

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" 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.373/JP/2023
निर्धारण वर्ष / Assessment Years : 2020-21

Joint Commissioner of Income Tax, Ajmer	बनाम Vs.	Vijay Gupta 5 Ground Floor, Khailand Market, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.:ABHPG 9894 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. C. M. Agarwal (CA)
राजस्व की ओर से / Revenue by: Sh. Ajay Malik (CIT)

सुनवाई की तारीख / Date of Hearing : 12/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 30/11/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by revenue and is arising out of the order of the Commissioner of Income Tax, Appeal, Udaipur-2 dated 30/03/2023 [here in after Id. CIT(A)] for assessment year 2020-21 which in turn arise from the order dated 30.09.2021 passed under section 143(3) of the Income Tax Act, by ACIT, Central Circle, Ajmer.

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

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

2. Whether on the facts and circumstances of the case for the 1691863 assessment year under consideration, the Id. CIT(A) is justified in Law in deleting the addition of Rs 21,69,057/- made on account of unexplained investment u/s 69 r.w.s. 115BBE of the Act without appreciating the fact that the reply of the assessee is vague and also without proper supporting evidence and the assessee failed to get these transactions verified from his regular books of accounts

3. Whether on the facts and circumstances of the case for the 74755980 assessment year under consideration, the Id. CIT(A) is justified in Law in deleting the addition of Rs.9,58,41,000/- made on account of unexplained investment u/s 69 r.w.s. 115BBE of the Act on the basis of incriminating documents found/seized.

4. The learned CIT Appeal has erred in law in granting relief to the taxpayer ignoring that all these documents The evidence emanating from the seized material and in this process, the Learned Commissioner ignored the Principle of Preponderance of Human Probability as elucidated by Honorable Supreme Court in the cases of Sumati Dayal versus CIT 1995 214 ITR 801 SC, and CIT versus 1971 82 ITR 540 SC.

5. The appellant craves leave to add, amend or withdraw any of the grounds of appeal during the course of appeal proceedings.”

3. Succinctly, the fact as culled out from the records is that the search and seizure action u/s 132 of IT Act, 1961, was carried out on 13.02.2020 at the residential and business premises of the assessee group and her family members i.e. “Saini Gupta Jain Somani Malpani 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 IT. Act.

3.1 Certain incriminating documents/Loose papers/Books of accounts etc. were also found, inventoried and some of them also seized or impounded at the time of search/survey u/s 132/133A of the IT. Act. The Pr.

Commissioner of Income-tax, Udaipur vide his order u/s 127 bearing No. Pr. CIT/ITO (Tech.)/UDR/2020-21/4050 dated 18.02.2021 had assigned the jurisdiction from ACIT, Circle-02, Ajmer to ACIT, Central Circle, Ajmer.

3.2 During the year under consideration, the assessee derives income under the Head House Property, Business or Profession and Income from other sources, During the year under consideration, the assessee is engaged in business of trading in Solar Items, Solar Plant, Work Contract etc. The assessee is also a Proprietor of M/s Gupta Electricals. The assessee is also one of the Director and Share Holder in Gupta Prime Resorts Pvt. Ltd. (Hotel & Restaurant). Director and Share Holder in Chakradev Infradev Pvt. Ltd. (Real Estate Developer), Shareholder in G. S. Build Estate Pvt. Ltd. (Real Estate Developer), Designated Partner in G.S. Dream home LLP (Real Estate Developer).

Addition on account of Unexplained Investment u/s 69 of the I.T. Act, 1961 on the basis of Digital Data Found

3.3 During the course of Search Proceedings, the Mobile Phone (Iphone) data was retrieved from forensic imaging in which WhatsApp images/ chats were found related to transaction of unsecured loans, cash transaction etc. The assessee was provided the copies of the chats/images and asked during assessment proceedings to explain the transactions mentioned therein and to verify the same from the regular books of accounts. The total amount of the transactions comes to Rs. 14,32,05,681/-.

3.4 The assessee was also asked to show cause as to why the same may not be held as undisclosed income. In response to the notice, the assessee filed written submission on 26.09.2021. On perusal of the reply of the assessee, the Id. AO found that out of the total amount of transaction, the assessee failed to furnish proper justification and to get them verified the following entries:

S. No.	Particulars	Amount Involved (in Rs.)
1	Photo No. 8	174757
2	Photo No. 9	163900
3	Photo No. 20	100000
4	Photo No. 59	1519500
5	Photo No. 60	78900
6	Photo No. 61	73200
7	Photo No. 62	58800
	Total	21,69,057

3.5 Since, the assessee failed to give any proper justification along with relevant supporting documentary evidences with regards to the entries mentioned above, therefore, the amount of Rs.21,69,057/- held as unexplained investment of the assessee u/s 69 r.w.s. 115BBE of the Act and the same was added to the total income of the assessee.

Addition on account of Unexplained Investment u/s 69 of the I.T. Act, 1961 on the basis of incriminating documents found/seized.

3.6 During the course search proceedings Exhibit-7 of Annexure AS was seized. The exhibit is a diary containing 13 written pages. In that diary various entries in the coded manner such as tube light, bulb, chok etc. written. During assessment proceedings, the assessee was asked to offer explanation on the pages recorded in that diary and also to get verify the entries made therein from his regular books of accounts. In response to the same, the assessee vide his submission made during the course of assessment proceedings has stated that these pages contains details of Tube light, Bulbs and Chok given by him to different persons on hiring charges basis. However, the explanation offered by the assessee not found to be acceptable owing to the reason that the amounts against which these entries are made as Tube Light Bulbs, Chok have also been

mentioned in fractions in some of the cases. Therefore, it is impossible to give Tube Light, Bulb and Chok in fractions. Further, it is also gathered from these entries that interest has also been charged by the assessee against the various entries made in the said diary. Therefore, the submission of the assessee not found convincing to the Id. AO. Accordingly, after making necessary verification from the submissions made by the assessee, necessary inference in respect of the financial implications of unverified coded entries has been drawn as under listed here in below by considering the code word used as Tube Light/Bulb/Chok as per 100 units equals to Rs 1 Crore and where the such words Tube Light/Bulb/Chok are not mentioned, than the same have been taken for the meaning they have been written for or in any other case as; 1 unit equals to 1,000:

Page	AY involved	Amount	Description
1	2020-21	11000	Due Rs. 11,000/- in the name of Sadguru
2	2020-21	21300000	A/c Details of Manoj Jain noted as on 01.04.2019 pending Rs.1,20,00,000 & Rs 20,00,000/- paid on 06.06.2019. Interest paid up to 30.04.2019 A/c of Mammuji where Rs.93,00,000/- is due as on 01.04.2019 and as on 01.07.2019 Rs. 20,00,000/- is due Rs.2,00,000/- cash paid on 26.11.2019.
3	2020-21	14000000	A/c of Sidharth as 01.01.2019 pending Rs. 1,00,00,000/- A/C of Arvind pending as on 01.01.2019 Rs. 40,00,000/- Interest paid on 01.07.2019.
4	2020-21	7000000	A/c of Chhablaniji Amount due Rs. 40,00,000/- as on 01.04.2019 Interest paid till 01.01.2020 A/c of Deepak Garg outstanding as on 01.04.2019 Rs. 30,00,000/- Interest paid till 01.01.2020
5	2020-21	500000	A/C of Vermaji outstanding as on 01.04.2019 Rs. 5,00,000/- interest paid till 01.01.2020

6	2020-21	20500000	A/c of Jakhar outstanding as on 01.01.2019 Rs. 10,00,000/- Rs. 1.5 Lakh adjusted towards Vijay Laxmi Marriage Garden. A/c of Khurana outstanding due as on 30.09.2019 Rs. 189500000/- Interest paid up to 30.09.2019 and balance outstanding as on 01.01.2020 Rs. 100.00 Lakh
7	2020-21	20030000	A/c of A. K. Jain (Paradizzo Resort) outstanding as on 01.04.2019 Rs. 2 Cr. interest paid up to 01.10.2019. A/c of Jinesh total due as on 16.09.2019 Rs. 30,000/-
8	2020-21	2000000	A/C of Vijay Kothi outstanding Rs. 20,00,000/- interest paid up to 01.01.2020
9	2020-21	10500000	A/C Chandra Kanti Saini through cheque 1,05,00,000/-.
		95841000	

3.7 From the perusal of the above, pages 01 to 13 of the Exhibit-7 of Annexure-AS, it was considered by the Id. AO that the assessee has made unexplained investment of Rs. 9,58,41,000/- by way of making loans/advances to the persons tabulated above for which the assessee is liable for tax on unexplained investment for an amount of Rs. 9,58,41,000/-. Accordingly, addition on account of unexplained investment u/s 69 r.w.s. 115BBE of the I.T. Act, 1961 of Rs. 9,58,41,000/- is being made to the total income of the assessee.

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

“5.9 I have considered the submission of Id. A/R and carefully gone through the material available on record.

5.9.1 Addition of Rs. 21,69,057/- was made on account of unexplained investment u/s 69 on the basis of digital data. In the assessment order AO mentioned that transactions appearing in some of the photos remains unexplained and accordingly addition was made.

S. No.	Particulars	Amount Involved (in Rs.)
1	Photo No. 8	174757
2	Photo No. 9	163900
3	Photo No. 20	100000
4	Photo No. 59	1519500
5	Photo No. 60	78900
6	Photo No. 61	73200
7	Photo No. 62	58800
	Total	21,69,057

Since, the assessee failed to give any proper justification along with relevant supporting documentary evidences with regards to the entries. mentioned above, therefore, the amount of Rs.21,69,057/- is held as unexplained investment of the assessee u/s 69 r.w.s. 115BBE of the Act and the same is being added to the total income of the assessee.

With regard to photo no. 8 the appellant stated that there is no finding of the Ld AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the WhatsApp Image it can be noted that there is no name /date mentioned except that in the amount of 1,76,625/-, Rs. 17,550/- is added and Rs. 19,417/- is reduced leaving a balance of Rs. 1,74,757.50/-. The paper does not reflect that the amount is paid. In the remand report also Ld AO has not brought on record any corroborative evidence as to how the amount noted on this paper is unexplained investment more particularly when there is no evidence of any payment. Thus, without having any name /date/ evidence of payment on the image, the addition made by the Ld AO may kindly be deleted.

I find that the AO has added this amount in the hands of the appellant without looking the nature of the entries. The entry is a mathematical calculation without any name and date as explained by the appellant. It is not clear whether the amount is paid or received. No corroborative evidence is mentioned by the AO in the assessment order. In the absence of these findings of the AO the addition made by the AO is not found to be sustainable.

With regard to photo no. 9 the appellant stated that there is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the WhatsApp Image it can be noted that amount of Rs. 1,63,900/- is sum total of 4 figures. There is no date mentioned on the paper. The paper does not reflect that the amount is paid. In the remand report also AO has not brought on record any evidence as to how the amount noted on this paper is unexplained investment more particularly when there is no corroborative evidence of any payment. Thus, without having any name /date/ evidence of payment on the Image, the addition made by the AO may kindly be deleted.

I find that the entry is a mathematical calculation without any name and date as explained by the appellant. It is not clear whether the amount is paid or received. No corroborative evidence is mentioned by the AO in the assessment order.

With regard to photo 20 the AO stated in the remand report that the AO stated that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the paper it can be noted that the paper relate to expenditure on building of Hotel Grand Xenia against which payment of Rs. 1,00,000/- is made by cheque and Rs. 1,00,000/- by cash. Hotel Grand Xenia is run by Gupta Prime Resorts Pvt. Ltd. where in survey dated 14.09.2016 an amount of Rs. 1,00,04,130 was offered for tax on account of Investment in Building. Tax on the same was paid by filing Form No. 1 under the Income Declaration Scheme, 2016. Thus the cash of Rs. 1,00,000/- noted on this paper is covered by income declared by M/s Gupta Prime Resorts Pvt. Ltd.. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and the cash noted on this paper is covered by the income declared by M/s Gupta Prime Resorts Pvt. Ltd. under Income declaration Scheme, 2016, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

I find that the cash of Rs. 1,00,000/- noted on this paper is covered by income declared by M/s Gupta Prime Resorts Pvt. Ltd. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and the cash noted on this paper is covered by the income declared by M/s Gupta Prime Resorts Pvt. Ltd.

under Income declaration Scheme, 2016, addition made in the hands of the appellant is not found to be justified.

With regard to photo no. 59 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the paper it cannot be inferred that amount noted has been paid. No date is mentioned on the paper. It has been explained that it relate to estimate for Subhash Udhyan Work which is related to Shri Gupta Electrical Consortium with Pradeep Kumar Jain. Thus, the paper neither relates to the assessee nor indicates any payment of the amount. The AO neither in the assessment proceedings nor in the remand proceedings has brought on record any evidence that the paper is related to the assessee. Hence, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

I find that the it cannot be inferred that amount noted has been paid. No date is mentioned on the paper. It has been explained that it relate to estimate for Subhash Udhyan Work which is related to Shri Gupta Electrical Consortium with Pradeep Kumar Jain. Thus, the paper neither relates to the assessee nor indicates any payment of the amount. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and it is not established that the amount has been paid, addition made in the hands of the appellant is not found to be justified.

With regard to photo no. 60 and 61 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. In fact the paper is a quotation taken from Bhadana Engineering Company for 5HP and 7HP Motor for Subhash Udyan Work by Pradeep Kumar Jain which was sent to the assessee for approval. However, no purchase is made from Bhadana Engineering Company rather 5HP Motor was purchased from Nirmal Electrical for Rs. 73,350/- by Pradeep Kumar

Jain. All documentary evidence in support of the same was filed. These evidences were not controverted by the AO in the assessment proceedings or remand proceedings. Hence, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

I find that the paper is a quotation taken from Bhadana Engineering Company for 5HP and 7HP Motor for SubhashUdyan Work by Pradeep Kumar Jain which was sent to the assessee for approval. However, no purchase is made from Bhadana Engineering Company rather 5HP Motor was purchased from Nirmal Electrical for Rs. 73,350/- by Pradeep Kumar Jain. These evidences were not controverted by the AO in the assessment proceedings or remand proceedings. Thus, when the transaction was not undertaken by the appellant and the AO could not prove otherwise, addition made in the hands of the appellant is not found to be justified.

With regard to photo no. 62 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. The paper dated 25.02.2019 is in the name of Dr. Manglaram Choudhary. It is a bill of Jaya Kishori Tent House who has charged hire charges from Dr. Manglaram Choudhary in respect of the function hosted by him at Hotel Grand Xenia (a unit of Gupta Prime Resorts Pvt. Ltd.). Thus this paper is not related to the appellant nor the AO in the assessment proceedings and in remand proceedings found any discrepancy in the explanation of the assessee. Hence, addition made is apparently incorrect, unjustified and unlawful.

I find that this paper is not related to the appellant. The AO in the assessment proceedings and in remand proceedings not recorded any discrepancy in the explanation of the appellant. Thus, when the transaction was not undertaken by the appellant and the AO could not prove otherwise, addition made in the hands of the appellant is not found to be justified.

Hon'ble High Court of Bombay held in the case of Principal Commissioner of Income Tax, Central-2 v. Umesh Ishrani [2019] 108 taxmann.com 437 (Bombay)[30-04-2019] as under-

"It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal noted that the loose papers entries were not clear and not corroborated by any independent evidence. No question of law therefore arises. Income Tax Appeal is dismissed."

In this case also the entries on the loose papers are not clear and not corroborated by any independent evidence. The appellant explained that some of the entries are simply mathematical calculations which can be termed as rough noting. The appellant provided explanation with regard to other pages but the AO has not controverted the explanation furnished by the appellant. Therefore, considering the explanation furnished by the appellant, the addition made by AO of Rs. 21,69,057/- is deleted.

5.9.2 Addition of Rs. 9,58,41,000/- is made on the basis of 13 written pages seized as exhibit 7 of Aneexure AS. The AO held that these amounts are loans advanced to various persons and therefore, these were treated as unexplained investment as the appellant could not explain that these are recorded in the books of accounts.

The reasons given by the AO and the reply of the appellant are summarised as under-

- i. The Ld. AO considered the word used as "Tube light/Bulb/Chok" as per 100 unit equals to Rs. 1 Cr. without any corroborative evidences. This fact is accepted in the remand report in Para 3.6(b) where it is admitted that the very basis of treating 100 units as equal to Rs. one Cr is not explained in the order.
- ii. It is observed that at Para 3.6(c) of remand report Ld. AO has concluded that the entries in the paper are in code form since "Tube light/Bulb/Chok" cannot be given in fraction and even interest has been written as charged in these entries.

At the same time on page no. 11 of the remand report it is stated that fraction are related to page no 2, 6, 7, 8, 10 but no addition is made in the assessment order in respect of these fraction entries. This fact in itself proves that Tube light/Bulb/Chok" noted on these pages are actually the units given on hire and wherever there is delay in payment of hire charges, interest has been charged for such delay as noted on the paper itself. Thus, it is admitted fact that there is no basis for the Ld. AO to treat the noting on these pages as in code without any corroborative evidences.

The arguments raised by the appellant with regard to decoding are found to be valid as no basis is explained by the AO for decoding of figures by adding five zeros. In the absence of any supporting material brought on record, the decoding of figures, by adding five zeroes is found to be unjustified. With regard to fraction of units, the AO accepted in the remand report that no addition is made with regard to fraction of entries. Therefore, no adverse inference can be drawn with regard to fraction of entries.

With regard to interest charged for delay in payment of hire charges, the AO has not controverted the reply of the appellant. Therefore, the explanation of the appellant is found to be acceptable.

After arriving these broad conclusions the page wise explanation given by the appellant are considered as under-

With regard to page no. 1 the AO stated the amount is in coded form. The appellant accepted that there is no dispute that 11.00 represent 11,000/-. However, this amount was only payable. It was not actually paid and in search no evidence found that it is actually paid. No comment is given by the AO on the explanation of the appellant and therefore the addition of Rs. 11,000/- is deleted.

With regard to page no. 2 the AO stated the amount is in coded form and contains various financial transactions. The appellant explained that the firm Shri Gupta Electricals is an Electrical Contractor. During F.Y. 2018-19 & 2019-20 the firm has received light maintenance contract from Ajmer Development Authority, Ajmer. As per this contract particular area has been specified in the work order where all the road lights maintenance Work is to be done by the firm Shri Gupta Electricals. As per the process involved in the contract, on intimation of any complaint from ADA, the firm has to do the replacement of lights. The firm issues lights, Chowk and other electrical items in lump sum quantity to their staff member so that they don't have to come again & again and also to avoid any damages while doing the replacement. In this particular case employee Hamendra was the site in charge and he was being employed by us on guarantee of Manoj Jain a known person to the firm. We use to regularly issue him the lights, Chowk and other electrical item and also received back the lights, Chowk and other electrical items which requires some repair and which are totally useless. The appellant enclosed copy of ADA Work order, their stock movement sheet maintained in respect of employee Hamendra, Copy of Challan, copy of complaint intimation received from ADA. The staff usually gives the account but in this case particularly account of 100 tubes was not given by the staff. The same

has been written in diary with name Manoj Jain so as to help remembrance of the fact that in case of any default by the staff the charges of 100 tubes could be recovered from Manoj Jain.

In the statement u/s 132(4) of the Income Tax Act in reply to question no.34 on page no.39 of statement dt.14.02.2020, while clarifying the Exhibit no. AS 7 Page 2, the appellant have stated this fact. In this particular case employee Monu Alies Manoj Tiwari was the site in charge and he was being employed by us on guarantee of Mammuji a known person to the firm. The appellant I claimed that he use to regularly issue him the lights, Chowk and other electrical item and also received back the lights, Chowk and other electrical items which required some repair and which are totally useless. The appellant enclosed copy of ADA Work order, their stock movement sheet maintained in respect of employee Monu Alies Manoj Tiwari, Copy of Challan, copy of complaint intimation received from ADA. The staff usually gives the account but in this case particularly account of 45 tubes and 28 Chowk was not given. by the staff. The same has been written in dairy with name Mammuji so as to help remembrance of the fact that in case of any default by the staff the charges of 45 Tubes and 28 Chowk could be recovered from Mammuji. In my statement u/s 132(4) of the Income Tax Act in reply to question no.34 on page no.39 of statement dt.14.02.2020, while clarifying the Exhibit no. AS 7 Page 2, the appellant have stated this fact.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,13,00,000/- is deleted.

With regard to page no. 3 the AO stated the amount is in coded form and contains various financial transactions. At this page there are two entries one as tube 100 in the name of one Siddharth and other as 40 tube interest paid in the name of Arvind. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 100 shows neontube supplied on hire charge and tube 40 also shows neon tube supplied on hire charge and interest charged for delay in payment of hiring charge. In assessment order AO made addition of Rs.1,40,00,000/- on the basis of amounts dues from the persons whose names are appearing.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to beas per his business activity of maintenance work done by the appellant. TheAO has not

controverted the reply of the appellant. Therefore, the addition made of Rs. 2,13,00,000/- is deleted.

With regard to page no. 4 the AO stated the amount is in coded form and contains various financial transactions. At this page there are two entries one as tube light 40 interest paid in the name of one Chhablaniji and other as 30 tube light interest paid in the name of Deepak. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 40 shows tube light supplied on higher charge, interest charged for delayed hire charge and tube light 30 also shows tube light supplied on hire charge, interest charged for delayed higher charge. In assessment order AO made addition of Rs.70,00,000/- on the basis of amounts dues from the persons whose names are appearing.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 70,00,000/- is deleted.

With regard to page no. 5 the AO stated the amount is in coded form and contains various financial transactions. At this page there are three entries out of which two are crossed and one as tube light 5 interest paid in the name of one Vermaji. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 5 shows tube light supplied on hire charge and interest charged for delayed hire charge. In assessment order AO made addition of Rs.5,00,000/- on the basis of amounts dues from the person whose names is appearing.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 5,00,000/- is deleted.

With regard to page no. 6 the AO stated the amount is in coded form and contains various financial transactions. At this page on the top written as Jakhar tube light 10 no. -1.5/VLMG. At bottom in the name of one Khurana entries of tube 195, chok 13, various interest paid entries and two cheque entries in fraction etc. are seen. In his statement appellant mentioned that this is account of tube

light and chok. During assessment proceedings, appellant claimed that tube 5 shows tube light supplied on higher charge in VLMG and in reference to Khurana entries are related to some tubes and chok for replacement to Delhi and cheque entries in fraction explained by him for payments made through cheques. In assessment order AO made addition of Rs.2,05,00,000/- on the basis of amounts dues from Mr. Jhakar of Rs. 10,00,000/- & Khurana of Rs.1,95,00,000/- and mentioned of Rs 1.5 lacs adjusted towards VLMG in respect of entry of Jhakar. For cheque entries etc. no addition was made. In the appellate proceedings the appellant claimed that entries related to Jhakar pertains to neon tubes given on hire charge which was charged as Rs. 1500/- and entries related to Khurana related to items for replacement which were purchased to Khurana for which some challans enclosed.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,05,00,000/- is deleted.

With regard to page no. 7 the AO stated the amount is in coded form and contains various financial transactions. At this page on top entries are made in the name of A.K Jain PD Bulb 200 interest paid. In middle there are entries in fraction on various dates in the name of Meenaji etc. In bottom there is entries as 30 in the name of Jinesh. During statement appellant mentioned that this is account of bulb. During the assessment proceeding, appellant claimed that top part entry in reference to A K. Jain PD relates to bulb supplies on hire charges, middle part entries amounts given out of personal savings on interest and lower part amount of Rs.30,000/- due for payment against purchase of Supari etc. AO in assessment order made addition of Rs.2,00,30,000/- (Rs.2 Crores outstanding from A.K. Jain Paradizzo Resorts by adding 5 zeros in 200 and Rs.30,000/- due from Jinesh by adding 3 zeros in 30 as tube etc was not mentioned here). The appellant stated that the income of hire charges are duly recorded in the books of account of the appellant.

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,00,30,000/- is deleted.

With regard to page no. 8 the AO stated the amount is in coded form and contains various financial transactions. At this page multiple entries including entries in fraction, entries for interest etc. seen. In statement appellant mentioned that this is account of tube light and washing machine. During assessment appellant claimed that on top part in reference to Vijay Kothi shows meta bulb supplied on hire charge, other entries are related to house hold repairs i.e. washing machine etc., payment to security guard, purchase of washing machine and some other higher charge and house hold expenses etc. In assessment order AO made additions of Rs.20,00,000/- for outstanding due from Vijay Kothi (entry on the top of page).

As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 20,00,000/- is deleted.

With regard to page no. 9 the AO stated the amount is in coded form and contains various financial transactions. At this page entries of 40 + 40 (some unclear noting) +10+5(some unclear noting)+10 of cheque is seen in the name of CS or GS (it is not clear whether it is CS or GS). In statement appellant mentioned that it is related to cheque given to GS Dream Home. During assessment proceeding appellant mentioned that these are rough jottings. AO made addition of Rs.1,05,00,000/- on account of Chandra Kant Saini through cheque. During the appellate proceedings the appellant stated that here it is GS with represent his firm G.S. Dream Home LLP and particulars pertains to the Capital account of partners/initial formation expenses of firm. Here it is to noted that the reply of appellant given is different from reply given during assessment but similar to his statement during search. However, in his reply submitted in response to the office letter of the AO dated 27.07.22 appellant submitted copy of partnership deed dated 25.12.2017 in which claimed capital entries are reflecting. Same are also seen reflecting in the copy of balance sheet given by during the course of assessment proceedings in the case of G.S. Dream Home LLP which is again enclosed in his reply submitted in response to this office letter dated 27.07.22. The AO has verified these entries during the remand proceedings.

As discussed above, the decoding of amounts made by the AO in the assessment order are found to be without basis. The facts explained by the appellant are found to be correct by the AO in the remand report. The AO has not controverted

the reply of the appellant. Therefore, the addition made of Rs. 1.05,00,000/- is deleted.

Page no 10 to 13: No addition is made by AO in assessment order for entries appearing in these pages.

In view of the above discussion, it can be concluded that appellant is claiming that most of these entries pertain to the electric items given by him on hire charge or to his employees or for replacement etc, and interest pertains to interest on hire charge due to delayed payment etc. The appellant has also provided name of the persons from whom hire charges were received. The AO has not given any findings in this regard. The AO has added five zeroes without any basis. No corroborative evidence brought on record to prove that the transactions are such that five zeroes can be added. The AO has not tried to controvert the explanation furnished by the appellant. In the absence of the explanation of the appellant could not be controverted by bringing any positive material on record the addition made by the AO of Rs. 9,58,41,000/- is not found to be sustainable and deleted.”

5. Feeling dissatisfied with the finding of the Id. CIT(A), revenue preferred the present appeal on grounds as reiterated here in para 2 above.

In support of the grounds so raised the Id. DR relied upon the following case laws :

S. No.	Description of the case	Page No
1	Sumati Dayal v. Commissioner of Income Tax (1995) 80 Taxman 89 (SC)	1-7
2	Commissioner of Income tax v. Durga Prasad More (1971) 82 ITR 540 (SC)	8-13

5.1 In addition to the relied upon the case laws, the Id. DR submitted that Ground No. 2 and 3 relates to additions the decision of the Id. CIT(A) deleting the said addition disputed by the revenue and Id. DR submitted that

the additions were made based on the WhatsApp chat found and extracted in photo image tabulated herein below:-

S. No.	Particulars	Amount Involved (in Rs.)
1	Photo No. 8	174757
2	Photo No. 9	163900
3	Photo No. 20	100000
4	Photo No. 59	1519500
5	Photo No. 60	78900
6	Photo No. 61	73200
7	Photo No. 62	58800
	Total	21,69,057

5.2 The Id. DR also submitted that the detailed discussion is duly referred to in para 6 of the assessment order. The Id. DR vehemently argued that out of total transaction of Rs.14,32,05,681/-, the Id. AO has only added the amount which has not been properly explained by the assessee. Therefore, the addition is required to be sustained. The Id. DR submitted that based on some code word language, the assessee has explained other transaction and as regards the remaining transaction, assessee is giving different explanation that the noting was not related to the money advanced but related to the hiring business. The Id. AR of the assessee also did not answer how rented tube light chalk etc. can be infraction. Therefore, the contention of assessee and finding of Id. CIT(A) are contradictory. Based on these contentions Id. DR vehemently argued that the finding of AO be sustained and that of Id. CIT(A) be quashed.

6. Per contra, the Id. AR of the assessee submitted that the Id. CIT(A) has given the detailed finding after considering the remand report of the Id. AO. Thus, he supported the order of the Id. CIT(A). The Id. AR of the assessee also filed following written submission:

Most humbly submitted:

A search and seizure operation was carried out at the business and residential premises of the assessee on dated 13.02.2020.

Assessee had filed return of Income on dated 15.02.2021 declaring income of Rs. 18,56,550/-

Assessment was completed by the Ld DCIT Central Circle Ajmer on dated 30.09.2021 at Rs. 9,98,66,607/- making by addition on the following points:

1. Addition on account of unexplained investment U/s 69 of the IT Act on the basis of digital data found of Rs. 21,69,057/-.
2. Addition on account of unexplained investment U/s 69 of the IT Act on the basis of incriminating documents found and seized of Rs. 9,58,41,000/-

Assessee filed an appeals before the Ld CIT Appeal – 2, Udaipur challenging therein the above referred addition.

During appellant proceeding the assessee filed written reply explaining therein each and every paper along with the supporting evidences.

On the basis of which remand report was called for by the Ld CIT Appeal – 2, Udaipur vide letter dated 22.04.2022.

That Ld AO had called for the details vide letter dated 22.07.2022.

In response to this appellant filed complete reply along with the evidences / details / reply.

That LD CIT Appeal – 2, Udaipur provided us copy of the remand report and complete rejoinder was filed in response to this remand report.

That LD CIT Appeal – 2, Udaipur vide order sheet dated 26.12.2022 asked for certain details / clarification and which were submitted.

The Ld CIT Appeal allowed the appeal on the two grounds vide his order dated 30.03.2023 considering the all the reply / evidences / clarification as asked for from time to time. Reply of the remand report and the rejoinder also submitted

and which was considered by Ld CIT Appeal -2, Udaipur.

Ground NO 2

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.9, 58, 41,000/- u/s 69 r.w.s. 115BBE in the case of the appellant assessee purely on the basis of his presumption, assumption, guess work and suspicion only, simply on the basis of some routine, rough notings/jottings etc. made in a diary on the basis of which no inference relating to any 'unexplained investment' made by the appellant assessee can be drawn. Therefore, the addition made by the Id.AO deserves to be deleted being unproved and unsubstantiated based on presumption, assumption, guess work and suspicion of the Id. AO.

Ground No 3.

(i).On the facts and in the circumstances of the case Id. AO has grossly erred on facts and in law in making the additions of Rs. 21, 69,057/- and Rs.9, 58, 41,000/-, as mentioned above, by invoking provisions of section 69 of the I.T.Act, 1961 treating the said amounts of Rs. 21, 69,057/-and Rs.9, 58, 41,000/- as '**unexplained investment**' and also erred on facts and in law in invoking the provisions of section 115BBE of the Act and charging tax and surcharge etc. accordingly.

(ii).On the facts and in the circumstances of the case neither the provisions of section 69 nor the provisions of section 115BBE are applicable.

Therefore, the addition made by the Id. AO is bad in law and deserves to be deleted.

Regarding Ground No 2 Ld CIT(A) At Page 18 -19 of the Order of CIT(A) is as under :-

"4.2I have considered the submission of Ld. A/R and carefully gone through the material available on record. The argument of the appellant are discussed hereunder.

The appellant argued that without corroborative evidences, the addition cannot be made. I have gone through the assessment order and it is noted that the AO has discussed only the photos of some transaction extracted from the phone of the appellant. The AO has not discussed any other corroborative material in the assessment order. Therefore, the argument of the appellant is found to be acceptable that there was no corroborative material with the AO in addition to the whatsapp images extracted from phone of the appellant. The appellant relied upon various judgments in support of his claim. The argument of the appellant is that no addition can be made on the basis of mere surmises and conjectures and the addition is merely based on dump documents found during the search. The argument of the appellant is justified to the extent that no addition can be made on the basis of surmises and conjectures. The veracity of the entries made in

images recorded by the AO is discussed while deciding the ground no. 3. The appellant argued that the AO has not identified any unexplained investment made by appellant during the period under consideration. The AO has considered the transactions as unsecured loans. The Loans given to others can be considered as investment. However, the appellant argued that the unsecured loans are not established by way of corroborative evidences. As discussed in the previous para, the AO has not discussed any corroborative evidence in the assessment order.

The appellant argued in the ground no. 2 that with respect to addition of Rs. 9, 58, 41,000/- the AO made addition on the basis of presumption and assumption, guess work and suspicion only. No inference can be drawn relating to unexplained investment. The argument of the appellant is accepted as these are based on well established judicial principles. The veracity of entries is discussed on merits while deciding the ground no. 3.

The appellant raised certain arguments which are on merits of the addition made. The merits of the additions made are discussed in the **next para** while deciding ground no. 3. In view of the above discussion, these legal grounds raised by the appellant are treated as allowed.

Regarding Ground No 3 Ld CIT(A) held as under:-

1. The LD CIT Appeal – 2, Udaipur had discussed the comment on the remand report made by the LD AO.
2. At Page no. 84 Ld CIT Appeal has mentioned that appellant has submitted as under:

Thus, only because LD AO in the assessment order considered these noting as unaccounted transaction noted in code form, cannot be a basis for addition particularly when assessee has given detailed explanation supported by documentary evidences on which no adverse comment is given in the remand report.

It is also mentioned that the Ld AO has made the addition by decoding tube/ Bulb/ Chok as per his own whims and without bringing on record any evidences to supports his decoding.

It is also important to mention here that Ld AO in his Remand Report nowhere made any adverse remark and comment on the evidences and explanation placed before him.

Rather ignoring all the evidences and explanation, he simply stated that the addition made by Ld AO during the assessment proceeding are correct.

It is also mention that the submission were made by appellant on dated 05.08.2022 before Ld AO during remand report proceeding to prove that the income received from hire charges and interest on delayed payment were

received in earlier year as well and was duly recorded in accounted and shown in ITR filed in A.Y. 2019-20 and same was ignored by Ld AO in the report.

Hence, the addition of Rs. 9,58,41,000/- made by the Ld AO may kindly be deleted.

3. At page no 89 of Ld CIT Appeal order appellant has requested that on the view of the reply filed and from the above explanation are as under:

From the above explanation it can be noted that none of the paper relates to any unexplained investment by the assessee. AO made the addition by simply stating that assessee failed to give proper justification with evidence ignoring that the explanation given is supported by documentary evidence or otherwise justifiable. He simply relied on the observation made in assessment order by then Ld AO and Ld AO has not made any adverse comment or brought on record any material/evidence to support the addition made during assessment proceeding Hence, the addition made by the AO be deleted.”

4. At the page no. 89 vide para no. 5.9 has discussed the submission made by the appellant and found that

With regard to photo no. 8 the appellant stated that there is no finding of the Ld AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the WhatsApp Image it can be noted that there is no name /date mentioned except that in the amount of 1,76,625/-, Rs. 17,550/- is added and Rs. 19,417/- is reduced leaving a balance of Rs. 1,74,757.50/-. The paper does not reflect that the amount is paid. In the remand report also Ld AO has not brought on record any corroborative evidence as to how the amount noted on this paper is unexplained investment more particularly when there is no evidence of any payment.

Thus, without having any name /date/ evidence of payment on the Image, the addition made by the Ld AO may kindly be deleted.

“I find that the AO has added this amount in the hands of the appellant without looking the nature of the entries. The entry is a Mathematical calculation without any name and date as explained by the appellant. It is not clear whether the amount is paid or received. No corroborative evidence is mentioned by the AO in the assessment order. In the absence of these findings of the AO the addition made by the AO is not found to be sustainable.”

With regard to photo no. 9 the appellant stated that there is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the WhatsApp Image it can be noted that amount of Rs. 1,63,900/- is sum total of 4 figures. There is no date mentioned on the paper. The paper does not reflect that the amount is paid. In the remand report also AO has not brought on

record any evidence as to how the amount noted on this paper is unexplained investment more particularly when there is no corroborative evidence of any payment. Thus, without having any name/date/ evidence of payment on the Image, the addition made by the AO may kindly be deleted.

“I find that the entry is a mathematical calculation without any name and date as explained by the appellant. It is not clear whether the amount is paid or received. No corroborative evidence is mentioned by the AO in the assessment order.”

With regard to photo 20 the AO stated in the remand report that the AO stated that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder_ There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the paper it can be noted that the paper relate to expenditure on building of Hotel Grand Xenia against which payment of Rs. 1,00,000/- is made by cheque and Rs. 1,00,000/- by cash. Hotel Grand Xenia is run by Gupta Prime Resorts Pvt. Ltd. where in survey dated 14.09.2016 an amount of Rs. 1,00,04,130 was offered for tax on account of Investment in Building. Tax on the same was paid by filing Form No. 1 under the Income Declaration Scheme, 2016. Thus the cash of Rs. 1,00,000/- noted on this paper is covered by income declared by M/s Gupta Prime Resorts Pvt. Ltd.. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and the cash noted on this paper is covered by the income declared by M/s Gupta Prime Resorts Pvt. Ltd. under Income declaration Scheme, 2016, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

“I find that the cash of Rs. 1,00,000/- noted on this paper is covered by income declared by M/s Gupta Prime Resorts Pvt. Ltd. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and the cash noted on this paper is covered by the income declared by M/s Gupta Prime Resorts Pvt. Ltd. under Income declaration Scheme, 2016, addition made in the hands of the appellant is not found to be justified.”

With regard to photo no. 59 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. From the paper it cannot be inferred that amount noted has been paid. No date is mentioned on the paper. It has been explained that it relate to estimate for Subhash Udhyan Work which is related to Shri Gupta Electrical Consortium with Pradeep Kumar Jain. Thus, the paper neither relates to the assessee nor indicates any payment of the amount. The AO neither in the assessment proceedings nor in the remand proceedings has brought on record

any evidence that the paper is related to the assessee. Hence, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

“I find that the it cannot be inferred that amount noted has been paid. No date is mentioned on the paper. It has been explained that it relate to estimate for Subhash Udhyan Work which is related to Shri Gupta Electrical Consortium with Pradeep Kumar Jain. Thus, the paper neither relates to the assessee nor indicates any payment of the amount. The AO neither in assessment proceedings nor in the remand proceedings has made any comment on this fact. Thus, when the paper does not relate to the assessee and it is not established that the amount has been paid, addition made in the hands of the appellant is not found to be justified.”

With regard to photo no. 60 and 61 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. In fact the paper is a quotation taken from Bhadana Engineering Company for 5HP and 7HP Motor for Subhash Udyan Work by Pradeep Kumar Jain which was sent to the assessee for approval. However, no purchase is made from Bhadana Engineering Company rather 5HP Motor was purchased from Nirmal Electrical for Rs. 73,350/- by Pradeep Kumar Jain. All documentary evidence in support of the same was filed. These evidences were not controverted by the AO in the assessment proceedings or remand proceedings. Hence, addition made is apparently incorrect, unjustified and unlawful and may kindly be deleted.

“I find that the paper is a quotation taken from Bhadana Engineering Company for 5HP and 7HP Motor for SubhashUdyan Work by Pradeep Kumar Jain which was sent to the assessee for approval. However, no purchase is made from Bhadana Engineering Company rather 5HP Motor was purchased from Nirmal Electrical for Rs. 73,350/- by Pradeep Kumar Jain. These evidences were not controverted by the AO in the assessment proceedings or remand proceedings. Thus, when the transaction was not undertaken by the appellant and the AO could not prove otherwise, addition made in the hands of the appellant is not found to be justified.”

With regard to photo no. 62 the AO stated in the remand report that the appellant failed to give proper justification of transaction. The appellant stated as under in the rejoinder-

There is no finding of the AO in the assessment order except stating that assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp Image. The paper dated 25.02.2019 is in the name of Dr. Manglaram Choudhary. It is a bill of Jaya Kishori Tent House who has charged hire charges from Dr. Manglaram Choudhary in respect of the function hosted by

him at Hotel Grand Xenia (a unit of Gupta Prime Resorts Pvt. Ltd.). Thus this paper is not related to the appellant nor the AO in the assessment proceedings and in remand proceedings found any discrepancy in the explanation of the assessee. Hence, addition made is apparently incorrect, unjustified and unlawful.

“I find that this paper is not related to the appellant. The AO in the assessment proceedings and in remand proceedings not recorded any discrepancy in the explanation of the appellant. Thus, when the transaction was not undertaken by the appellant and the AO could not prove otherwise, addition made in the hands of the appellant is not found to be justified.”

Hon'ble High Court of Bombay held in the case of Principal Commissioner of Income Tax, Central-2 v. Umesh Ishrani [2019] 108 taxmann.com 437 (Bombay)[30-04-2019] as under –

“It can thus be seen that the entire issue is based on appreciation of evidence on record. The Tribunal noted that the loose papers entries were not clear and not corroborated by any independent evidence. No question of law therefore arises. Income Tax Appeal is dismissed.”

In this case also the entries on the loose papers are not clear and not corroborated by any independent evidence. The appellant explained that some of the entries are simply mathematical calculations which can be termed as rough noting. The appellant provided explanation with regard to other pages but the AO has not controverted the explanation furnished by the appellant. Therefore, considering the explanation furnished by the appellant, the addition made by AO of Rs. 21,69,057/- is deleted.

5. At page no. 94 vide para no. 5.9.2 the Ld CIT Appeal has discussed about the addition made by the Ld AO of Rs. 9,58,41,000/- on the basis of 13 written pages seized as Exhibit 7

The AO held that these amounts are loans advanced to various persons and therefore, these were treated as unexplained investment as the appellant could not explain that these are recorded in the books of accounts.

The reasons given by the AO and the reply of the appellant are summarized as under_

i. The Ld. AO considered the word used as “Tube light/Bulb/Chok” as per 100 unit equals to Rs. 1 Cr. without any corroborative evidences. This fact is accepted in the remand report in Para 3.6(b) where it is admitted that the very basis of treating 100 units as equal to Rs. one Cr is not explained in the order.

ii. It is observed that at Para 3.6(c) of remand report Ld. AO has concluded that the entries in the paper are in code form since “Tube light/Bulb/Chok” cannot be given in fraction and even interest has been written as charged in these entries.

At the same time on page no. 11 of the remand report it is stated that fraction

are related to page no 2, 6, 7, 8, 10 but no addition is made in the assessment order in respect of these fraction entries. This fact in itself proves that "Tube light/Bulb/Chok" noted on these pages are actually the units given on hire and wherever there is delay in payment of hire charges, interest has been charged for such delay as noted on the paper itself. Thus, it is admitted fact that there is no basis for the Ld. AO to treat the noting on these pages as in code without any corroborative evidences.

The arguments raised by the appellant with regard to decoding are found to be valid as no basis is explained by the AO for decoding of figures by adding five Zeros. In the absence of any supporting material brought on record, the decoding of figures by adding five zeroes is found to be unjustified.

With regard to fraction of units, the AO accepted in the remand report that no addition is made with regard to fraction of entries. Therefore, no adverse inference can be drawn with regard to fraction of entries.

With regard to interest charged for delay in payment of hire charges, the AO has not controverted the reply of the appellant. Therefore, the explanation of the appellant is found to be acceptable.

After arriving these broad conclusions the page wise explanation given by the appellant are considered as under:

With regard to page no. 1 the AO stated the amount is in coded form. The appellant accepted that there is no dispute that 11.00 represent 11,000/-. However, this amount was only payable. It was not actually paid and in search no evidence found that it is actually paid. No comment is given by the AO on the explanation of the appellant and therefore the addition of Rs. 11,000/- is deleted.

With regard to page no. 2 the AO stated the amount is in coded form and contains various financial transactions. The appellant explained that the firm Shri Gupta Electricals is an Electrical Contractor. During F.Y. 2018-19 & 2019-20 the firm has received light maintenance contract from Ajmer Development Authority, Ajmer. As per this contract particular area has been specified in the work order where all the road lights maintenance Work is to be done by the firm Shri Gupta Electricals. As per the process involved in the contract, on intimation of any complaint from ADA, the firm has to do the replacement of lights. The firm issues lights, Chowk and other electrical items in lump sum quantity to their staff member so that they don't have to come again & again and also to avoid any damages while doing the replacement. In this particular case employee Hamendra was the site in charge and he was being employed by us on guarantee of Manoj Jain a known person to the firm. We use to regularly issue him the lights, Chowk and other electrical item and also received back the lights, Chowk and other electrical items which required some repair and which are totally useless. The appellant enclosed copy of ADA Work order, their stock movement sheet maintained in respect of employee Hamendra, Copy of Challan, copy of complaint intimation received from ADA. The staff usually gives the

account but in this case particularly account of 100 tubes was not given by the staff. The same has been written in diary with name Manoj Jain so as to help remembrance of the fact that in case of any default by the staff the charges of 100 tubes could be recovered from Manoj Jain.

In the statement u/s 132(4) of the Income Tax Act in reply to question no.34 on page no.39 of statement dt.14.02.2020, while clarifying the Exhibit no. AS 7 Page 2, the appellant have stated this fact. In this particular case employee Monu Alies Manoj Tiwari was the site in charge and he was being employed by us on guarantee of Mammuji a known person to the firm. The appellant claimed that he use to regularly issue him the lights, Chowk and other electrical item and also received back the lights, Chowk and other electrical items which required some repair and which are totally useless. The appellant enclosed copy of ADA Work order, their stock movement sheet maintained in respect of employee Monu Alies Manoj Tiwari, Copy of Challan, copy of complaint intimation received from ADA. The staff usually gives the account but in this case particularly account of 45 tubes and 28 Chowk was not given by the staff. The same has been written in dairy with name Mammuji so as to help remembrance of the fact that in case of any default by the staff the charges of 45 Tubes and 28 Chowk could be recovered from Mammuji. In my statement u/s 132(4) of the Income Tax Act in reply to question no.34 on page no.39 of statement dt.14.02.2020, while clarifying the Exhibit no. AS 7 Page 2, the appellant have stated this fact.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,13,00,000/- is deleted.”

With regard to page no. 3 the AO stated the amount is in coded form and contains various financial transactions. At this page there are two entries one as tube 100 in the name of one Siddharth and other as 40 tube interest paid in the name of Arvind. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 100 shows neon tube supplied on hire charge and tube 40 also shows neon tube supplied on hire charge and interest charged for delay in payment of hiring charge. In assessment order AO made addition of Rs.1,40,00,000/- on the basis of amounts dues from the persons whose names are appearing.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,13,00,000/- is deleted.”

With regard to page no. 4 the AO stated the amount is in coded form and contains various financial transactions. At this page there are two entries one as tube light 40 interest paid in the name of one Chhablaniji and other as 30 tube

light interest paid in the name of Deepak. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 40 shows tube light supplied on higher charge, interest charged for delayed hire charge and tube light 30 also shows tube light supplied on hire charge, interest charged for delayed higher charge. In assessment order AO made addition of Rs.70,00,000/- on the basis of amounts dues from the persons whose names are appearing.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition

made of Rs. 70,00,000/- is deleted.”

With regard to page no. 5 the AO stated the amount is in coded form and contains various financial transactions. At this page there are three entries out of which two are crossed and one as tube light 5 interest paid in the name of one Vermaji. In his statement appellant mentioned that this is account of tube light. During assessment proceedings, appellant claimed that tube 5 shows tube light supplied on hire charge and interest charged for delayed hire charge. In assessment order AO made addition of Rs.5,00,000/- on the basis of amounts dues from the person whose names is appearing.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 5,00,000/- is deleted.”

With regard to page no. 6 the AO stated the amount is in coded form and contains various financial transactions. At this page on the top written as Jakhar tube light 10 no. -1.5/VLMG. At bottom in the name of one Khurana entries of tube 195, chok 13, various interest paid entries and two cheque entries in fraction etc. are seen. In his statement appellant mentioned that this is account of tube light and chok. During assessment proceedings, appellant claimed that tube 5 shows tube light supplied on higher charge in VLMG and in reference to Khurana entries are related to some tubes and chok for replacement to Delhi and cheque entries in fraction explained by him for payments made through cheques. In assessment order AO made addition of Rs.2,05,00,000/- on the basis of amounts dues from Mr. Jhakar of Rs.10,00,000/- & Khurana of Rs.1,95,00,000/- and mentioned of Rs.1.5 lacs adjusted towards VLMG in respect of entry of Jhakar. For cheque entries etc. No addition was made. In the appellate proceedings the appellant claimed that entries related to Jhakar pertains to neon tubes given on hire charge which was charged as Rs.1500/- and entries related to Khurana related to items for replacement which were purchased to Khurana for which some challans enclosed.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,05,00,000/- is deleted.

With regard to page no. 7 the AO stated the amount is in coded form and contains various financial transactions. At this page on top entries are made in the name of A.K Jain PD Bulb 200 interest paid. In middle there are entries in fraction on various dates in the name of Meenaji etc. In bottom there is entries as 30 in the name of Jinesh. During statement appellant mentioned that this is account of bulb. During the assessment proceeding, appellant claimed that top part entry in reference to A K. Jain PD relates to bulb supplies on hire charges, middle part entries amounts given out of personal savings on interest and lower part amount of Rs.30,000/- due for payment against purchase of Supari etc. AO in assessment order made addition of Rs.2,00,30,000/- (Rs.2 Crores outstanding from A.K. Jain Paradizzo Resorts by adding 5 zeros in 200 and Rs.30,000/- due from Jinesh by adding 3 zeros in 30 as tube etc was not mentioned here). The appellant stated that the income of hire charges are duly recorded in the books of account of the appellant.

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 2,00,30,000/- is deleted.”

With regard to page no. 8 the AO stated the amount is in coded form and contains various financial transactions. At this page multiple entries including entries in fraction, entries for interest etc. seen. In statement appellant mentioned that this is account of tube light and washing machine. During assessment appellant claimed that on top part in reference to Vijay Kothi shows meta bulb supplied on hire charge, other entries are related to house hold repairs i.e. washing machine etc., payment to security guard, purchase of washing machine and some other higher charge and house hold expenses etc. In assessment order AO made additions of Rs.20,00,000/- for outstanding due from Vijay Kothi (entry on the top of page).

“As discussed above, the decoding of amounts made by the AO are found to be without basis. The facts explained by the appellant are found to be as per his business activity of maintenance work done by the appellant. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 20,00,000/- is deleted.”

With regard to page no. 9 the AO stated the amount is in coded form and contains various financial transactions. At this page entries of 40 + 40 (some unclear noting) +10+5(some unclear noting)+10 of cheque is seen in the name of CS or GS (it is not clear whether it is CS or GS). In statement appellant

mentioned that it is related to cheque given to GS Dream Home. During assessment proceeding appellant mentioned that these are rough jottings. AO made addition of Rs.1,05,00,000/- on account of Chandra Kant Saini through cheque. During the appellate proceedings the appellant stated that here it is GS with represent his firm G.S. Dream Home LLP and particulars pertains to the Capital account of partners/initial formation expenses of firm. Here it is to noted that the reply of appellant given is different from reply given during assessment but similar to his statement during search. However, in his reply submitted in response to the office letter of the AO dated 27.07.22 appellant submitted copy of partnership deed dated 25.12.2017 in which claimed capital entries are reflecting. Same are also seen reflecting in the copy of balance sheet given by during the course of assessment proceedings in the case of G.S. Dream Home LLP which is again enclosed in his reply submitted in response to this office letter dated 27.07.22. The AO has verified these entries during the remand proceedings.

“As discussed above, the decoding of amounts made by the AO in the assessment order are found to be without basis. The facts explained by the appellant are found to be correct by the AO in the remand report. The AO has not controverted the reply of the appellant. Therefore, the addition made of Rs. 1,05,00,000/- is deleted.

Page no 10 to 13: No addition is made by AO in assessment order for entries appearing in these pages.

In view of the above discussion, it can be concluded that appellant is claiming that most of these entries pertain to the electric items given by him on hire charge or to his employees or for replacement etc. and interest pertains to interest on hire charge due to delayed payment etc. The appellant has also provided name of the persons from whom hire charges were received. The AO has not given any findings in this regard. The AO has added five zeroes without any basis. No corroborative evidence brought on record to prove that the transactions are such that five zeroes can be added. The AO has not tried to controvert the explanation furnished by the appellant. In the absence of the explanation of the appellant could not be controverted by bringing any positive material on record the addition made by the AO of Rs. 9,58,41,000/- is not found to be sustainable and deleted.”

6.1 In addition to the above written submission the Id. AR submitted that the Id. CIT(A) has given detailed finding based on the contentions of the Id. AO raised in the remand report. Based on the remand report submitted by the Id. AO, relief is granted to the assessee by the Id. CIT(A). Therefore, the

contention of the Id. DR is not correct and the report of the Id. AO in the remand proceeding cannot be challenged. Even in the remand proceedings, the Id. AO did not controvert the submission made and the decision of the Id. CIT(A) is based on the remand report, submission made before the Id. CIT(A) and evidence furnished before him in the first appeal and based on that set of facts the Id. CIT(A) has decided the issue. In the statement recorded u/s 132 (4) the assessee has explained all the details and the assessee has offered the income arising out of the list/ documents so found and in the remand proceedings he supported the same arguments. The Id. AO has rightly appreciated the fact and not disputed it in the remand proceedings. The contention of the assessee in the remand proceedings was considered by the Id. AO. In the light of these facts Id. CIT(A) has allowed the appeal of the assessee. So, there is no merit in the appeal so filed by the revenue and is required to be dismissed.

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the revenue has taken ground no. 1 which is in general and as there is no specific grievance of the revenue same is considered as general in nature and does not require any adjudication.

8. Ground no. 5 is relating to the specific leave to alter or modify the ground which the revenue has not taken and therefore, the same is also not required to be adjudicated and the same is not considered for our adjudication.

9. Vide Ground no. 2 revenue challenged the action of the Id. CIT(A) in deleting the addition of Rs 21,69,057/- made on account of unexplained investment u/s 69 r.w.s. 115BBE of the Act, and in ground no. 3 & 4 revenue has challenged the action of the Id. CIT(A) in deleting the addition of Rs. 9,58,41,000/- .

10. The facts related to the dispute are that the assessee is a Proprietor of M/s Gupta Electricals. The assessee is also one of the Director and Share Holder in Gupta Prime Resorts Put. Ltd. (Hotel & Restaurant). Director and Share Holder in Chakradev Infradev Pvt. Ltd. (Real Estate Developer), Shareholder in G. S. Build Estate Pvt. Ltd. (Real Estate Developer), Designated Partner in G.S. Dream home LLP (Real Estate Developer). During the year under consideration, the assessee is engaged in the business of trading in Solar Items, Solar Plant, Work Contract etc. During the course of Search Proceedings, from the Mobile Phone (Iphone)

of the assessee data was retrieved from forensic imaging in which WhatsApp images/ chats were found related to transaction of unsecured loans, cash transaction etc. The assessee was provided the copies of the chats/images and asked during assessment proceedings to explain the transactions mentioned therein and to get the same verified from the regular books of accounts. The total amount of the transactions comes to Rs. 14,32,05,681/-. He was also asked to show cause as to why the same may not be held as his undisclosed income. The assessee filed the detailed reply. But on perusal of the reply of the assessee, the Id. AO found that out of the total amount of transaction, assessee failed to furnish proper justification and to get them verified the following entries:

S. No.	Particulars	Amount Involved (in Rs.)
1	Photo No. 8	174757
2	Photo No. 9	163900
3	Photo No. 20	100000
4	Photo No. 59	1519500
5	Photo No. 60	78900
6	Photo No. 61	73200
7	Photo No. 62	58800
	Total	21,69,057

11. Since the assessee failed to give any proper justification along with relevant supporting documentary evidence with regards to the entries mentioned above, an amount of Rs.21,69,057/- held as unexplained investment of the assessee u/s 69 r.w.s. 115BBE of the Act. On this issue

the Id. CIT(A) based on the submission of the assessee called for the remand report. Based on the remand report and submission of the assessee, Id. CIT(A) considered all the pages as reflected and given his finding which we have also persuaded.

11.1 The bench noted that the addition related to photo no. 8 there is no specific finding of the Id. AO except alleging that the assessee failed to justify the nature of transaction reflected there in. We note from the copy of that page 8 placed on record that there is no name / date relating to the entries except the amount mentioned. Out of the total amount of Rs. 1,76,625/- there is addition of Rs. 17,550/- and subtraction of Rs. 19,417/- so remaining balance of Rs. 1,74,757/- was added in the assessment order. As it is evident that there is no date on this page, whether the amount paid or received is also not evidently clear from the copy of this page. There is no reference as to what the exact nature of transaction is noted on this page. In the remand proceeding the Id. AO submitted that the assessee's reply is vague and cannot be accepted and Id. AO in the remand proceeding also relied upon the finding recorded in the assessment order. The Id. CIT(A) noted that there is no name/date mentioned. The

paper does not reflect the amount paid or received. In the remand report also Id. AO did not bring on record any corroborative evidence more particularly when there is no evidence as to whether the assessee has paid the money or received the money. The Id. CIT(A) has based on this fact held that the entry is a mathematical calculation without any name and date as explained by the assessee. The Id. CIT(A) further, noted that it is not clear whether the amount is paid or received the money in the absence of corroborative evidence no such addition can be made. On careful persual of the finding as persuaded by us we do not find any infirmity in the finding of the Id. CIT(A) and that too after affording opportunity to the Id. AO countering the submission of the assessee in the first appellate proceedings.

11.2 As regards the photo No. 9, the assessee submitted that there is no findings of the AO in the assessment order in detailed except alleging that the assessee failed to give proper justification without even looking to the nature of noting in the WhatsApp image. From the WhatsApp image it can be noted that the amount of Rs. 1,63,900/- is sum of 4 figures. There is no date mentioned on page no. 9. There is no reference or any corroborative

evidence to establish that the amount is paid by the assessee. In the remand proceeding the Id. AO did not counter submission of the assessee, advanced by the assessee in the first appellate authorities and has not proved that the assessee has made any unexplained investment of the amount recorded on this page. Thus the Id. CIT(A) based on this finding deleted the addition. The Bench thus noted that the entries mentioned on this page is anything but a rough ratio and mathematical calculation without any name and date of payment. Thus in the absence of any corroborative evidence no addition can be made. Thus we do not find any infirmity in the findings of the Id. CIT(A) in deleting the said addition of Rs. 1,63,900/-.

11.3 As regards the photo No. 20, the Bench noted that in the remand proceedings the Id. AO alleged that the assessee failed to give properly justification for two entries reflected on this page. The Bench noted that the paper related to expenditure on the building of Hotel Grand Xenia against which payment of Rs. 1,00,000/- is made by cheque and Rs. 1,00,000/- by cash. Hotel Grand Xenia is run by Gupta Prime Resorts Pvt. Ltd. Wherein survey dated 14.09.2016 an amount of Rs. 1,00,04,130/- was offered for tax, relating to the investment in building. The Id. CIT(A) thus based on this

explanation hold that the said company already filed Form No. 1 in income declaration scheme. The Id. CIT(A) noted that there is no finding on this fact by the Id. AO in the remand proceeding also and when the paper is related to M/s Gupta Prime Resorts Pvt. Ltd., the addition cannot be made in the hand of the assessee. Thus, on perusal of the arguments of both the parties and looking at the detailed finding of the Id. CIT(A) the Bench does not find any infirmity in the finding of the Id. CIT(A) while deleting the addition.

11.4 As regards to photo No. 59, which relates to estimate for Subhashudyan work which is related to Shri Gupta Electricals Consortium with Pradeep Kumar Jain (New JV- PAN AAWAS0867N). In the remand report Id. AO relied upon the finding recorded in the assessment order. In the assessment order the Id. AO noted that assessee failed to give justification without even looking to the nature of noting in the WhatsApp Image. From the seized paper one cannot inferred that the amount noted has been paid. No date is mentioned on the paper. It has been explained that it relates to the estimate for Subhash Udhyan Work which is related to Shri Gupta Electrical Consortium with Pradeep Kumar Jain. Thus, the

paper neither relates to the assessee nor indicates any payment of the money. The Id. AO neither in the assessment nor in the remand proceeding brought on record any evidence to support the addition so made. Therefore, the Bench feels that we do not find any infirmity in the findings of the Id. CIT(A), who has accepted the explanation of the assessee after giving an equal opportunity to the Id. AO and thus, the addition deleted by the Id. CIT(A) has no infirmity and the finding is recorded after following the proper course of hearing the Id. AO on the contention of the assessee.

11.5 As regards to photo No. 60 & 61, the Bench noted that this two pages, reflects the quotation taken from Bhadana Engineering Company for 5 HP and 7 HP motor for Subhash Udyan work by Pradeep Kumar Jain. The said quotation was sent to the assessee for approval. In fact the Id. CIT(A) hold that based on mere quotation the addition cannot be sustained not only that it is explained that there is purchase of 5HP motor Nirmal Electrical for an amount of Rs. 73,350/- by Pradeep Kumar Jain paid through cheque and the same has been recorded in the books. In support of this copy of bank statement and bill was filed in the remand proceedings also. The Id. AO did not controvert the issues in the remand report. Thus

on careful perusal of the arguments and findings recorded in the order of the Id. CIT(A) we do not find any infirmity in the finding while deleting the addition recorded at page No. 60 & 61.

11.6 As regards to photo No. 62, it has been submitted that it relates to work done by Jaya Kishori Tent house for Dr. Manglaram Choudhary dated 25.02.2019 which is a bill of Jaya Kishori Tent House who charged hire charges from Dr. Manglaram Choudhary in respect of the function hosted by him at Hotel Grand Xenia (a unit of Gupta Prime Resorts Pvt. Ltd.) thus, this paper is not related to the assessee. In the assessment proceeding the Id. AO merely noted that assessee failed to give proper justification. This observation is without even looking to the content recorded in the WhatsApp Image. The Id. CIT(A) in the remand proceedings observed that the Id. AO did not find any contrary to the submission made by the assessee in respect of the explanation furnished by the assessee. Therefore, in the light of this fact we do not find any fault in the finding of the Id. CIT(A) in deleting the said addition recorded at page 62. Therefore, the addition is rightly deleted by the Id. CIT(A).

11.7 Thus in totality as discussed hereinabove the loose paper or the photo either simply mathematical calculations or the noting without any reference to the payment made or received by the assessee and it on some page even did not have any date of transaction. In the light of this facts and circumstances discussion hereinabove we do not find any infirmity in the order of the Id. CIT(A) and therefore, we hold that the addition made by the AO for an amount of Rs. 21,69,057/- is rightly to be deleted by the Id. CIT(A). Based on these observations we do not find any merits in the ground no. 2 raised by the revenue.

12. In ground no. 3, the Revenue disputed the action of the Id. CIT(A) in deleting the addition for an amount of Rs. 9,58,41,000/- made in the assessment order. The addition was based on 13 written pages, as seized and inventoried as exhibit 7 of Annexure AS. In the assessment proceedings, the Id. AO held that these amounts are loans / advances to various parties. Therefore, the same was considered as unexplained investment which the assessee in the opinion of the Ld. AO failed to explain these transactions showing the same are recorded in the regular books of accounts of the assessee in the assessment proceedings. The Id.

AO considered the word used as "Tube light/Bulb/Chowk" as per 100 unit equals to Rs. 1,00,00,000/-. The Id. Assessing Officer has applied these coded formulae without any basis as it is written and confirmed in the remand proceedings. He has categorically stated that decoding of the Tube Light/ Bulb/Chock applied has no basis or reasoning. The Id. AO concluded that these entries are an unexplained investment of the assessee. The Id. AR of the assessee on this issue submitted that the addition has been made by the Id. AO only for certain entries appearing in page no. 1 to 9 and no addition was made for entries appearing in page no. 10 to 13. In the assessment proceeding after considering the reply of the assessee and the relevant verification, the Id. AO while working out the addition on account of the entries as unexplained investment of the assessee which was alleged as written in coded form. Because the assessee has recorded the interest amount charged on these entries and therefore, these entries were not considered as Tube light, Bulb, Chowk etc. Thus ignoring the explanation of the assessee the Id. AO taken a view that the assessee has advanced this money and recorded it in coded form "Tube light/Bulb/Chok". The Id. AO rejected the explanation of the assessee that the assessee as equally given these "Tube light/Bulb/Chowk" to their employees for maintenance work or they have been given on rent/ hire charges. Wherever this has

been delivered with delay along with payment of hire charges the assessee has charged interest thereupon. Thus the assessee explained that the figures are recorded in fractions too for those items given on rent/hire. The Id. AR of the assessee contended before us that confirmation of the parties (who paid interest on hire charges) has also been submitted by the assessee related to page No. 2, 6,7,8 & 10 etc. and no addition in the assessment order made with respect to this fraction entries by the Id. AO there is no addition for entries between 10 to 13. For page No. 8 the addition is made for the first entry on side of page and for fraction entry appearing at lower side of page no addition is made on same page. Similarly the case of page No. 7, 2 and 6 for page no. 6 no addition for fraction entries for 1.5 also not made. Thus, the Id. AR of the assessee had contended that the Id. AO has no direction/ basis of making the addition in the assessment order. The Bench noted at para 3.6(c) of remand report that the Id. AO made statement that the entries in the paper are in coded form, but there is no corroborative evidence of making this statement. As regards the interest charged for delay in the payment of hire charges, the AO has not controverted the reply of the assessee in the remand proceeding where in the assessee has submitted all the required details to the assessing officer. The Id. AR of the assessee filed comparative chart

showing the reply of the Id. AO in the remand proceedings and explanation of the assessee against the remand report.

12.1 From the explanation furnished by the Id. AR of the assessee, finding recorded in the order of the Id. CIT(A) and after considering the remand report of the Id. AO. The Bench observed that as regards page No. 1 the assessee has not disputed that 11.00 represents 11,000/-. But this amount was only payable and actually not paid in search proceedings, no evidence found that it is actually paid. In the remand proceedings, no comment has been given by the Id. AO upon the explanation of the assessee. Therefore, we are of the view that the addition Rs. 11,000/- cannot be sustained and thus, there is no infirmity in the finding of the Id. CIT(A) while deleting the said addition.

12.2 As regards to the page No. 2, the Id. AO stated the amount is in coded form and contains various financial transactions. The assessee explained that the firm Shri Gupta Electricals is an Electrical Contractor. In the financial years 2018-19 and 2019-20 as the firm has received light maintenance contract from Ajmer Development Authority, Ajmer. As per

terms of the contract particular area has been specified in the work order where all the road lights maintenance work is to be undertaken by the said Shri Gupta Electricals. As per the terms of the contract upon intimation of any complaint from the Ajmer Development Authority the said firm must replace the lights. Thus, the said firm issues lights. Thus, the said firm issues lights, chowk and other electrical items in lump sum quantity to their staff of the said firm so that they do not have to approach again and again and also to avoid any damages charges of replacement as per contract. In this work employee Shri Hamendra was the site in charge. Who has to undertake the replacement work of the Ajmer Development Authorities. The assessee submitted that the copy of work order, the stock movement sheet maintained by that employee Shri Hamendra while undertaking this work. The copy of sheet maintained, copy of challan, copy of complaint were also submitted in support of the contention so raised. In the said firm employee Hamendra was the site in charge and he was being employed upon the guarantee of Shri Manoj Jain as known person to the firm the same has been written in diary with name of Manoj Jain, so as to remember the fact that in case of any default by the staff the money can be recovered from the reference of Shri Manoj Jain. During the search in statement recorded u/s 132(4) of the Act while replying to question No. 34 on page 39 recorded

on 14.02.2020 while giving clarification for 6 pages have been made. Wherein the assessee explained that Mammu alias Manoj Tiwari was the site in charge was being employed by the firm on guarantee of Mammuji a known person to the firm. The assessee submitted that he use to regularly issue him the lights, chowk and other electrical items which required some repair and which are totally useless. The assessee submitted copy of work order issued by Ajmer Development Authority, their stock movement sheet maintained, copy of challan, copy of complaint received. All these evidences along with contention of the Id. AR of the assessee was submitted to the Id. AO in the remand proceedings. The Id. AO in his report in the remand proceeding submitted that the addition to the extent of Rs. 9.58 Crores is made as against the proposed addition of Rs. 24.95 crores recommended in appraisal report. Thus, considering / examining the submission of the assessee and material made available on record that he reiterated the contention that there cannot be fraction of tube light, bulbs and chowk. Therefore, he contended that it is impossible to belief the explanation furnished by the assessee. He also submitted that, the assessee has charged interest against the various entries mentioned in the said diary where the assessee recorded the amount 100 units equals to Rs. 1 crores and 1 unit equals to 1000. Basis of decoding has not been

explained in the assessment order is categorically mentioned at page 4 in the remand report. But considering the same formula as referred for the other explanation given of the amount recorded in the diary based on the submissions of the assessee and report of the Id. AO in remand proceedings. the Id. CIT(A) hold a view that decoding of amounts made by the Id. AO are found without any basis and ignoring the supporting evidence brought on record, and the same is considered based on the recommendation made in the appraisal report. The assessee has explained that the transactions are found to be in accordance with the maintenance work of Ajmer Development Authority and this fact has not been controverted or disputed by disproving the evidence placed on record. Therefore, based on the submission along with the supported evidences, Id. CIT(A) ordered for deleting the addition of Rs. 2.13 crores recorded on this page. The bench upon careful perusal of the submission made the assessee, contention recorded in the remand report and finding recorded in the order of the Id. CIT(A), we do not find any infirmity in the finding of the Id. CIT(A). Therefore, we confirm the finding of the Id. CIT(A).

12.3 As regards the addition made related to page no. 3 the Id. Assessing Officer on the same analogy two entries one as tube 100 and other as 40 tube in the name of Siddharth and Arvind considered for addition of Rs.

1,40,00,000/- as unexplained investment. The Bench feels that considering the same discussion as recorded for page no. 2 hereinabove we confirmed the action of the Id. CIT(A) in deleting the addition of Rs. 1,40,00,000/- considering the same are without any basis against proving nothing on the detailed record of receipt of allotment and received the tube lights, bulb in accordance with contract terms of Ajmer Development Authority and therefore, considering the confirmation of the Id. AO in the remand proceedings that there is no basis for adopting the decoding of the tube light and bulb and therefore, we confirmed the action of the Id. CIT(A) for deleting the addition made on account of page No. 3.

12.4 As regards the page No. 4 the Id. AO stated the amount is in coded form and contained various financial transactions where in 40 tube light in the name of Chhablaniji and 30 tube light in the name of Deepak. This amounts were considered as unexplained investment as interest paid to have been recorded on this page. The assessee submitted that tube lights 40 shows tube light supplied on higher charge paid and 30 also shows the supply of tube lights and interest charges for delayed hire charges were recovered. The Id. AO did not consider this explanation of the

assessee and the made addition of Rs. 70,00,000/- and remained silent on the issue of the interest recorded in the form of hire charges as explained by the assessee. Since it is not controverted in the remand proceedings that the business of the assessee of giving tube light etc. that higher charges is not and not commented that the same is not recorded in the books. As there is no basis for decoding the amount confirmed in the remand proceedings and there is no comment of the Id. AO about the hire charges and interest charged detailed submitted in the remand proceedings. We do not find any infirmity in the finding of the Id. CIT(A) holding that these transactions are related to the business of the assessee. Therefore, we confirm the action of Id. CIT(A) in deleting the addition of Rs. 70,00,000/- made on account of page No. 4.

12.5 As regards at page No. 5, there are 3 entries out of which two are crossed and one is recorded as tube light 5 and interest paid in the name of one Shri Vermaji. In the statement recorded at the time of search the assessee submitted that this is account of tube light. In the assessment proceedings, the Id. AO made an addition of Rs. 5,00,000/- considering the amount advances as unexplained investment and dues in the in the name

of Shri Vermaji. The Id. CIT(A) on being consisting to the finding recorded for page No. 2,3 and 4 of his ordered to delete the addition of Rs. 5,00,000/-. Based on the documentary evidence of hire charges and interest thereon recorded in the books and we no comments on the issue by the Id. AO in the remand proceeding we do not find any infirmity in the finding of the Id. CIT(A) and therefore, we confirm the action of the Id. CIT(A) in deleting the addition of Rs. 5 lac.

12.6 As regards to page no. 6, the Id. AR stated that at this page on the top written as Jakhar tube light 10 No.-1.5/VLMG. At the bottom in the name of one Khurana entries of tube 195, chowk 13, interest paid and two cheque entries in fraction etc. are seen. On this issue in the statement of the assessee he submitted that this is an account of tube light and chowk. In the assessment proceedings, the assessee claimed that tube light supplied on higher charges and in reference to Khurana entries are related to some tubes and chowk for replacement to Delhi and cheque entries in fraction for payment made through cheque and in the assessment proceedings, the AO made an addition of Rs. 2,05,00,000/- on the basis of amounts dues from Mr. Jhakar of Rs. 10,00,000/- and Khurana of Rs.

1,95,00,000/- and mentioned of Rs. 1.5 lacs adjusted towards VLMG in respect of cheque entry in separate addition was made in the assessment proceedings. Before the Id. CIT(A), the assessee submitted that the interest related to Jhakar pertains to Neon tube light given on higher charges which are charges as 1500 and entries related to Khurana related to items for replacement which were purchased from the Khurana and against which the challans were submitted. Since this explanations were not challenged by the Id. AO in the remand proceedings and as there is no basis of decoding the transactions recorded in the page No. 6 and also the Id. AO has not been made any addition to the amount of cheque amount written in the same page and therefore, the addition made ignoring the explanation given by the assessee which are supported with the evidence. In the remand proceeding the Id. AO did not bringing nothing on record to counter the submission of the assessee and thus we hold that no addition can be made on the recording made in this page and thus, we do not find any infirmity in the order of the Id. CIT(A) in deleting the addition of Rs. 2,05,00,000/-.

12.7 As regards the page No. 7, the Id. AO noted that on the top entries are made in the name of A.K. Jain PD Bulb 200 interest paid in middle there are entries in fact on various dates in the name of Meenaji etc., in the bottom there is entries as 30 in the name of Jinesh. In the statement recorded at the time of search the assessee submitted that this is on account of bulb. In the assessment proceedings, the assessee claimed that entry made at the top part in the name of A.K. Jain PD relates to bulb supplies on hire charges, middle part entries amounts given out of personal savings on interest and lower part amount of Rs. 30,000/- due for payment against purchase of Supari etc. The Id. AO ignored the explanation of the assessee and made an addition of Rs. 2,00,30,000/- (Rs. 2 Crores outstanding from A.K. Jain Paradizzo Resorts by addition 5 zeors in 200 and Rs. 30,000/- due from Jinesh by adding 3 zeros in 30 as tube etc was not mentioned here). In the appellate proceedings, the assessee contended that the income of hire charges are duly recorded in the books of account of the assessee and this has not been specifically countered or discussed in the remand proceedings by the Id. AO. Therefore, on being consistent to the finding that there is no basis for decoding the amount, the Id. CIT(A) ordered to delete the addition. Considering the explanation of the assessee, which is supported by

evidence in the remand proceeding and the Id. AO in the remand proceedings not countered or controverted the submission of the assessee. We do not find any infirmity in the order of the Id. CIT(A) and therefore, confirmed the action of the Id. CIT(A) in deleting the addition.

12.8 As regards to page No. 8 multiple entries including entries in fraction, and entries for interest is mentioned. In the statement recorded while search proceedings, the assessee contended that this is the account of tube light and washing machine. In the assessment proceedings, the assessee submitted that on top part with reference to Vijay Kothi shows meta bulb supplied on hire charge and other entries are related to house hold repairs i.e. payment of security guard, purchase of washing machine and some other higher charge. The Id. AO ignored the submission of the assessee and made an addition of Rs. 20,00,000/- for outstanding due from Vijay Kothi being entries recorded on the top of the page. Since, there is no basis for decoding the amount recorded on this page and there is no counter submission against the evidences and contentions raised by the assessee while furnishing the report in the remand proceeding about the contention of the assessee that this fractions are related to meta build on

hire charge to Vijay Kothi. Therefore, the action of the Id. CIT(A) in deleting the said addition is based on the finding of facts and based on the remand report and submission of the assessee we do not find any infirmity in the finding so recorded in the order of the Id. CIT(A).

12.9 As regards the noting at page No. 9, recording entries of 40+40 (some unclear nothing)+10+5 (some unclear noting) + 10 of cheque is seen in the name of CS or GS (it is not clear whether it is CS or GS). In the statement recorded at the time of search, the assessee submitted that the entries are related to the cheque given to GS dream home. In the assessment proceedings the assessee submitted that these are rough jottings the Id. AO ignored the explanations of the assessee and made addition of Rs. 1,05,00,000/- on account of Chandra Kant Saini. In the proceedings before the Id. CIT(A), the assessee contended that GS represent his firm G.S. Dream Home LLP and particulars pertains to the capital account of partners and initial formation expenses of firm. The Id. AO noted that reply of the assessee in the proceeding before the Id. CIT(A) is different from the reply given in the assessment. In support of the contentions so raised before the Id. CIT(A), the assessee submitted copy of

partnership deed dated 25.12.2017 wherein the claim of the assessee are found recorded in the capital account entries and the same is found to have been recorded in the Balance Sheet given in the assessment proceedings in the case of GS Dream Home LLP. The records submitted were forwarded to the Id. AO in the remand proceedings. The Id. AO has verified these entries in the remand proceedings as the fact explained by the assessee found correct in the remand report of the AO. The AO has not controverted the reply of the assessee. The Id. CIT(A) ordered to delete the addition of Rs. 1,05,00,000/- after considering this fact that the entries are recorded. Before us as the revenue did not place on record any contrary material or could not demonstrate any error in the finding so recorded in the order of the Id. CIT(A) we confirm the action of the Id. CIT(A) in deleting the addition of Rs. 1,05,00,000/-.

12.10 We noted that for page No. 10 to 13 no addition in the assessment order and therefore, there is no dispute for the entries recorded in these pages.

13. Thus, the Bench noted that the assessee has claimed that most of the entries recorded in the impugned pages related to the electric items given by the assessee on hire charge upon which the hire charges and interest due there on is recorded and others are related to contractual obligation of the party given to the employee for replacement work upon which the contract and stock movement records were placed on record. The reasons advanced has not been controverted by the Id. AO and the assessee has submitted the name of parties from whom hire charge were received. This contentions has not been controverted in the remand proceedings, also it has been further submitted that there is no basis adding five zeroes and since there is no basis the adding five zeroes is also held to be without any supportive and corroborative evidence placed on record. Thus, in the absence of specifically not controverting the explanation of the assessee on hire charges in the books of account and since there is no basis on adding five zeroes to tube light and bulb amount so one on this page no addition can be made to the extent of Rs. 9,58,41,000/-. Therefore, we do not find any infirmity in the finding of the Id. CIT(A) in deleting the said addition. Based on these observations, ground no. 3 raised by the revenue is dismissed.

14. Ground No. 4 raised by the Revenue that the Id. CIT(A) erred in giving the finding that the documents upon which the Id. AO made addition are emanating from the seized material / records. Thus, the principle of preponderance of Human Probability as elucidated by the Hon'ble Supreme Court in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801 is not considered. On this issue we find that since the Id. AO has not controverted the submission of the assessee, which are based on the evidences and the Id. AO specifically admitted that there is no basis for adding five zeroes in the noting of the seized material. Therefore, we do not find any force in the ground so raised by the Revenue. Had it been the case of the Revenue that the assessee not been in a situation to controvert the finding of the Id. AO and the Id. CIT(A) has considered the contentions without any evidence or allowing the Id. AO to rebut the contention but here is not the same. Here we see that in the remand proceeding the Id. AO himself agreed that there is no basis at adding 5 zeros. The Id. AO did not controvert the submission of the assessee that the assessee has already accounted hire charges and the interest there upon. Therefore, based on this finding in the ground No. 2 & 3 of the Revenue we do not see any force. Therefore, ground no. 4 raised by the revenue is also dismissed.

In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 30/11/2023.

Sd/-

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 30/11/2023

*Ganesh Kumar, PS

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

1. The Appellant- Joint Commissioner of Income Tax, Ajmer
2. प्रत्यर्थी / The Respondent- Vijay Gupta, Ajmer
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 373/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar