetwani was found showing the total purchase consideration of the land at Rs. 84,00,000/- the said agreement to show that the assessee paid Rs.24,00,000/- in cash and Rs. 1,51,000/- vide cheque dated 30.04.2008 out of the total consideration and the balance amount of Rs.60,00,000/- was to be paid by the assessee subsequently. The said agreement further, enumerates time and manner of payment by the assessee regarding the balance amount of Rs. 60,00,000/- out of which a sum of Rs. 5,50,000/- was to be paid within a month from the agreement, Rs. 25,00,000/- was to be paid to the Oriental Bank of Commerce to discharge the mortgage loan taken on this property and the balance of Rs. 29,50,000/- was to be paid at the time of registration of sale deed. Even otherwise without discharging the charge of mortgage with the bank the property could not be transferred through a registered sale deed. So far as the payment of Rs. 24,00,000/- in cash and Rs. 1,51,000/- by cheque is concerned there is no dispute regarding the said payment as it is paid at the time of agreement dated 30.04.2008 and the assessee has accepted the same. The Assessing Officer has also recorded this fact that the said amount of Rs 24,00,000/- paid at the time of agreement and Rs. 5,50,000/- was to be paid in the next month of the agreement pertains to the assessment year 2009-10. The relevant part of the order at page 3 of the assessment order reads as under-

"It is observed that as per the agreement, the assessee made the payment of Rs. 31.01 lakhs in thy AY 2009-10 against the transaction,

while the period of balance payment of Rs. 54,50,000/- is not known. Since, the unaccounted payment of Rs.24 lakhs & Rs. 505 lakhs pertains to the AY 2009-10, the same cannot be added in the year under consideration. However, with respect to the unaccounted expenditure of Rs. 54,50,000/-, since the time period of the payment of this amount is not known and also not disclosed by the assessee, the same is held to be the unaccounted expenditure made by the assessee for the purpose of investment property during the current year and accordingly, added to his total income for the AY 2016-17. Penalty Proceedings u/s 271AAB (1)(c) are initiated due to concealment of income spent towards making investment in property."

Therefore, the AO has not made any addition in respect of the payment of Rs. 24, 00,000/- in cash at the time of agreement and further of Rs. 5, 50,000/- was to be paid in the next month of the agreement. Except this agreement dated 30.04.2008 there was no other material found during the course of search to show that the assessee has made the balance of purchase consideration to the seller. The assessee explained before the AO well as Id. CIT(A) that due to the dispute between family members to the seller the transaction did not materialize and no payment other than paid at the time of agreement was made by the assessee. The AO has also accepted this fact that there was no material to show that the balance payment was made by the assessee and even the time period of the alleged payment. In support of his presumption the AO has not referred any evidence of material. Once there was nonmaterial available with the AO to show that the assessee has made the payment of the balance purchase consideration of Rs. 54, 50,000/- the addition cannot be made on the basis of presumption. The Assessing Officer instead of conducting any enquiry to find out the correct facts about the alleged payment has proceeded only on the basis of assumption and presumption regarding the alleged payment of Rs.54, 50,000/-. Further, he has also assumed that the payment has been made during the year under consideration. In the absence of any material or other facts to indicate that the alleged payment was made by the assessee and that too in the year under consideration the addition made by the AO merely on the basis of assumption and presumption has not justified. The Id. CIT(A) has confirmed the addition made by the AO by giving the reasons that the assessee has not explained the details of payment. It is pertinent to note that once the assessee has denied any payment except the payment made by the assessee at the time of agreement, the assessee is not supposed to produce any evidence of non existing transaction. Further as per terms of the agreement the assessee was to pay Rs. 25,00,000/- for discharge of loan amount against the property and once this payment is not made by the assessee to discharge the property in question from the mortgage charge of the bank which is matter of record then it cannot be presumed that the assessee has made the said payment. The Assessing Officer

instead of discharging his duty to bring any material on record to show that the assessee has made unaccounted payment during the year under consideration the addition made purely on the basis of presumption it is not justified and the same is liable to be deleted. Accordingly the addition made by the AO is deleted. In the result, the appeal of the assessee is allowed. Order pronounced in the open court on 28/10/2021."

Thus the LD AO is not justified in making addition of Rs. 1,07,50,000/- U/S 69A of the Income Tax Act

Without prejudice to above the LD AO made addition of Rs. 1,07,50,000/- in the hands of Shri Prem Prakash Agarwal whereas the investment in the said property is as under

1. Smt. Jamna Bansal - 31,00,000/-
2. Smt. Pratibha Bansal - 31,00,000/-
3. Smt. Kamla Bansal - 31,00,000/-
4. Shri Prem Praash Agarwal - 6,00,000/-
5. Shri Pukhraj Agarwal - 6,00,000/-
6. Shri Suresh Bansal - 6,00,000/-

Thus Shri Prem Prakash Agarwal is only having 5.41 % share in the said property and addition of Rs. 5,81,081/- to be made in the hands of Shri Prem Prakash Agarwal."

7.2 I have considered the facts of the case and written submission of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration. It is undisputed fact as discussed above in decision of ground no. 1 that Rs 1,07,50,000/- over and above the registered agreement price was paid in this property transaction In the registered agreement there was 6 purchase parties including the appellant, therefore addition of whole amount of on money of Rs 1,07,50,000/- in the case of appellant is not justifiable. The investment part of all 6 purchase parties are as under

1. Smt. Jamna Bansal - 31,00,000/- (27.92%)
2. Smt. Pratibha Bansal - 31,00,000/-(27.92%)
3. Smt. Kamla Bansal -31,00,000/- (27.92%)
- 4 Shri Prem Praash Agarwal -6,00,000/-(5.41%)
5. Shri Pukhraj Agarwal -6,00,000/- (5.41%)
6. Shri Suresh Bansal - 6,00,000/- (5.41%)

As Shri Prem Prakash Agarwal ie the appellant is only having 5.41 % share in the said property, thus his proportionate share of Rs. 5,81,081/- is hereby sustained in the hands of Shri Prem Prakash Agarwal i.e. the appellant and balance amount is deleted. The AO is free to take necessary remedial action in other person for this transaction. Thus, the 2nd ground of appeal is partly allowed.

8. The 3rd ground of appeal is against initiating penalty proceedings u/s 271(1)(c) of the Act. Simply initiation of penalty proceedings should not give rise to any grievance. If at all penalty is levied by the AO the appellant has right to appeal. This ground is dismissed.

9. The 4th ground if for interest which are consequential in nature no needing any specific adjudication and are accordingly treated as dispose off.

10 The last Ground of Appeal is that the appellant craves leave to add, alter, amend or withdraw any of the grounds of appeal during the course of appellate Proceedings.

10.1 The appellant has not added or altered, amend or withdraw any of the above mentioned grounds of appeal. Accordingly, such mention by the appellant in its ground is treated as general in nature, no needing any specific adjudication and is accordingly treated as dispose off.

11. In the result, the appeal is treated as partly allowed.”

5. As the appeal of the assessee was considered in part and thus, feeling dissatisfied from the order of the Id. CIT(A) the assessee has preferred this appeal on the grounds as reiterated here in above. To support the various grounds so raised the Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below:

“Most humbly it is submitted that return of Income in response to the Notice u/s 153A of the Income Tax Act dated 12.09.2018 was filed by the appellant on 02.06.2019 at an income of Rs 9,54,140/. Subsequently brokerage income of Rs 24,00560/ was also offered to tax during the course of assessment proceedings. However, assessment u/s153A of the Income Tax Act was made by the Ld Assessing Officer Central Circle- Ajmer on 26.05.2021 by making an addition of Rs 1,07,50,000/ to the total income of the appellant u/s 69A of the Income Tax Act on account of alleged cash payment made for purchase of a property at Civil Lines Ajmer. The addition was purportedly made on the basis of an agreement

dated 18.05.2014 found during the course of search which was never acted upon. Ld AO also relied upon the statement made u/s 132(4) of the Income Tax by the appellant during the course of search, which though admittedly was retracted by the appellant before the DDIT(Inv) itself.

Against the assessment order, assessee filed appeal before Ld CIT(A) Jaipur- 5, where Ld CIT(A) vide the impugned order dated 07/08/2023 provided part relief to the appellant and reduced the addition to Rs 5,81,081/ proportionate to the share of the appellant in the property, simultaneously upholding the unaccounted payment in purchase of property basis the agreement dated 18.05.2014. Since, full relief has not been provided to the appellant by the Ld CIT (A), the present appeal has been filed.

Submissions in respect of Grounds No 1 & 2 of appeal-

Ld CIT(A) in his order observed that the appellant and 2 other person were the purchase parties in the agreement under question dated 18.05.2014 and for the same property the appellant and 5 other persons were purchase parties in the registered agreement dated 27.08.2014. Thus the agreement found during search has high evidentiary value and the rate specified in the original agreement is the true value of the property.

Ld CIT(A) further observed that very same are parties are involved in the agreement to sell found during the course of search and the sale deed executed of the same property, proved that higher consideration was paid by the purchase parties and contents of sale deed are very well valid.

Ld CIT (A) further observed that contention of the appellant regarding dispute, chain of documents etc have no evidentiary value as the same are without any supporting value. The agreement found during search was actually materialised within 3 months, therefore it is clear that time was the essence of the agreements and the arguments put forth by the appellant is not sustained in the situation.

It is humbly submitted that the Ld CIT (A) fell into grave error of law and fact in observing that same parties are involved in the agreement to sell found during the course of search and the sale deed executed of the same property, proved that higher consideration was paid by the purchase parties and contents of sale deed are very well valid. Ld CIT(A) got oblivious of the fact that sellers of a property will always remain the same be it agreement to sale or sale deed as the owners alone will execute any document and therefore, same selling parties in agreement and sale deed is at best a neutral fact, not proving anything beyond the identity of the Sellers.

Ld CIT (A) further failed to consider that in the transaction of sale of the property, it is only the purchasers which may either be the same parties as to the agreement and sale deed or different parties. In case sale deed is executed by the parties different from the parties who entered into purchase agreement, the

eventual sale deed may or may not be the culmination of the earlier purchase agreement entered into by different purchasers. In that situation, further examination of the facts if any brought to the knowledge of the Ld AO and Ld CIT(A) requires due consideration and cannot be dismissed summarily as has been done by the Ld AO and Ld CIT(A) in the present case.

The agreement to sale found during the course of search, was entered into with the sellers by the appellant and Sh Pukhraj Agarwal and Sh Suresh Bansal. However, subsequent to the entering into agreement it was noticed that title of the property in the name of the sellers/ parties to the agreement was not fully clear as authentic documents of certain in between transactions of transfer of property in the name of the sellers from the original owner of the property were missing. Therefore, the transaction was renegotiated and 3 more parties were added to the transaction. In fact, sellers also gave a legal notice through their advocate to the purchasers for execution of the sale transaction and such notice was also found and seized during the course of search & seizure proceedings. Since, the documents substantiating the contention of the appellant were also found during the course of search and were also seized along with the agreement to sale relied upon by AO and Ld CIT (A), therefore, the observations of the Ld CIT (A) that contention of the appellant regarding dispute, chain of documents etc have no evidentiary value as the same are without any supporting value is perverse on fact.

Thus, the action of the LD AO and Ld CIT (A) in placing selective reliance on the search findings is not in accordance with law and equity. Ld AO and Ld CIT(A) both in making and sustaining the addition relied upon the agreement to sale found during the course of search which has been agreed upon by parties different from the parties who eventually bought the property, and at the same time ignored the another seized document substantiating the factum of renegotiation of sale agreement. In the circumstances, it is prayed that the illegal and arbitrary orders passed by the lower authorities may kindly be quashed and the addition to the income sustained by the Ld CIT (A) be deleted.

Submissions in respect of Ground No 3- ,

It is submitted that during the course of assessment proceedings, the Ld Assessing Officer conducted independent enquiries from the sellers by issuing summons u/s 131 of the Income Tax Act to the sellers. The sellers confirmed to the Ld Assessing Officer that due to the issues of defective titles to the property, the sale price was renegotiated to Rs 1,10,00,000/ only. The Sellers categorically affirmed to the LD AO that the agreement dated 18.05.2014 was not acted upon for want of original papers of the property and disputes regarding demarcation and possession of the property.

Ld CIT (A) totally ignored the fact of independent enquiries so made by the LD AO during the course of assessment proceedings itself. Ld CIT (A) only observed that the AO had to bring corroborative evidences on record before making the addition and sale deed clearly shows that higher amount is paid by the

purchasing parties. Observations of the Ld CIT (A) suffer from gross perversity of facts. The corroborative evidence collected by the LD AO is in the shape of results of independent enquiries conducted by the LD AO by exercising powers u/s 131 of the Income Tax Act and the corroborative evidence only substantiates the case of the appellant.

Since the corroborative evidences already on record clearly establish that no any payment over and above the payment recorded in the sale deed was ever paid to the sellers, the addition sustained by the Ld CIT (A) deserves to be deleted and it is prayed accordingly.

Submissions in respect of Ground No 4-

In this regard it is submitted that though the Ld CIT(A) on the basis of sale deed which has been entered into with the sellers by the appellant along with 5 co-buyers where share bought by the appellant in the property is 5.41% confirmed the addition of amount proportionate to the share of the appellant, Ld CIT(A) completely ignored that the alleged unaccounted payments deduced on the basis of agreement to sale is totally different from the sale deed in terms of sale price as well as the proportionate shares to be bought. The proportionate share of the appellant has been taken from the sale deed whereas the unaccounted payment has been taken from the agreement to sale. When both the documents differ substantially from each other not only in the sale price but in the share in property to be purchased by the appellant, the earlier document cannot be relied upon. Once the Ld CIT (A) based on sale deed accepted the ownership percentage of the appellant i.e 5.41%, the agreement to sale having 1/3 right of the appellant should have been ignored by the Ld CIT (A).

Submission in respect of Gr No 5 – It is humbly submitted that admittedly the assessee eventually bought 5.41% share in the property and remaining 94.59% was purchased by other persons in whose cases no addition has been made by the Ld AO. When purchase price has been accepted in the hands of buyers having 94.59% share, the sustaining of addition in the hands of the appellant on the basis of very same documents is contrary to law and equity. Action of the LD AO and the Ld CIT (A) is gross discriminatory in this regard and should not be sustained for this reason alone.”

5.1 To support the various contentions so raised in the written submission the Id. AR of the assessee also filed a paper book for the following evidence / supporting documents:

S. No.	Particulars	Pg No.
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1	Written submission	1 to 5
2	Copy of agreement dated 18.05.2014 Exhibit 10	6 to 12
3	Notice by Advocate of Seller party Exhibit 10	13 to 15
4	Reply to notice to party	16
5	Reply by the party	17
6	Registry Copy dated 27.08.2014	18 to 26
7	Statement of Shri Prem Prakash	27 to 33
8	Reply filed by Charu Mathur on 29/11/2018	34 to 35

5.2 The Id. AR of the assessee in addition to the above written submission vehemently argued that impugned agreement relied upon is cancelled one and the same was not materialized at all. Because the chain of documents were missing in the legal title for which this property agreement found. In support of this contention the Id. AR of the assessee submitted a legal notice given vide his paper book. Therefore, that price was not in fact paid and ultimately the price was negotiated again. He also submitted that the share of the assessee is only 5.41% in the impugned property and in case of the other parties based on the explanation furnished no addition is proposed by the revenue. Even in the report of the Id. AO there is no whisper of making the addition in the other cases and therefore, considering that aspect of the matter the addition sustained by the Id. CIT(A) to the extent of Rs. 5,81,081/- is required to be deleted.

6. Per contra, the Id. DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR submitted that the addition relates to the seized material and addition is based on the evidence collected at the time of action of the revenue. The Id. DR also relied upon the contentions raised by the Id. AO in the factual report submitted by him to counter the grounds of the appeal of the assessee. The contention of the Id. AO reads as under :

“ Sub:-

Appeal before Hon'ble Bench in ITA No. 523/JPR/2023, A.Y. 2015-16 In the case of Shri Prem Prakash Agarwal (PAN- ACGPA2972H)- Regarding-

Sir,

Kindly refer to your office letter No. 436 dated 02.11.2023, on the subject cited above.

02. In this regard, it is submitted that, appeal effect of order of Id. CIT(A) In the case of Shri Prem Prakash Agarwal having PAN ACGPA2972H for A.Y. 2015-16 has already been given vide D&CR No. 30/149 dated 08.08.2023.

03. Following information as directed by the Ld. CIT(A) vide order No. 2/11084/2014-15 dated 07.08.2023 has already been uploaded on insight portal for necessary action by the jurisdictional assessing officer in the case of the concerned assessee. Relevant part of such information are as under:-

"The search and seizure action u/s 132 of 1.T. Act, 1961, was carried out on 12.09.2018 at the residential and business premises of R.P. Group of Ajmer including the appellant. A Notice u/s 153A was issued on 28.05.2019 which was duly served upon the assessee by E- mail. In response to the notice u/s 153A, the assessee has submitted return of Income on 02.06.2019 declaring income of Rs. 9,54,140/-. During the course of assessment proceeding a revised

computation of income was filed by the appellant declaring of brokerage Income of Rs. 24,00,560/-.

Assessment proceedings u/s 153A of the Act was completed on 24.05.2021 on assessed income at Rs. 1,41,04,700/- after making additions of Rs. 1,07,50,000/- u/s 69A of the Act on account of on account of alleged cash payment for purchase of property at Civil Lines, Ajmer.

An appeal has been filed by the assessee on the issue of addition of Rs. 1,07,50,000/- u/s 69A of the Act before Ld. CIT(A). Ld. CIT(A)-5, Jalpur vide his order No. CIT (A), Udaipur 2/11084/2014-15 dated 07.08.2023 has partly allowed the appeal of the assessee. Relevant para of the appeal order are as under:-

“ 7.2I have considered the facts of the case and written submission of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration. It is undisputed fact as discussed above in decision of ground no.1 that Rs. 1,07,50,000/- over and above the registered agreement price was paid in this property transaction. In the registered agreement there was 6 purchase parties including the appellant, therefore addition of whole amount of on money of Rs 1,07,50,000/- in the case of appellant is not justifiable. The investment part of all 6 purchase parties are as under:-

1. Smt. Jamna Bansal - 31,00,000/- (27.92%)
2. Smt. Pratibha Bansal - 31,00,000/- (27.92%)
3. Smt. Kamla Bansal - 31,00,000/- (27.92%)
4. Shri Prem Praash Agarwal - 6,00,000/- (5.41%)
5. Shri Pukhraj Agarwal - 6,00,000/- (5.41%)
6. Shri Suresh Bansal - 6,00,000/- (5.41%)

As Shri Prem Prakash Agarwal i.e. the appellant is only having 5.41% share in the said property, thus his proportionate share of Rs. 5,81,081/- is hereby sustained in the hands of Shri Prem Prakash Agarwal i.e. the appellant and balance amount is deleted. The AO is free to take necessary remedial action in other person for this transaction. Thus, the 2nd ground of appeal is partly allowed.” Copy of assessment order of Shri Prem Prakash Agarwal dated and appeal order vide No. CIT (A), Udaipur - 2/11084/2014-15 dated 07.08.2023 is attached herewith for ready reference.”

04. Put up for your kind consideration and necessary action.”

7. We have heard the rival contentions and perused the material placed on record. The only dispute that the assessee has raised in this appeal for

sustained addition of Rs. 5,81,081/- by the Id. CIT(A). The Id. AO has made an addition of Rs. 1,07,50,000/- based on the agreement wherein it was found that the land of 437 yards was purchased @ Rs. 50,000/- per yard and total amount of Rs. 2,18,50,000/- (437 yards @ Rs. 50,000/- per yard) was paid during the financial year 2014-15. He further stated that the above land was registered only at Rs. 1,11,00,000/- and the balance amount of Rs. 1,07,50,000/- (2,18,50,000/- - 1,11,00,000/-) was paid in cash from the undisclosed income and was added accordingly. Out of this addition Id. CIT(A) has sustained the addition of Rs. 5,81,081/- the relevant finding of the Id. CIT(A) is reiterated so as to deal with the grounds raised by the assessee.

“ 7.2I have considered the facts of the case and written submission of the appellant as against the observations/ findings of the AO in the assessment order for the year under consideration. It is undisputed fact as discussed above in decision of ground no.1 that Rs. 1,07,50,000/- over and above the registered agreement price was paid in this property transaction. In the registered agreement there was 6 purchase parties including the appellant, therefore addition of whole amount of on money of Rs 1,07,50,000/- in the case of appellant is not justifiable. The investment part of all 6 purchase parties are as under:-

1. Smt. Jamna Bansal - 31,00,000/- (27.92%)
2. Smt. Pratibha Bansal - 31,00,000/- (27.92%)
3. Smt. Kamla Bansal - 31,00,000/- (27.92%)
4. Shri Prem Praash Agarwal - 6,00,000/- (5.41%)
5. Shri Pukhraj Agarwal - 6,00,000/- (5.41%)
6. Shri Suresh Bansal - 6,00,000/- (5.41%)

As Shri Prem Prakash Agarwal i.e. the appellant is only having 5.41% share in the said property, thus his proportionate share of Rs. 5,81,081/- is hereby sustained in the hands of Shri Prem Prakash Agarwal i.e. the appellant and

balance amount is deleted. The AO is free to take necessary remedial action in other person for this transaction. Thus, the 2nd ground of appeal is partly allowed."

Against the said decision of the Id. CIT(A), the Id. AO in the factual reported presently during the hearing of the appeal there is no counter statement of the Id. AO as to the submission of the assessee that admittedly the property was jointly purchased by the assessee where the stake of the assessee is 5.41 % and the balance share of 94.59 % wherein five other persons are involved. While dealing with the same paper the Id. AO has accepted the purchase price and no further addition was called for considering the submission of the assessee that impugned agreement relied upon is cancelled one and the same was not materialized at all. Because the chain of documents were missing in the legal title for which this property agreement found. The assessee in his paper book submitted the legal notice issued by in respect of this property. Based on these factual aspect of the matter the price was not in fact paid as alleged by the revenue as per that agreement but ultimately the price was negotiated again based on the defect in the title of the property. The share of the assessee in the property is only 5.41% in the impugned property and in case of the other parties based on the explanation furnished no addition is proposed by the revenue in the assessment proceedings. Since, the revenue has accepted the

explanation of the parties concerned out of six in five cases no addition is proposed or made in the assessment proceedings we do not see any reason to sustained in the case of the assessee. Based on this aspect of the matter we direct to delete the addition of Rs. 5,81,081/- sustained by the Id. CIT(A). Since we have considered the ground no. 5 raised by the assessee as discussed here in above, the other grounds raised by the assessee becomes educative in nature and therefore, the same are not decided.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 04/14/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 04/12/2023

*Ganesh Kumar, PS

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Prem Prakash Agarwal, Ajmer
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-Ajmer, Ajmer
3. आयकरआयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File (ITA No. 523/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar