

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

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

आयकर अपील सं./ITA No. 397 to 399 & 367/JP/2023
निर्धारण वर्ष / Assessment Year : 2013-14 to 16-17.

M/s. Macro Township Pvt. Ltd., 288-289, Mahaveer Nagar, Durgapura, Jaipur.	बनाम Vs.	The DCIT, Central Circle-2, LIC Building, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AAHCM 8947 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri C.M. Agarwal, CA

राजस्व की ओर से / Revenue by : Shri Arvind Kumar (CIT)

सुनवाई की तारीख / Date of Hearing : 12/09/2023

उद्घोषणा की तारीख / Date of Pronouncement: 05/12/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

These appeals by the assessee are directed against the separate orders dated 03.05.2023, 04.05.2023 and 11.04.2023 of Id. CIT (A)-4, Jaipur passed under section 250 of the IT Act for the assessment years 2013-14, 14-15, 15-16 and 16-17 respectively. The assessee has raised the following grounds :-

ITA NO. 397/JP/2023 – A.Y. 2013-14 :

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

2. That the Ld CIT(A) erred in law as well as on the facts and circumstances of the case in confirming the absolutely illegal, arbitrary and ab initio void assessment order and in completely ignoring the self speaking facts of the impugned assessment order, which need no further reference to either any records or documents or submissions.

3. That the order of the Ld CIT(A) of confirming the action of the assessing officer in assuming jurisdiction u/s 153C of the Act when there exist none and in passing the impugned assessment order making huge addition to the total income of the appellant in complete disregard to the facts and statutory provisions of section 153C of the I.T.Act, suffers from gross perversity of facts and law and therefore, unsustainable.

3.1 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not quashing the illegal assessment order which has been passed pursuant to the illegal assumption of jurisdiction by the Assessing Officer, as

a. no proper satisfaction as mandated u/s 153C of the I.T. Act was recorded by the AO.

b. no satisfaction as to any money, bullion, jewellery or other valuable article or thing, belonging to the appellant seized or any seized books of account or documents, pertains or pertain to, or any information contained therein, relates to the appellant for the impugned assessment year was recorded

c. no reference to any such valuable or material has been made in the entire assessment order.

4. Ld CIT(A) erred in law as well as on facts and circumstances of the case in sustaining the completely illegal and arbitrary addition of Rs 12,32,79.549/ made by the AO u/s 69 of the Act on account of alleged cash investment in property despite the fact that

a. appellant was not the owner of the alleged property and had never been the owner of the alleged property.

b. no document relating the said property or any interest in the said property to the appellant has been found during the course of search, nor has been referred to/relied upon by the AO in the assessment order

c. the alleged Ikrarnama referred to by the AO is in the name of Sh Pooran Mal Kanwat and the said Ikrarnama was also never acted upon by the parties.

d. no such alleged sale consideration was ever paid either by the appellant or by Sh Pooran Mal Kanwat.

e. there is absolutely no material on record which might suggest that any investment in the property was made by the assessee. f. the addition made absolutely on the basis of presumptions, surmises and conjectures and without providing any opportunity to the appellant to cross examine Sh Pooran Mal Kanwat.

g. that addition of Rs 94,43,250/ out of total addition of Rs 12,32,79,549/- has been made solely on the basis of post dated cheque entries mentioned in the alleged Ikrarnama, when the said Ikrarnama had never been acted upon nor were the cheques debited to the account of the appellant.

h. that the purchase of the alleged property by Sh Pooran Mal Kanwat was made through three separate registered sale deeds clearly evidencing that the alleged Ikrar Nama never got executed.

i. that the actual transaction of property, documentary evidences of which were also found during the course of search was substantially different from the alleged Ikrarnama in all aspects including the nature of the property.

5. Ld CIT(A) erred in law as well as on facts and circumstances of the case in sustaining the addition of Rs 11,05,69,458/ made by the AO on account of alleged short term capital gains in the hands of the assessee without considering that:

a. the appellant was never the owner of the said property

b. the appellant had no role whatsoever in the transfer/sale of the property giving rise to the capital gains

c. no material has been brought on record by the AO which might suggest that the sale consideration was ever received by the appellant

d. for subjecting the appellant to tax for capital gains under the Indian Income Tax 1961, the appellant should own the capital asset, the capital asset should be transferred during the year and such transfer should result in profit, when none of the condition is satisfied, the appellant cannot be burdened with tax liability for imaginary capital gains.

5.1 Ld CIT(A) further erred in law as well as on facts and circumstances of the case in not considering that the deeming provisions of Section 50C(1) of the Income Tax Act can never be applied to the appellant, therefore, the

adoption of sale value in respect of property sold to Smt Sunita Mathur at Rs 10,07,63,400/ was totally arbitrary and without any legal basis.

6. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 15,00,000/ made by the AO u/s 68 by treating the genuine loan transactions from M/s Gemini Commerce Pvt Ltd as accommodation entry despite the fact that:

a. the transaction of loan is duly recorded in the Books of accounts of the appellant and no material whatsoever as to the non genuine nature of the transaction was found during the course of search and therefore beyond the scope of the proceedings w/s 153C of the Act.

b. the appellant duly discharged the burden cast upon it by filing confirmation, copy of Income Tax Return and Bank statement of the lender company.

c. none of the evidences in support of identity, creditworthiness and genuineness of the transactions placed on record by the appellant have been dislodged by the AO by bringing on record any positive evidence.

d. the notices sent by the AO at the address of the lender company were duly served and complied with thereby clearly establishing the genuineness of the transaction.

e. no adverse material as to the identity or creditworthiness of the lender company, if any in possession of the AO was ever confronted to the appellant

f. after filing of confirmation, copy of ITR and Bank statement of the lender company, the AO did not require the appellant to produce any other specific evidence or either produce the director of the lender company.

g no opportunity of cross examining Sh Arpit Khnadelwal Director of the lender company was provided to the appellant.

6.1 Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 3750/ made by the AO on account of alleged hypothetical commission payment for arranging entries of loan from M/s. Gemini Commerce Pvt Ltd.

7. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the absolutely illegal and arbitrary addition of Rs 4,25,50,000/ made u/s 68 of the Act by the AO on account of unexplained cash credit in

respect of amounts received back from Sh Pooran Mal Kanwat despite the fact that;

a. all transactions entered into with Sh Pooran Mal Kanwat are duly recorded in the Books of accounts of the appellant and in the absence of any incriminating material to the contrary found during the course of search, addition so made is beyond the scope of proceedings u/s 153C of the Act.

b. there was no cash credit in the name of Sh Pooran Mal Kanwat in the Books of accounts of the assessee for the year, and the alleged cash credit is repayment of previously taken loans from the appellant by Sh Pooran Mal Kanwat.

c. despite the amounts being repayment of previously obtained loans by Sh Pooran Mal Kanwat, all evidences establishing his identity, creditworthiness and genuineness were duly submitted before the AO

d. the source of making repayment by Sh Pooran Mal Kanwat to the appellant has been accepted by the AO in the simultaneous assessment of Sh Pooran Mal Kanwat.

e. no opportunity of cross examining Sh Pooran Mal Kanwat was ever provided to the appellant.

8. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the AO in invoking the provisions of Section 115 BBE of the Income Tax Act in respect of various additions made by him.

9. Ld. CIT (A) further erred in law as well as on facts and circumstances of the case in confirming the illegal disallowance of expenses amounting to Rs. 2,18,000/- made by the AO arbitrarily.

The appellant craves leave of the Hon'ble Tribunal to amend or raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.

ITA NO. 398/JP/2023 – A.Y. 2014-15 :

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

2. That the Ld CIT(A) erred in law as well as on the facts and circumstances of the case in confirming the absolutely illegal, arbitrary and ab initio void assessment order and in completely ignoring the self speaking facts of the impugned assessment order, which need no further reference to either any records or documents or submissions.

3. That the order of the Ld CIT(A) of confirming the action of the assessing officer in assuming jurisdiction u/s 153C of the Act when there exist none and in passing the impugned assessment order making huge addition to the total income of the appellant in complete disregard to the facts and statutory provisions of section 153C of the I.T.Act, suffers from gross perversity of facts and law and therefore, unsustainable.

3.1 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not quashing the illegal assessment order which has been passed pursuant to the illegal assumption of jurisdiction by the Assessing Officer, as

a. no proper satisfaction as mandated u/s 153C of the I.T.Act was recorded by the AO.

b. no satisfaction as to any money, bullion, jewellery or other valuable article or thing, belonging to the appellant seized or any seized books of account or documents, pertains or pertain to, or any information contained therein, relates to the appellant for the impugned assessment year was recorded

c. no reference to any such valuable or material has been made in the entire assessment order.

4. Ld CIT(A) erred in law as well as on facts and circumstances of the case in sustaining the addition of Rs 3,82,33,796/ made by the AO on account of alleged short term capital gains in the hands of the assessee without considering that:

a. the appellant was never the owner of the said property

b. the appellant had no role whatsoever in the transfer/sale of the property giving rise to the capital gains

c. no material has been brought on record by the AO which might suggest that the sale consideration was ever received by the appellant

d. for subjecting the appellant to tax for capital gains under the Indian Income Tax 1961, the appellant should own the capital asset, the capital asset should be transferred during the year and such transfer should result in

profit, when none of the condition is satisfied, the appellant cannot be burdened with tax liability for imaginary capital gains.

4.1 Ld CIT(A) further erred in law as well as on facts and circumstances of the case in not considering that the deeming provisions of Section 50C(1) of the Income Tax Act can never be applied to the appellant, therefore, the adoption of sale value in respect of property sold to Smt Sunita Mathur at Rs 10.07,63,400/ was totally arbitrary and without any legal basis.

5. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the absolutely illegal and arbitrary addition of Rs 4,19,46,250/ made u/s 68 of the Act by the AO on account of unexplained cash credit in respect of amounts received back from Sh Pooran Mal Kanwat despite the fact that;

i. all transactions entered into with Sh Pooran Mal Kanwat are duly recorded in the Books of accounts of the appellant and in the absence of any incriminating material to the contrary found during the course of search, addition so made is beyond the scope of proceedings u/s 153C of the Act.

ii. there was no cash credit in the name of Sh Pooran Mal Kanwat in the Books of accounts of the assessee for the year, and the alleged cash credit is repayment of previously taken loans from the appellant by Sh Pooran Mal Kanwat.

iii. despite the amounts being repayment of previously obtained loans by Sh Pooran Mal Kanwat, all evidences establishing his identity, creditworthiness and genuineness were duly submitted before the AO

iv. the source of making repayment by Sh Pooran Mal Kanwat to the appellant has been accepted by the AO in the simultaneous assessment of Sh Pooran Mal Kanwat.

v. no opportunity of cross examining Sh Pooran Mal Kanwat was ever provided to the appellant.

6. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 10,92,000/ made by the AO u/s 68 of the IT Act by arbitrarily treating the genuine loan transactions from M's Inner Mercantile Pvt Ltd as accommodation entry merely on the basis of conjectures and surmises despite the fact that,

(i) the transaction of loan is duly recorded in the Books of accounts of the appellant and no material whatsoever as to the non genuine nature of the

transaction was found during the course of search and therefore beyond the scope of the proceedings u/s 153C of the Act.

(ii) the appellant duly discharged the burden cast upon it by filing confirmation. copy of Income Tax Return and Bank statement of the lender company.

(iii) none of the evidences in support of identity, creditworthiness and genuineness of the transactions placed on record by the appellant have been dislodged by the AO by bringing on record any positive evidence.

(iv) the notices sent by the AO at the address of the lender company were duly served and complied with thereby clearly establishing the genuineness of the transaction.

(v) no adverse material as to the identity or creditworthiness of the lender company, if any in possession of the AO was ever confronted to the appellant

(vi) after filing of confirmation, copy of ITR and Bank statement of the lender company, the AO did not require the appellant to produce any other specific evidence or either produce the director of the lender company.

6.1 Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 2730/ made by the AO on account of alleged hypothetical commission payment for arranging entries of loan from M/s Inner Mercantile Pvt Ltd.

7. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the AO in invoking the provisions of Section 115 BBE of the Income Tax Act in respect of various additions made by him.

8. Ld. CIT (A) further erred in law as well as on facts and circumstances of the case in confirming the illegal disallowance of expenses amounting to rs. 1,92,767/- made by the AO arbitrarily.

The appellant craves leave of the Hon'ble Tribunal to amend or raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.

ITA NO. 399/JP/2023 – A.Y. 2015-16 :

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

2. That the Ld CIT(A) erred in law as well as on the facts and circumstances of the case in confirming the absolutely illegal, arbitrary and ab initio void assessment order and in completely ignoring the self speaking facts of the impugned assessment order, which need no further reference to either any records or documents or submissions.

3. That the order of the Ld CIT(A) of confirming the action of the assessing officer in assuming jurisdiction u/s 153C of the Act when there exist none and in passing the impugned assessment order making huge addition to the total income of the appellant in complete disregard to the facts and statutory provisions of section 153C of the I.T. Act, suffers from gross perversity of facts and law and therefore, unsustainable.

3.1 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not quashing the illegal assessment order which has been passed pursuant to the illegal assumption of jurisdiction by the Assessing Officer, as

a. no proper satisfaction as mandated u/s 153C of the I.T. Act was recorded by the AO.

b. no satisfaction as to any money, bullion, jewellery or other valuable article or thing, belonging to the appellant seized or any seized books of account or documents, pertains or pertain to, or any information contained therein, relates to the appellant for the impugned assessment year was recorded

c. no reference to any such valuable or material has been made in the entire assessment order.

4. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the absolutely illegal and arbitrary addition of Rs 1,91,50,000/ made u/s 68 of the Act by the AO on account of unexplained cash credit in respect of amounts received back from Sh Pooran Mal Kanwat despite the fact that;

i. all transactions entered into with Sh Pooran Mal Kanwat are duly recorded in the Books of accounts of the appellant and in the absence of any incriminating material to the contrary found during the course of search, addition so made is beyond the scope of proceedings u/s 153C of the Act.

ii. there was no cash credit in the name of Sh Pooran Mal Kanwat in the Books of accounts of the assessee for the year, and the alleged cash credit is repayment of previously taken loans from the appellant by Sh Pooran Mal Kanwat.

iii. despite the amounts being repayment of previously obtained loans by Sh Pooran Mal Kanwat, all evidences establishing his identity, creditworthiness and genuineness were duly submitted before the AO

iv. the source of making repayment by Sh Pooran Mal Kanwat to the appellant has been accepted by the AO in the simultaneous assessment of Sh Pooran Mal Kanwat.

v. no opportunity of cross examining Sh Pooran Mal Kanwat was ever provided to the appellant.

5. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 1,28,000/ made by the AO u/s 68 of the 1.T.Act by arbitrarily treating the genuine loan transactions from M/s Inner Mercantile Pvt Ltd as accommodation entry merely on the basis of conjectures and surmises despite the fact that;

(i) the transaction of loan is duly recorded in the Books of accounts of the appellant and no material whatsoever as to the non genuine nature of the transaction was found during the course of search and therefore beyond the scope of the proceedings u/s 153C of the Act.

(ii) the appellant duly discharged the burden cast upon it by filing confirmation, copy of Income Tax Return and Bank statement of the lender company. (iii) none of the evidences in support of identity, creditworthiness and genuineness of the transactions placed on record by the appellant have been dislodged by the AO by bringing on record any positive evidence.

(iv) the notices sent by the AO at the address of the lender company were duly served and complied with thereby clearly establishing the genuineness of the transaction.

(v) no adverse material as to the identity or creditworthiness of the lender company, if any in possession of the AO was ever confronted to the appellant

(vi) after filing of confirmation, copy of ITR and Bank statement of the lender company, the AO did not require the appellant to produce any other specific evidence or either produce the director of the lender company.

5.1 Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 320/ made by the AO on account of alleged hypothetical commission payment for arranging entries of loan from M/s Inner Mercantile Pvt Ltd.

6. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the AO in invoking the provisions of Section 115 BBE of the Income Tax Act in respect of various additions made by him.

The appellant craves leave of the Hon'ble Tribunal to amend or raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.

ITA NO. 367/JP/2023 – A.Y. 2016-17 :

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

2. That the Ld CIT(A) erred in law as well as on the facts and circumstances of the case in confirming the absolutely illegal, arbitrary and ab initio void assessment order and in completely ignoring the self speaking facts of the impugned assessment order, which need no further reference to either any records or documents or submissions.

3. That the order of the Ld CIT(A) of confirming the action of the assessing officer in assuming jurisdiction u/s 153C of the Act when there exist none and in passing the impugned assessment order making huge addition to the total income of the appellant in complete disregard to the facts and statutory provisions of section 153C of the I.T. Act suffers from gross perversity of facts and law and therefore, unsustainable.

3.1 That the Ld CIT(A) erred in law as well as on facts and circumstances of the case in not quashing the illegal assessment order which has been passed pursuant to the illegal assumption of jurisdiction by the Assessing Officer, as

a. no proper satisfaction as mandated u/s 153C of the I.T. Act was recorded by the AO.

b. no satisfaction as to any money, bullion, jewellery or other valuable article or thing, belonging to the appellant seized or any seized books of account or documents, pertains or pertain to, or any information contained therein, relates to the appellant for the impugned assessment year was recorded

c. no reference to any such valuable or material has been made in the entire assessment order.

4. Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 10,72,000/ made by the AO us 68 of the I.T. Act by arbitrarily treating the genuine loan transactions from M/s Inner Mercantile Pvt Ltd as accommodation entry merely on the basis of conjectures and surmises despite the fact that;

(i) the transaction of loan is duly recorded in the Books of accounts of the appellant and no material whatsoever as to the non genuine nature of the transaction was found during the course of search and therefore beyond the scope of the proceedings u/s 153C of the Act.

(ii) the appellant duly discharged the burden cast upon it by filing confirmation, copy of Income Tax Return and Bank statement of the lender company.

(iii) none of the evidences in support of identity, creditworthiness and genuineness of the transactions placed on record by the appellant have been dislodged by the AO by bringing on record any positive evidence.

(iv) the notices sent by the AO at the address of the lender company were duly served and complied with thereby clearly establishing the genuineness of the transaction. (v) no adverse material as to the identity or creditworthiness of the lender company, if any in possession of the AO was ever confronted to the appellant

(vi) after filing of confirmation, copy of ITR and Bank statement of the lender company, the AO did not require the appellant to produce any other specific evidence or either produce the director of the lender company.

4.1 Ld CIT(A) erred in law as well as on facts and circumstances of the case in confirming the addition of Rs 2680/ made by the AO on account of alleged hypothetical commission payment for arranging entries of loan from M/s Inner Mercantile Pvt Ltd.

5. On the facts and circumstances of the case and in law, the Ld CIT(A) erred in confirming the action of the AO in invoking the provisions of Section 115 BBE of the Income Tax Act in respect of various additions made by him.

The appellant craves leave of the Hon'ble Tribunal to amend or raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.

2. First, we take up the appeal of the assessee in ITA No. 397/JP/2023 for the assessment year 2013-14 for adjudication. Apropos grounds of appeal of the assessee for the assessment year 2013-14, the facts as emerges from the order of the Id. CIT (A) are as under wherein the Id. CIT (A) has dismissed the appeal of the assessee.

2. Here in this appeal, appellant has raised ten (10) grounds of appeal. Ground of Appeal No. 9 relating to initiation of penalty proceeding u/s 271(1)(c) is premature, therefore the same is dismissed. Ground of Appeal No. 10 is general in nature and not needing any specific adjudication. The main Ground of Appeal No. 1 to 8 (Ground of Appeal No. 2 to 2.4, Ground of Appeal No. 3 to 3.2, Ground of Appeal No. 4 to 4.5, Ground of Appeal No. 5 to 5.1 and Ground of Appeal No. 6 to 6.5 are inter related hence they are clubbed for adjudication) is reproduced herein as under:

Ground No. 1: On the facts and in the circumstances of the case, the Ld. AO has erred in passing the impugned order u/s 153C of the IT Act, 1961 without recording the proper satisfaction and therefore the order so passed is bad in law and deserves to be quashed.

Ground No. 2: Without Prejudice to ground no. 1 above and in the alternate 2: On facts and in circumstances of the matter, the Ld. AO has grossly erred in making addition of Rs. 12,39,79,549/- u/s 69 on account of alleged cash investment in purchase of property, arbitrarily. Thus the addition so made deserves to be deleted in full.

2.1: That the Ld, AO has further erred in making addition of Rs. 11,39,36,299/- (out of total addition made of Rs. 12,32,79,549/- in the hands of the appellant) solely based on alleged Ikrar-nama (sale agreement), when in fact no such sale consideration was ever paid to the sellers on behalf of the actual purchaser Sh. Pooranmal Kanwat nor such agreement was ever acted upon by the parties. Thus the addition made for purchase consideration alleged as paid in cash merely on conjecture and surmises is bad in law and deserves to be deleted.

2.2: That the Ld. AO has further erred in making addition of Rs. 94,43,250/- (out of total addition made of Rs. 12,32,79,549/- in the hands of appellant) solely based on post dated cheques entries mentioned in Ikrar-name (sale agreement) in fact the sale agreement was not acted upon and the said cheques were never encashed from the bank account of the assessee company. Thus the addition made for purchase consideration alleged as paid in cash, in lieu of post dated cheques not debited from bank account of the

appellant is merely on conjecture and surmises is bad in law and deserves to be deleted.

2.3: That the Ld. AO has further erred in ignoring the vital fact that the subject properties has been purchased by Sh. Pooranmal Kanwat through three separate registered sale deeds and there it is clearly established that the alleged sale agreement to sale was never executed and therefore no addition can be made in the hands of the assessee.

2.4: That The Ld. AO has further erred in ignoring the fact that the even as per sales agreements dated 25.05.2012 the purchase consideration was required to be paid in two installments and lastly by 20.01.2013, however since the deal could not get materialized in the purported manner and the subject property was ultimately got transferred in the shape of agriculture land only vide sales deeds executed on 11.07.2012 which were also found during the course of search, thus it is clearly established from the seized record itself that alleged sales agreements were never acted upon and therefore any additions made based on these agreements without having any material in hand is contrary to the facts of the case and the no addition can be made in the hands of the assessee.

2.5. That the Id. AO has further erred in not giving opportunity to cross-examination Sh. Pooranmal Kanwat before placing reliance on his statements for making addition which is in gross violation of principles of natural justice and accordingly the addition made deserves to be deleted.

Ground No. 3: On facts and in circumstances of the case, the Ld. AO has grossly erred in making addition of Rs. 11,05,69,458/- on account of alleged short term capital gain on sale of property arbitrarily. Thus the additions so made deserves to be deleted in full.

3.1: That the Ld. AO has further erred in making additions in the hands of the assessee while in fact the owner of the property is third person and Ld. AO has not brought on record any evidence which suggest that the sale consideration has been received by the assessee and therefore in absence of any such document no addition could have been made in the hands of the assessee.

3.2: Without prejudice to above, and in the alternate the Ld. AO has further erred adopting the full value of sale consideration of piece property sold to Smt. Sunita Mathur at Rs. 10,07,63,400/- by applying provision of section 50C(1) of the LT. Act. 1961, arbitrarily, thus the value so adopted deserves to be hold bad in law.

Ground No. 4: On facts and in circumstances of the matter, the Ld. AO erred in making addition of Rs. 15,00,000/- u/s 68 by treating the loan taken from M/s. Gemini Commerce Pvt. Ltd. as accommodation entry arbitrarily, thus the addition made deserves to be deleted.

4.1: That the Ld. AO has further erred in ignoring the fact that office of the lender company existed at its registered office and also the notices sent were duly served and were complied with, thus observation of Ld. AO that lender company is a paper company is totally misplaced and therefore, the addition made based on such misplaced observation deserves to be deleted.

4.2: That the Ld. AO has further erred in ignoring the fact that assessee has duly discharged the burden cast upon it of proving the identity, genuineness of transaction and creditworthiness of the lender by filing its confirmation, ITR and bank statement, moreover the lender company is still active with ROC, thus the consequent addition deserves to be deleted.

4.3. That the Ld. AO has further erred in not confronting the inspector report and also not giving opportunity to cross-examine Director Shri Arpit Khandelwal of lender company before placing reliance on these for making addition which is in gross violation of principle of natural justice and accordingly the addition made deserves to be deleted.

4.4. That the Ld. AO has further erred in ignoring the fact that no paper whatsoever was found as a result of search reflecting that assessee has managed accommodation entry from M/s. Gemini Commerce Pvt. Ltd., thus the addition made solely on conjectures and surmises deserves to be deleted.

4.5. The Ld. AO has further erred in assuming the loan as accommodation entry despite that all three ingredients of loan has been established by assessee by filing evidence on record which remained un-rebutted by Ld. AO and without Ld. AO establishing it to be accommodation entry by any evidence, thus addition so made only on presumptions and surmises being bad in law, deserves to be deleted.

Ground No. 5: On facts and circumstances of the matter, the Ld. AO has grossly erred in making addition of Rs. 3,750/- by treating the same as commission for arranging alleged accommodation entry arbitrarily.

5.1: That the Ld. AO has failed to bring on record any evidence of suggesting any such payment of commission/arrangement of accommodation entry either during the assessment proceeding or found as a result of search, thus consequent addition made deserves to be deleted.

Ground No.6: On the facts and in the circumstances of the case and in law, Ld. AO has grossly erred in making addition of Rs. 4,25,50,000/- u/s 68 as unexplained cash credit of amount received from Sh. Pooranmal Kanwat by ignoring the fact that no incriminating document was found during the course of search in relation to these credit entries which are recorded in the books maintained in regular course and therefore no addition could have been made u/s 153C.

6.1. On the facts and in the circumstances of the case and in law, Id. AO has grossly erred in making addition of Rs. 4,25,50,000/- u/s 68 by treating the money received from Sh. Pooranmal Kanwat as non-genuine arbitrarily, thus the addition made deserves to be deleted.

6.2. That the Id. AO has further erred in making addition of Rs. 4,19,46,250/- u/s 68 by treating it as unexplained, ignoring the fact that the same was not unsecured loan taken by the assessee but it was actually repayment by Sh. Pooranmal Kanwat to the assessee of the earlier amount advanced to him/his behalf by assessee and thereby same being not the unsecured loan and therefore addition u/s 68 being unjustified deserves to be deleted.

6.3. That the Id. AO has further erred in ignoring the fact that assessee has duly discharged the burden cast upon it of proving the identity, genuineness of transaction and creditworthiness of the lender by filing its confirmation, bank statement wherein almost no cash is deposited, thus the consequent addition deserves to be deleted.

6.4. That the Id. AO has further erred in treating the money received from Sh. Pooranmal Kanwat as unexplained in the case of appellant by doubting the creditworthiness, whereas in the assessment proceedings in his own case the source of the advance given by him to the assessee has been considered as explained by the same Id. AO and no adverse view has been taken in his case. Thus the adverse view so taken in respect of loan from Sh. Pooranmal in the case of assessee is contrary to the fact, emerging from the case of Sh. Pooranmal and thereby the additions so made is bad in law and deserves to be deleted.

6.5. That the Id. AO has further erred in not giving opportunity to cross-examine the lender before placing reliance on their statement for making addition which is in gross violation of principle of natural justice and accordingly the addition made deserves to be deleted.

Ground No. 7: On facts and in circumstances of the matter the Ld. AO has grossly erred in invoking the provision of section 115BBE of the IT. Act, 1961."

Ground No. 8. On facts and in circumstances of the case the Id. AO has grossly erred in disallowing the expenses claimed at Rs. 2,18,000/- in the profit and loss account by assuming that assessee company has not commenced any business activity and these expenses are in the nature of capital expenses, which is contrary to the facts of the case and without any material in possession of the Id. AO and therefore the disallowance so made should be allowed to the assessee company.

3. During the course of appellate proceedings, appellant has not complied with the notices issued on various dates, the details of which are reproduced herein as under:

S. No.	Date of Notice	Date of hearing	Remarks
1.	18-01-2021	28-01-2021	Adjournment letter submitted on ITBA Portal vide dated 28.01.2021 with frivolous reasons that "due to last date of audit we are preparing the reply so we are requested to please adjourned the case and oblige"
2.	09-07-2021	19-07-2021	Adjournment letter submitted by Director of the company stated reasons that "It is submitted that due to Covid-19 pandemic has greatly affected the manner of working and has also affected the various deadlines that have been shifted to two or three months thereby increasing the work load that to within limited working hours so we are preparing the reply" vide dt. 19.07.2021 and the case was adjourned to 12.08.2021.
3.		12-08-2021	No compliance
4.	11-11-2021	18-11-2021	No compliance
5.	14-12-2021	27-12-2021	No compliance
6.	04-01-2022	11-01-2022	Adjournment letter submitted by Authorized person of the company stated reasons that "due to Omicrom COVID pandemic affecting our business we hereby request you to give final adjournment of 20-25 days for submission of documents against the above mentioned appeal" vide letter dt. 11.01.2022 and the case was adjourned to 25.01.2022.
7.		25.01.2022	Adjournment letter submitted by Authorized person of the company stated reasons that "due to Omicrom COVID pandemic affecting our business very badly. Father of Sh. Charan Singh Khandgarot director of the company is expired on 22.01.2022 who was admitted in ICU from many days. We hereby

			request you to give adjournment of 15 days for submission of documents against the above mentioned appeals. You are requested to please grant adjournment for 15 days in the case and oblige" vide dt. 24.01.2022.
8.	21.02.2023	28.02.2023	No compliance
9.	03.03.2023	09.03.2023	No compliance
10.	16.03.2023	23.03.2023	No compliance
11.	23.03.2023	30.03.2023	No compliance

3.1 Vide the notice issued on 23.03.2023, the appellant was specifically informed that this is the last opportunity. The relevant portion of the notice is reproduced herein as under:

.....This is to inform you that 3 notices u/s 250 of the income-tax Act, 1961 have already been issued in your case vide DIN & Notice No. ITBA/APL/F/APL_1 2022- 23/1049964701(1) dated 21.02.2023, DIN & Notice No. ITBA/APL/F/APL_1/2022-23/1050389706[1] dated 03.03.2022 and DIN & Notice No. ITBA/APL/F/APL_1/2022-23/1050857841(1) dated 16.03.2023 respectively but till date there has not been any compliance on your part and no documentary evidences(s)/information/submissions/clarification have been furnished by you. Hence, you are being provided a final opportunity to present your case/file your submissions. If no submission/information is furnished/received within the stipulated time period, it will be presumed that you have nothing to submit/say in the matter and your appeal would be decided on the basis of material already available on record....."

3.2 However, the appellant did not comply with this notice also and nor filed any submissions to support his grounds of appeal. It is specifically observed here that inspite of giving 11 opportunities of being heard to the appellant, as detailed above the appellant has chosen not to furnish any information to substantiate and plead the grounds of appeal.

4. It is crystal clear from the above chart that the appellant has been given a number of opportunities to present his case. However, no compliance and no written submissions are made till date. The appeal has been filed by the appellant but looking at the conduct of not complying with the notices, not filing any information's/submissions in support of the grounds of appeal, the only inference that can be drawn is that the appellant is not interested in perusing the appeal and therefore I am left with no alternative but to decide the appeal on the basis of material available on record.

4.1 The brief facts of the case are that appellant company primarily derives its income from real estate business. The Appellant company filed its original return of income u/s 139(1) of the Act, on 18.09.2013 for the AY 2013-14

declaring a total loss at Rs. 2,18,000/-. Pursuant to this, AO issued a notice u/s 153C of the Act to the appellant on 14.08.2019, in compliance of which, the appellant filed its return of income declaring the same income as declared in the original return filed u/s 139 of the Act.

5. The first Ground of Appeal that the appellant has raised is purely a legal ground viz-a-viz the assessment completed u/s 153C. Based on whatever material is available on file, I do not find any infirmity in the assessment made as per the Section 153C of the Act. This Ground of Appeal is rejected.

6. The Ground of Appeal No. 2 to 2.4 are inter related hence they are clubbed together for adjudication and is with respect to the addition on a/c of unexplained investment in immovable property u/s 69 of the Act situated at Ajayrajpura and Mathurawala, Teh. Sanganer, Jaipur amounting to Rs. 12,32,79,549/-. The AO has observed that sale deed dated 25-05-2012 and subsequent 3 registered sale deeds were executed in the name of Sh. Pooran Mal Kanwat S/o Sh. Mehtab Singh Kanwat. However, payment has been made through the bank account of M/s Macro Properties Pvt. Ltd. and M/s Macro Township Pvt. Ltd. held in Malviya Urban Co-operative Bank which established that Sh. Pooran Mal Kanwat is only a name lender whereas actual beneficiary owner of the aforesaid land are M/s Macro Properties Pvt. Ltd. and M/s. Macro Township Pvt. Ltd.

6.1 Sh. Pooran Mal Kanwat is a retired government employee and he is showing his income from pension & interest. He has not filed any return of income for AYrs 2011- 12 to 2012-13. Sh. Pooran Mal Kanwat is a person of no means as per his ROI filed for the AY 2013-14 shows that his net income is at Rs. 3,65,130/- whereas he has purchased agricultural land amounting to crores of rupees. It is also evident from the detailed facts mentioned in the assessment order that he has not paid even a single penny from his pocket and the sale consideration was paid by M/s Macro Township Private Limited and M/s Macro Properties Private Limited.

6.2 Further, the statement of Sh. Pooran Mal Kanwat was recorded u/s 131 of the Act on dated 24-10-2017 wherein he stated that the land under reference was belonging to Schedule Tribes and Schedule Tribe land cannot be purchased by the persons of other community, therefore, Sh. Charan Singh Khangarot has purchased these properties in his name whereas actual owner of the land under reference is M/s Macro Properties Private Limited & M/s Macro Township Private Limited, the companies related to Shri Charan Singh Khangarot. He has further admitted that he did not pay a single penny for purchase of above land and his name was only used by Sh. Charan Singh Khangarot and companies belonging to him. The scanned copy of statement of Sh. Pooran Mal Kanwat is mentioned in AO's assessment order at page no. 15 to 18. The AO has made a detailed analysis of the facts and evidence found at the time of search in the group of cases, while establishing that actual beneficial owner of the land is not Sh. Pooran Mal Kanwat. The relevant fact is

mentioned in AO's assessment order at page no. 19 to 21. The same is not repeated for sake of brevity.

6.3 In view of the above facts and evidence brought on record it is evident that the land under consideration was purchased in the name of Sh. Pooran Mal Kanwat as he belongs to ST community and the land under consideration is also ST land which can be purchased by the person of ST community. The whole sale consideration was paid through cheque issued from bank account of M/s Macro Properties Pvt. Ltd. and M/s Macro Township Pvt. Ltd. and Sh. Pooran Mal Kanwat does not have any worth to invest huge amount in the immovable property which he admitted in the statement also. Therefore, it is beyond doubt that Sh. Pooran Mal Kanwat is only a name lender and actual beneficial owner of the land are M/s Macro Township Pvt. Ltd. and M/s Macro Properties Pvt. Ltd.

6.4 During the appellate proceedings, the appellant has not furnished any information/source of investment in property in spite of providing various opportunities. Based on whatever material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition made by the AO. This Ground of Appeal is rejected and the addition of Rs. 12,32,79,549/- is confirmed.

7. The Ground of Appeal No. 3 to 3.2 are inter related hence they are clubbed together for adjudication and with respect to the addition on a/c of undisclosed short term capital gain earned on sale of land which is situated at Ajayrajpora & Mathurawala, Teh. Sanganer, Jaipur amounting to Rs. 11,05,69,458/-. The AO has observed that land measuring 3.87 hectares situated at Village Ajayrajpora & Mathurawala, Tehsil Sanganer, Jaipur purchased in the name of Sh. Pooran Mal Kanwat by M/s Macro Properties Private Limited & M/s Macro Township Private Limited from various Khatodars for total sale consideration of Rs. 4,30,58,000/- was later on converted from agricultural to mixed uses by JDA on the application filed for conversion of the land by Sh. Kapil Bhakar, Power of Attorney holder of Sh. Pooran Mal Kanwat.

7.1 The AO has given a detailed analysis of the seized material i.e. as per details available in hard disc containing computer imaging data of various computers installed at office premises of M/s FS Housing Private Limited various data & tally software of various concerns related to F S Group were impounded during the course of survey action. On perusal of one of the hard disc, tally data of Sh. Pooran Mal Kanwat for the AY 2013-14 & 2014-15 were found vide path Account PC-Ganesh Agarwal- Tally Data- Account PC-2 Ganesh Agarwal-G drive -Tally backup 12.06.2017 - Nawal-Misc -File No. 10999.

7.2 In this hard disc, details of other expenses, registry amount, land development charges etc are also available which has been discussed elaborately at pages 31 to 35 of the AO's order, to arrive at the conclusion that

the appellant has earned short term capital gain of Rs. 11,05,69,458/-. The same are not repeated here for the sake of brevity.

7.3 During the appellate proceedings, the appellant has not furnished any information/source of short term capital gain earned on sale of aforementioned land. Based on whatever material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition made by the AO. This Ground of Appeal is rejected and the addition of Rs. 11,05,69,458/- is confirmed.

8. The Ground of Appeal No. 4 to 4.5 are inter related hence they are clubbed together for adjudication and is with respect to the addition on account of bogus unsecured loans from M/s Gemini Commerce Pvt. Ltd. amounting to Rs. 15,00,000/-. The details of the lender company M/s Gemini Commerce Pvt. Ltd. were examined and it is found that the company is one of the company out of 16794 companies which has been declared as a shell company by the Serious Fraud Investigation Officer [SFIO] which is a fraud investigating agency in India. Perusal of the ITR, Balance Sheet and Profit & Loss A/c of the company M/s Gemini Commerce Pvt. Ltd., it is found that the aforesaid company is not involved in any business activity. The company has no business activity and despite of the same company has shown a large amount in security premium account and using these funds for giving loans.

8.1 From perusal of the financial disclosed by the companies, the AO further observed that these are showing relatively high share premium and are almost exclusively utilizing all this capital for extending loans and advances or investing in unlisted equities. This is typical of paper companies that provide accommodation entries out of bogus unsecured loans and share premium in their accounts.

8.2 During the search proceedings, residence of one of the directors of M/s Gemini Commerce Pvt. Ltd., Sh. Arpit Khandelwal was also covered on dt. 05.08.2019 as one of the members of M/s Kiran Fine Group. During the course of search statement of Director of the company Sh. Arpit Khandelwal was recorded on oath u/s 132(4) of the Act dt. 05.08.2017 wherein he categorically admitted that he was not aware about the full name of the company. He is only dummy director in M/s Gemini Commerce Pvt. Ltd. and he has done all this as per the directions of Sh. Harsh Agarwal. The statement of Sh. Arpit Khandelwal is mentioned at page no. 43 of AO's assessment order. The aforesaid statement of Sh. Arpit Khandelwal, establishes that the lender company M/s Gemini Commerce Pvt. Ltd. is a shell company only which provide accommodation entries to various persons in the guise of unsecured loans.

8.3 An enquiry was conducted by DDIT-2, Jaipur wherein an inspector is deputed for verification of business activity of the bogus companies which includes the lender company M/s Gemini Commerce Pvt. Ltd. and it is clear from the Inspector's report that companies are not in existence in their registered addresses and holding offices but on those addresses a combined office of various companies were found, which is used only for receiving Dak (mail). Hence in the field enquiry as well, no business activities were found by these companies from their registered addresses.

8.4 Accordingly, during the assessment proceedings, the appellant was issued a detailed show cause notice. In response to the show cause notice, the appellant filed its reply. The AO duly considered the reply and found not to be tenable for the reasons mentioned in para 10.10 of the assessment order.

8.5 During the appellate proceedings, the appellant has not furnished any information/source of unsecured loans from M/s Gemini Commerce Pvt. Ltd. in spite of providing various opportunities. Based on whatever material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition made by the AO. This Ground of Appeal is rejected and the addition of Rs. 15,00,000/- is confirmed.

9. The Ground of Appeal No. 5 & 5.1 are inter related hence they are clubbed together for adjudication and with respect to the addition on a/c of unexplained payment of commission amounting to Rs. 3,750/-. The AO has given a clear finding that this fact is also unearthed during the course of investigation that the beneficiaries have also paid commission @ 0.25% on acquiring accommodation entries. Accordingly the AO held that it is justifiable that commission paid @ 0.25% which computes at Rs. 3,750/- are treated as unexplained expenditure for acquiring accommodation entry which is added to total income u/s 69C of the Act. During the appellate proceedings, the appellant has not been able to rebut the findings of the AO, by not furnishing any information/submissions. Based on whatever material is available on file, I do not find any infirmity in the addition made by the AO. This Ground of Appeal is rejected and the addition of Rs. 3,750/- is confirmed. This Ground of Appeal is rejected.

10. The Ground of Appeal No. 6 to 6.5 are inter related hence they are clubbed together for adjudication and with respect to the addition on a/c of unexplained cash credit from Sh. Pooranmal Kanwat u/s 68 of the Act. The AO observed that the appellant has shown cash credit amounting to Rs. 4,25,50,000/- from Sh. Pooranmal Kanwat for AY 2013-14. The ITR of the lender of Sh. Pooranmal

Kanwat were download from ITD system which reveals that he has not file any return of income for AY 2011-12 to 2012-13. Further, the return of income filed for the AY 2013-14 & 2014-15 shows that his net income is at Rs. 4,65,130/- and Rs. 3,57,459/-. These facts clearly shows that Sh. Pooranmal Kanwat is a person of no means and do not have creditworthiness to extent huge loan to the assessee.

10.1 During the course of post search enquiry statement of Sh. Pooranmal Kanwat was recorded on oath u/s 131 of the Act wherein he admitted that bank account no. 00203110000005475 held in Malviya Urban Cooperative Bank, Jaipur was opened by Sh. Charan Singh Khangarot. He further admitted that the pass book and signed cheque book of the aforesaid bank account was taken by Sh. Charan Singh Khangarot and he has no information or a knowledge of the transaction held in the bank account.

10.2 Based on the post search enquiries and the quantum of returned income of Sh. Pooranmal Kanwat and the fact that no interest was being paid on the loan so raised. The AO held that Sh. Pooranmal Kanwat was not a person of means and his creditworthiness/genuineness of the transaction is not established after considering the information furnished by the appellant. Accordingly the AO held the amount of Rs. 4,25,50,000/- shown in the books of accounts under the head 'Repayment of Unsecured Loan' as a non-genuine u/s 68 of the Act.

10.3 During the appellate proceedings, the appellant has not furnished any information/source of cash credit received from Sh. Pooranmal Kanwat u/s 68 of the Act. Based on whatever material is available on file and in absence of any new submission/ finding and any other material for which the appellant was provided so many opportunities, I do not find any infirmity in the addition made by the AO. This Ground of Appeal is rejected and the addition of Rs. 4,25,50,000/- is confirmed.

11. The seventh Ground of Appeal is with respect to invoking the provisions of section 115BBE of the Act. All the additions made by the AO are based on the seized material, invoking the provisions of Section 69A and therefore the Provisions of Section 115BBE are clearly applicable. Based on whatever material is available on file, I do not find any infirmity in the application of Section 115BBE(1) for charging of tax on additions made by the AO. This Ground of Appeal is rejected.

12. The Ground of Appeal No. 8 is with respect to the addition on account of revenue expenditure amounting to Rs. 2,18,000/-. From perusal of the Profit and Loss Account of the company it is gathered that no revenue has been received from operation which clearly established that business had not commenced during the period. Therefore, the expenditure incurred has to be capitalized. However, expenditure under head other expenses totaling to Rs. 2,18,000/- has been debited which is not allowable being capital expenditure.

12.1 Since, the appellant has not shown any revenue from the business during the year as well as in any previous years. Hence, the commencement of the business has not happened and expenditure incurred are capital in nature and same cannot be claimed as revenue expenditure. Therefore, the appellant has not been able to rebut the findings of the AO, by not furnishing any information/submissions. Based on whatever material is available on file, I do not find any infirmity in the addition made by the AO. This ground of appeal is rejected and the addition of Rs. 2,18,000/- is confirmed. This Ground of appeal is rejected.

13. In the result, the appeal of the appellant is dismissed.”

3. Apropos to the legal ground so taken by the assessee during the course of hearing, the Id. AR of the assessee opposed to the finding of the Id. CIT(A) who has recorded the cryptic finding and has not touched upon the important facts of the case. Therefore, Id. AR of the assessee read the discussion made in the order of the assessee and the same is reproduced here in below :

“ 1. A search and seizure action u/s 132 of the Income Tax Act, 1961 (the Act) and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02.08.2017 of which the Assessee is one of the members.

2. The jurisdiction over the case was assigned to Central Circle-2, Jaipur by the Pr. Commissioner of Income Tax, Central, Jaipur by means of an Order u/s 127 of the Act circulated vide PCIT(C)/DCIT(Hq)/C-184/2019-20/1211 dated 08.08.2019.

3. Thus being satisfied that the books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out, notice(s) under section(s) 153C of the Act dated 14.08.2019 was issued and served upon the assessee, requiring him to file a true and correct return of income as prescribed under Rule 12 of the Income Tax Rules 1962 within 15 days of the service of the said notice.

4. In response to the said notice(s), a return declaring a loss of Rs. 2,18,000/- was filed by the assessee on 21.08.2019. In the return of income originally filed by the assessee u/s 139(1) of the Act on 18.09.2013 a loss of Rs. 2,18,000/- was declared. However, in the return of income filed in response to notice u/s 153C of the Act no undisclosed income pertaining to the relevant year has been declared by the Assessee."

As there is no reference of the seized material and the Id. A/R submitted that the documents/ material discussed in the order of the assessment relates to the recorded transaction in the books of account of the assessee company and the other part of the document relied upon were seized during the course of survey. Based on that fact and considering the provision of the law Id. AO does not hold jurisdiction to reopen the case u/s. 153C of the Act as there is no incriminating material found in the search for that he has relied upon the recent Supreme Court decision settling the controversy in the case of U. K. Paints. The Id. AR of the assessee also submitted that the Id. CIT(A) has erred in dismissing the appeal of the assessee summarily without dealing with the facts and merits of the case that the Id. AO had erred in passing the assessment order u/s 153C of the Act,1961 without recording the proper satisfaction so as to invoke the provision of section 153C of the Act and the Id. CIT(A) without elaborately discussing the main issue of applicability of section 153C of Act and rejected this ground wherein the Id. AR of the assessee narrated the ground No. 1 raised by the assessee and subsequently disposed off by this ground

by the Id. CIT(A) rejecting ground of the assessee. The relevant observation of the Id. CIT(A) on the issue is reiterated here in below :-

'5. The first ground of appeal that the appellant has raised is purely a legal ground viz-a-viz the assessment completed u/s 153C. Based on whatever material is available on file, I do not find any infirmity in the assessment made as per the Section 153C of the Act. This ground of appeal is rejected.'

4. Denoting to the above finding of the Id. CIT(A), and the ground of the appeal of the assessee raising the legal ground the bench noted that the assessee has challenged the validity of the assessment and has contended that the Id. AO has passed the order without recording the satisfaction as required u/s. 153C of the Act as it did not transpire from the order of the assessment as there is no discussion to recording of the satisfaction for taking up the case of the assessee u/s. 153C of the Act.

5. The bench noted that there is no discussion to the satisfaction note or finding of any incriminating material in the order of the assessment, therefore, in the course hearing the bench directed the Id. AO through DR to demonstrate as to the content of the satisfaction note if any before issue of notice u/s. 153C of the Act. The satisfaction note so recorded by the Id. AO as submitted by the Id. D/R is reproduced here in below:

Satisfaction Note as required u/s 153C of the I.T. Act, 1961 in the case of M/s. Macro Township Pvt. Ltd. (PAN: AAHCM8947Q), AY 2012-13 & 2018-19.

"A search & seizure action u/s 132(1) of the I.T. Act, 1961 was carried out at residential premises of Shri Charan Singh Khangarot s/o Shri Mukut Singh Khangarot, situated at M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur, on dated 02-08-2017 wherein certain documents were found and seized and inventorized as Annexure-AS, Exhibits 1 to 06. Exhibit AS-3 contains 102 pages. Page nos. 21 to 28

is a duly notarized sale agreement dated 25.05.2012 executed between Shri Tofan, Kalian s/o Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naina Devi w/o Shri Jagannath Meena, R/o Vill. Naglaiya Manpur, Dhani Bainada, Tehsil- Sanganer, Jaipur (Sellers) & Shri Pooran Mal Kanwat S/o Shri Mahtab Singh Kanwat (purchaser) for sale of immovable property of 26 khasra no. having total area 3.87 hectare khasras in village Ajayrajpura & Mathurawala, Tehsil-Sanganer, Jaipur at the sale consideration of Rs. 17,10,70,000/- for the land situated at aforementioned. These land were purchased by Shri Pooran Mal Kanwat through three sale deeds duly registered with the SR- Sanganer-1, Jaipur on 11.07.2012.

During the course of search proceedings at residence of Shri Ashok Singh situated at M-21, Income Tax Colony, Durgapura, Jaipur 3 sale deeds of these aforesaid land as mentioned in sale agreement were found and seized as page no. 17-24, 25-33 & page no. 34-41 of Exhibit-4 of Annexure-AS, which reveals that sale consideration reported in these sale deeds is shown at much below the actual consideration reported in sale agreement. Details of these sale deeds are as under.

(a) 1st Registered Deed: Property admeasuring 80 hectare hectares of land purchased from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naini Devi w/o Shri Jagannath, Vill. Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur by Shri Pooran Mal Kanwat on 11/07/2012 for total sale consideration of Rs. 1,18,40,000/- out of land located at Village Mathurawala, Tehsil Sanganer, District Jaipur. However, the actual sale consideration of the land as per the duly notarized sale agreement dated 25.05.2012 is at Rs. 3,53,63,307/- whereas in the registered sale deed sale consideration reported to have been paid to the sellers at Rs. 1,18,40,000/-, thus there is difference in sale consideration amounting to Rs. 2,35,23,307/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468, which is found to be in the name of M/s Macro Township Private Limited. Hence it is also evident that the cash consideration of Rs. 2.35 crore was also paid by M/s M/s Macro Township Private Limited to the seller.

(b) 2nd registered deed: A property admeasuring 2.56 hectare hectares of land was purchased by Shri Pooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naini Devi w/o Shri Jagannath, Vill. Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of land located at Village Mathurawala, Tehsil Sanganer, District Jaipur. For the consideration of Rs. 2,76,48,000/-. However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 11,31,62,583/- thus there is a difference in sale consideration amounting to Rs. 8,55,14,583/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468 & 0020301000001019, which are respectively found to be in the names of M/s Macro Township Private Limited & M/s Macro Developers Private Limited. Further, in the registered sale deed cheques related to both the companies are reflected, therefore the undisclosed investment in the hands of both the companies in proporaonate to the amount paid by them to the land owner The contribution made in sale consideration as per registered sale deed is as under:

S.No.	Name of the company	Amount paid through cheques in Rs	Share in cash payment in Rs.	Percentage in total sale consideration
1	M/s. Macro Properties Private Limited	40,00,000	5,50,000 (being 50% share in cash amount of 11,00,000)	16.46%
2	M/s. Macro Township Private Limited	2,25,48,000	5,50,000 (being 50% share in cash amount of 11,00,000)	83.54%

Hence, it is also evident that the cash consideration of Rs. 8.55 crore was also paid by M/s Macro Township Private Limited and M/s Macro Properties Private Limited to the seller in accordance with the share of sale consideration paid by them as per registered sale deed which comes at Rs. 1,40,75,700/- (16.46% of 8,55,14,583/-) in the hands of M/s Macro Properties Private Limited and Rs. 7,14,38,883/- (83.54% of 8,55,14,583/-) in the hands of M/s Macro Township Private Limited.

(c) 3rd registered sale deed: A Property admeasuring 0.51 hectare hectares of land purchased by Shri Prooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan S/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhoti Lal S/o Shri Jagannath, Smt Naini Devi W/o Shri Jagananth, Vill Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of the land located at Village Ajayrajapura, Tehsil Sanganer, District Jaipur for sale consideration of Rs. 35,70,000/-. However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 2,25,44,209/-. Thus there is a difference in sale consideration amounting to Rs. 1,89,74,109/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468, which is found to be in the name of M/s Macro Township Private Limited. Hence it is also evident that the cash consideration of Rs. 1.89 crore was also paid by M/s Macro Township Private Limited to the seller.

Further, the cheque numbers mentioned in the sale agreement/registered sale deeds are related to M/s Macro Properties Private Limited & M/s Macro Township Private Limited and as admitted by Shri Pooran Mal Kanwat in his sworn statement recorded during the course of post search investigation that the land under reference was belonging to Schedule Tribes and Schedule Tribe land cannot be purchased by the persons of other community, therefore, Shri Charan Singh Khangarot has purchased these properties in his name whereas actual owner of the land under reference is M/s Macro Properties Private Limited & M/s Macro Township Private Limited. He has further admitted that he did not pay a single penny for purchase of above land and his name was only used by Shri Charan Singh Khangarot and companies belong to him.

I am therefore, satisfied that the document seized belong to M/s Macro Township Pvt. Ltd. (PAN: AAHCM8947Q) other than the search person and have bearing on the determination of his total income. Hence notice u/s 153C of the I.T. Act, for the AYS 2012-13 to 2017-18 and notice u/s 142(1)/143(2) for AY 2018-19 are to be issued for the purpose of assessment and reassessment of income of Shri Pooran Mal Kanwat in accordance with provision of Section 153A."

6. The Id. A/R of the assessee referring to the satisfaction so recorded vehemently argued that the document which the Id. AO mentioned in his satisfaction note is not incriminating material. The transaction recorded is the bank transfer recorded as loan and the property referred was in fact sold subsequently to the third party by the real owner of the property where there is no connection to the assessee company. Not only that the money so advanced by the company is still receivable in the books of the assessee company. Thus, so far as the advances given by the company there is no incriminating material unearthed in the search which suggest to invoke the provision of section 153C of the Act in the case of the company. The rest of the documents are found during survey and therefore, the addition u/s. 153C can only be invoked if the incriminating material found in the search. Thus, the Id. AR relying on the apex court decision in the case of DCIT Vs. M/s. U. K. Paints (Overseas) Ltd. submitted that the addition de hors the incriminating material cannot be made in the year under consideration. In addition to the above oral arguments, the Id. A/R of the assessee on all the grounds so taken and attached in this appeal has also relied upon the written submission as reiterated here in below :-

" Assessee is a company incorporated under the Indian Companies Act and is engaged in the activity of Real Estate Business. The Assessee Company is duly complying with all the statutory requirements like getting its account audited from an auditor and filing annual return of income as required under the Indian Income Tax Act.

On 14.08.2019, DCIT Central Circle-2, Jaipur issued Notice u/s 153C of the Income Tax Act to the assessee company requiring it to file its return of income for the A.Ys. 2012-13 to A.Ys A.Y. 2017-18. However, reasons for issuing the said notice were not supplied to the Appellant. The reasons for issuing Notice u/s 153C are also not uploaded on the web portal. Therefore, it is ascertainable whether prior to the issuance of Notice u/s 153C of the Income Tax Act any reasons were recorded by the Assessing Officer or not.

Reasons discernible from assessment orders; Though no reasons for issuing Notices u/s 153C of the Act were ever supplied to the appellant, however, from the copies of assessment orders served upon the appellant, it is seen that the Assessing Officer has made the following common observations in respect of all the assessment years in appeal:

" A search and seizure action u/s 132 of the Income Tax Act 1961("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02.08.2017 of which the assessee is one of the members.

The Jurisdiction over the case was assigned to Central Circle-2 Jaipur by the Pr Commissioner of Income Tax Central Jaipur by means of an order u/s 127 of the Act circulated vide PCIT(C)/DCIT(Hq)/C-184/2019-20/1211 dated 08.08.2019.

Thus being satisfied that the Books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out, Notice (s) under Section(s) 153C of the Act dated 14.08.2019 was issued and served upon the assessee, requiring him to file a true and correct return of income as prescribed under rule 12 of the Income Tax Rule 1962 within 15 days of the service of the said notice."

Though the Assessing Officer has mentioned that on being satisfied that the Books of accounts or documents found and seized during the course of search belonged to a person other than the person in the case of whom search u/s 132 of the Act was carried out, however, no such satisfaction is manifest in the assessment order. The Assessing Officer has neither referred to the specific person searched nor referred to any specific books of account or document. Thus from the plain reading of the facts noted by the Assessing Officer, it is crystal clear that the assumption of jurisdiction by the Assessing

Officer in issuing Notice u/s 153C of the Income Tax Act was totally illegal and bad in law and thereby renders the assessments made pursuant thereto as illegal and void ab inito. The Assessing Officer in a completely arbitrary manner and in violation of the statutory provisions of section 153C of the Income Tax Act proceeded to complete the assessments without any authority legal or otherwise. Continuing with the absolutely illegal assumption of jurisdiction without complying with the statutory mandate of Section 153C of the Act, the Assessing Officer made huge additions to the total income of the Appellant without making any reference to any seized material belonging or related to the appellant for any of the assessment years.

Aggrieved by the absolutely, illegal, arbitrary and void ab inito orders of the Assessing officer, the appellant filed appeals before the LD CIT (A)-4 Jaipur. However, the Ld CIT (A) -4 Jaipur too dismissed the appeals filed by the appellant in a completely arbitrary manner and in utter disregard to the statutory provisions of the Income Tax Act. Hence the present appeals have been preferred by the appellant. The appellant hereby submits that in respect of the subject matter of the present appeals the appellant has not sought any other alternate remedy before any authority or court of law.

Specific Grounds wise submissions;

Submissions' on legal grounds , Gr No 1, 2, 3 & 3.1 of the appeal.

Most humbly it is submitted that the appellant company suffered huge setback during the Covid period and business of the appellant was in total disarray. Appellant was finding it difficult to organise its affairs. Also during the pandemic, father of one of the Directors of the appellant company got seriously ill, and expired after remaining in critical condition in the Hospital for long time. Therefore, the humble appellant could not present its case before the Ld CIT (A) well in time.

However, the appellant submits that the Ld CIT (A) failed in discharging her statutory duties in dismissing the appeals though ostensibly after considering the facts available on record. However, as the humble appellant would demonstrate in the subsequent paragraphs, the Ld CIT (A) acted in an absolutely arbitrary manner in confirming the patently illegal and void ab-initio orders of the Ld Assessing Officer. Illegal assumption of jurisdiction by the Assessing Officer in issuing Notices u/s 153C of the Act to the appellant and in assessing the income of the appellant under the provisions of Section

153C of the Income Tax Act is clearly evident from the impugned assessment orders itself and do not require looking into any other documents/ records.

The appellant submits that the provisions of Section 153C of the Income Tax Act as amended by Finance Act of 2015 read as under:

"Section **153C** - (1) notwithstanding anything contained in Section 139, Section 147, Section 148, Section 149, Section 151 and Section 153, where the Assessing Officer is satisfied that,

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in Section 153-A, then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of Section 153A, if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of Section 153-A:.....

From the bare perusal of the above provisions of Section 153C of the Income Tax Act it is evident that for the purpose of invoking the provisions of section 153C against any person, any books of account or documents, seized during the course of search in the case of other person must either pertain to the assessee or should contain any information therein which relates to the assessee. Additionally, Assessing Office must also record his satisfaction that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of the assessee.

Facts as to the non compliance with the provisions of Section 153C of the Income Tax Act made by the Assessing Officer in the present case-

1. Prior to the issuance of Notice u/s 153 C of the Income Tax Act the Assessing Officer has not recorded any satisfaction whatsoever.
2. Even assuming that the Assessing Officer has recorded a satisfaction in his file, which was not shared with the appellant, **however even during the course of assessment proceedings, no seized document/Books of account belonging to or related to or containing any information about the appellant was ever confronted to the appellant. Nor any such document formed the basis of making any addition to the total income of the appellant in the impugned assessment orders.**
3. The Assessing Officer in the assessment order has no where mentioned the fact of recording of any valid satisfaction which is clearly evident from the observations of the Assessing Officer reproduced verbatim in these submissions. However, for the sake of completeness and clarity, the humble appellant seeks leave of the Hon'ble Bench for reproducing the same again even at the cost of brevity:

" A search and seizure action u/s 132 of the Income Tax Act 1961("the Act") and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02.08.2017 of which the assessee is one of the members.

....

Thus being satisfied that the Books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out, Notice (s) under Section(s) 153C of the Act dated 14.08.2019 was issued and served upon the assessee, requiring him to file a true and correct return of income as prescribed under rule 12 of the Income Tax Rule 1962 within 15 days of the service of the said notice."

4. From the plain reading of the above notings of the assessing officer , it is evident that the satisfaction, if any formed by the Assessing Officer is absolutely vague and not in conformity with the statutory mandate as explained by the Hon'ble Supreme Court, various High Courts and coordinate Benches of the Hon'ble Tribunal. The Assessing Officer has vaguely referred to the Books of accounts or documents seized during the course of search belonged to a person other than the person in the case of whom search has been carried out. The Assessing Officer has miserably failed in mentioning in unequivocal terms;

(i) Which specific Books of accounts or documents found and seized during the course of search belonged to the assessee?

(ii) During the course of search in whose case, Books of accounts or documents, if any belonging or related to the assessee were seized? Mere mentioning of the words ` search and survey` in the case of Kiran Fine Jewellers Group of which assessee is a member, does not satisfy the requirement of law.

(iii) `Kiran Fine Jewellers Group` may be a recognisable entity to the Assessing Officer or to the Investigation wing of the Income Tax Department but is neither recognisable to the assessee nor to the law. The Assessing Officer is obligated to record his satisfaction with respect to the Books of accounts and documents belonging to the assessee/related to the assessee or containing any information related to the assessee, seized during the course of search action in the case of a person in whose case warrant u/s 132(1) of the income tax act was issued. Needless to say that "Kiran fine Jewellers Group" is not a person and no search and seizure action has been carried out in the case of any such entity/person by the name of "Kiran Fine Jewellers Group". The Search and seizure action has been carried out in the cases of certain persons and the Assessing Officer should satisfy himself about the documents belonging to the assessee, if any found from the premises of searched person/persons.

5. Evidently, the Assessing Officer is not sure of the identity of the person from whom the documents belonging to the assessee were seized. Kiran Fine Jewellers Group is neither any entity in itself and no search action was carried out against Kiran Fine Jewellers Group. Therefore, satisfaction if any has at all been recorded by the Assessing Officer; the satisfaction is general, vague and does not satisfy the preconditions of section 153C of the Act so as to force the humble appellant to undergo the rigors of Section 153C of the Income Tax Act.

6. The Assessing Officer has not recorded satisfaction in respect of each of the assessment years before issuing notice u/s 153C of the Income Tax Act relating seized Books of accounts or documents to each assessment year separately.

7. The Assessing Officer has not recorded satisfaction about incriminating nature of the Books of accounts or document belonging to the appellant for each of the assessment years i.e , the seized Books of accounts or document having a bearing on the determination of total income of the appellant.

Therefore, absent any satisfaction as mandated u/s 153C of the Act, the very initiation of proceedings u/s 153C of the Income Tax Act is totally illegal, bad in law and without jurisdiction and need to be quashed.

The appellant submits that no Books of Accounts or documents seized during the course of search action in Kiran Fine Jewellers Group, pertain to the appellant or related to the assessee, or contain any information related to the assessee. The seized Books of accounts or documents also have no bearing on determination of total income of the appellant for any of the impugned assessment years.

Assessment year-wise additions made by the Assessing Officer vis a vis basis of addition as discernible from Assessment orders:

A.Y. 2013-14 - In the impugned assessment order, the additions made by the AO and the basis of such addition as has been discussed by the AO in the assessment order is as below:

i. **Addition of Rs 12,32,79,549/- u/s 69** of the Act on account of alleged cash investment in property purchased by one Sh Pooranmal Kanwat. Assessing Officer has referred to a sale agreement seized from the premises of Sh Charan Singh Khangarot in which the appellant is neither a seller or the buyer, nor name of appellant appear anywhere in the documents. (Ref Asst Order Para 7, Pg 2) (Document referred to as Pg 21-28 Annexure AS Exhibit - 3).

AO has also referred to another sale agreement dated 25.05.2012 between the same parties. (Ref –Asst Order Para 7.2 Pg 3) (Document referred to as Pg 1-8 Annexure AS -6)

AO has also referred to copy of another sale agreement dated 02.03.2012 completely unconnected with the appellant (Ref –Asst Order Para 7.6 Pg 5) (Document referred to as annexure AS-3 Pages No. 13-2)

AO has also referred to copy of another sale deed dated 11.07.2012 seized from the premises of Sh Ashok Singh entered into between Sellers and Sh Pooran Mal Kanwat. (Ref –Asst Order Para 7.6 Pg 6) (Document referred to as Pg 17-41 of Annexure-AS)

None of the documents referred to by the AO neither belong to the assessee nor related to the assessee nor contain any information related to the assessee. The Assessing officer has also nowhere mentioned in the assessment order that any of the documents contain information related to the assessee

(Also Refer show cause notice issued by the AO, reproduced in the assessment order in Para 8.7 Pgs 22-23)

ii. Addition of Rs 11,05,69,458/- on account of alleged short term capital gains- Documents referred to are data received from tally software installed at the office premises of M/s F.S. Housing Pvt Ltd during the course of **survey action** relating to sale of property by Sh Pooran Mal Kanawat (Ref. Assessment order Para 9.1 & 9.2 Pg 29-30) and information gathered by the AO from the website of Rajasthan Govt (Ref Asst Order para 9.4 Pg 30) .

iii. Addition of Rs 15, 00,000/- on account of alleged bogus unsecured loans from M/s Gemini Commerce Pvt Ltd and Rs 3,750/ on account of alleged commission payment for arranging entry of unsecured loan.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition. Moreover, **the very same addition made by the Assessing Officer in the assessment order dated 31.03.2015 was deleted by the Ld CIT(A)-4 Jaipur and appeal of the department was dismissed by the Hon'ble Bench vide order dated 27.09.2017 in ITA No 1057/JP/2016.**

iv. Addition of Rs 4,25,50,000/- u/s 68 of the income Tax Act on account of unsecured loan taken from Sh Pooran Mal Kanwat.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition.

v. Disallowance of expenses amounting to Rs 2,18,000/- No reference to any material seized or impounded has been made in making the disallowance.

Addition made by the LD AO at (i) above mentions seized documents however, the documents mentioned by AO neither belong to the assessee, nor are related to the assessee. The Documents do not contain any information concerning the assessee. The AO has in the assessment order nowhere mentioned the information concerning or related to the assessee contained in the said documents. Evidently the documents are completely unrelated to the assessee. Detailed discussion is being made in the submissions on merits.

In making additions mentioned at (ii), above the documents though completely unrelated to the assessee have been impounded during the course of Survey proceedings and thus cannot otherwise form the basis of initiating action u/s 153C.

No document is mentioned in relation to the addition made at (iii) , (iv) & (v) above.

A.Y. 2014-15 - In the impugned assessment order, the additions made by the AO and the basis of such addition as discussed by him in the assessment order is as below:

i. Addition of Rs 3,82,33,796 /- on account of alleged short term capital gains- Documents referred to are data received from tally software installed at the office premises of M/s F.S. Housing Pvt Ltd during the course of **survey action**. (Ref. Assessment order Para 9.1 & 9.2 Pg 28-29) and information gathered by him from the website of Rajasthan Govt (Ref Asst Order para 9.4 Pg 30) .

ii. Addition of Rs 4,19,46,250/- u/s 68 of the income Tax Act on account of unsecured loan taken from Sh Pooran Mal Kanwat.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition.

iii. Addition of Rs 10,92,000/- on account of alleged bogus unsecured loan from M/s Inner Merchantile Pvt Ltd and of Rs 2,730/ on estimated commission payment for arranging unsecured loan.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition.

iv. Disallowance of expenses amounting to Rs 1,92,767/- No reference to any material seized or impounded has been made in making the disallowance.

Addition made by the AO at (i), above the documents though completely unrelated to the assessee but finding mention in the discussions made by the AO in the assessment order, have been impounded during the course of Survey proceedings. Thus, no mention of any seized document in the entire order. No other document whether seized or impounded has been referred to in making the additions at (ii) (iii) and (iv) above.

A.Y. 2015-16 - In the impugned assessment order, the additions made by the AO and the basis of such addition as disclosed in the assessment order is as below:

i. Addition of Rs 1,91,50,000/- u/s 68 of the income Tax Act on account of unsecured loan taken from Sh Pooran Mal Kanwat.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition

ii. Addition of Rs 1,28,000/- on account of alleged bogus unsecured loan from M/s Inner Merchantile Pvt Ltd and of Rs 320/- on estimated commission payment for arranging unsecured loan.

No document whether seized or impounded during the course of search or survey action has been referred to in making the addition

Thus, there is no mention of any seized or impounded document in the entire order.

A.Y. 2016-17 - In the impugned assessment order, the additions made by the AO and the basis of such addition as disclosed in the assessment order is as below:

i. Addition of Rs 10,72,000/- on account of alleged bogus unsecured loan from M/s Inner Mercantile Pvt Ltd and of Rs 2,680/ on estimated commission payment for arranging unsecured loan.

Thus, there is no mention of any seized or impounded document in the entire order.

As has been demonstrated above, out of 4 assessments, there is absolutely no reference to any seized Books of accounts or documents in the assessment orders for A.Y. 2015-16 and A.Y. 2016-17.

For A.Y.2014-15 only one addition has been made wherein reference to documents impounded during the course of survey action has been made.

So far as the assessment for assessment year 2013-14 is concerned, it is evident from the bare perusal of the assessment order that in making a couple of additions, the Assessing Officer has discussed certain seized documents but in the entire order, the Assessing Officer has nowhere mentioned that any of the documents is related to the assessee or contain information about the assessee. The additions have been made absolutely on the basis of conjectures and surmises and without any factual foundation. None of the documents discussed by the AO contain any reference whatsoever to the assessee. The Assessing officer based his addition only on the statement of the Investor wherein he stated that the funds for investment were provided by Sh Charan Singh Khangarot and his companies. Statement which too was recorded in the post search proceedings u/s 131 of the Income Tax Act can never lent any legality to the proceedings initiated u/s153C of the Act. The addition made by the AO is also not based on any document but on assumptions made by the AO. Assumptions made by the Assessing Officer also suffer from complete perversity of facts.

In the light of the above self evident facts, the assumption of jurisdiction by the Assessing Officer u/s 153C of the Income Tax Act is completely arbitrary and illegal. There was no occasion for the Assessing Officer to invoke the provisions of Section 153C of the Income Tax Act against the assessee, as the preconditions of Section 153C have not been met by the Assessing Officer. It is therefore requested that all the impugned assessment orders may kindly be quashed for lack of jurisdiction with the Assessing Officer.

Decision of the Ld CIT(A)

The Ld CIT (A) dismissed the related Grounds of appeal of the appellant for all the assessment years with identical observations which are reproduced as under:

"The first Ground of appeal that the appellant has raised is purely a legal ground vis a vis the assessment completed u/s 153C. Based on whatever material is available on file, I do not find any infirmity in the assessment made as per the Section 153C of the Act. This Ground of the appeal is rejected."

From the above observations of the Ld CIT(A) it is evident that the Ld CIT(A) has acted in the most arbitrary, illegal and whimsical manner. The Ld CIT (A) has not mentioned which material available on the file prompted her to uphold the absolutely illegal assessment orders. On the contrary, as discussed above, it is evident even from the bare perusal of the assessment orders that the Assessing Officer has in the absence of any material belonging to the assessee or related to the assessee or containing any information related to the assessee, seized from a searched person, much less any incriminating material, acted in the complete illegal and arbitrary manner in assigning to himself the jurisdiction to reassess the income of appellant under the provisions of section 153C of the Income Tax Act.

The humble appellant submits that a speaking order ensure that the principles of natural justice are followed by the authority. To give reasons for the decision is a requirement of the principle of natural justice. The order would show which particular circumstances received due consideration while arriving at the decision. It is a settled legal proposition that every administrative as well as judicial order must be supported by cogent reasons. Reasons have been held to be sacrosanct to the judicial process. The Hon'ble Supreme court has been consistently insisting on this fundamental requirement. The giving of reasons for decision has been held to be an essential attribute of judicial and judicious disposal of a matter before the courts. Reason, it is said, introduces clarity in an order and without the same, it became life less. Reasons substitute subjectivity by objectivity. Absence of reasons renders indefensible / unsustainable, particularly when the order is subject to further challenge before a higher forum.

Time and again Hon'ble Supreme Court has observed that giving of reasons in support of their conclusions by judicial and quasi judicial authorities when exercising initial jurisdiction is essential for various reasons. Firstly, it is calculated to prevent unconscious unfairness or arbitrariness in reaching the conclusions. The very search for reason will put the authority on the alert and minimize chances of unconscious infiltration of personal bias or unfairness in the conclusion. The authority will adduce reasons which will be regarded as fair and legitimate by a reasonable man and will discard irrelevant or extraneous considerations. Second, it is a well known principle that justice should not only be done but should also appear to be done. Unreasoned conclusions may be just but they may not appear to be just to those who read them. Reasoned conclusions, on the other hand will have also the

appearance of justice. Third, it should be remembered that an appeal generally lies from the decision of judicial and quasi judicial authorities to this court by special leave granted under Article 136. A judgement which does not disclose the reasons will be of little assistance to the court. The court will have to wade through the entire record and find for itself whether the decision in appeal is right or wrong. In many cases the investment of time and industry will be saved if reasons are given in support of the conclusions. So it is necessary to emphasize that judicial and quasi judicial authorities should always give the reasons in support of their conclusions.

{ woolcombers of India Ltd Vs Woolcombers Worker Union AIR 1973 SC 2758: Baidya Nath Sharma Vs CWT (1983) 140 ITR 801(Gau): Mool Chand Mahesh Chand Vs CIT (1978) 115 ITR 1 (All) : Siemens India Ltd vs. ITO (1983) 143ITR120(Bom).

In view of the above submissions, it is submitted that the orders passed by the Ld CIT (A) and the Assessing Officer need to be quashed in entirety.

Undisputed legal position with regard to the provisions of Section 153C, as settled by the Hon'ble Supreme Court:

Satisfaction of the Assessing Officer should be based on cogent material and should not be arrived at in a casual manner.

It is submitted that Section 132(4A) (i) clearly stipulates that when inter alia any document is found in the possession or control of any person in the course of a search it may be presumed that such document belongs to such person. The presumption as to asset, books of accounts, etc. is governed by section 292C (1) (i) belong or belongs to the person from whom said were found during the course of search u/s 132. Therefore, whenever a document is found from a person who is being searched the normal presumption is that the said document belongs to that person. It is for the Assessing Officer to rebut that presumption and come to a conclusion or 'satisfaction' that the document in fact belongs to somebody else. There should be some cogent material with the Assessing Officer to arrive at his satisfaction that the seized document does not belong to the searched person but to somebody else. Surmise and conjecture cannot take the place of 'satisfaction'. This interpretation is in accord with the Interpretation given by various courts on umpteen occasions. The appellant place reliance on some of the following authoritative decisions of various courts in this regard:

**PCIT v. Himanshu Chandulal Patel [2019]109 taxmann.com 202
(Gujarat High Court)**

**CIT v. Raj Pal Bhatia [2011] 10 taxmann.com 191 (High Court of
Delhi)-**

**CIT v. Smt. Chitra Devi Soni [2008] 170 Taxman 164 (High Court of
Rajasthan)-**

**PCIT v. Star PVG Exports [2019]112 taxmann.com 163 (Karnataka
High Court)**

**DCIT v. Qualitron Commodities (P) Ltd [2015] 54 taxmann.com 295
(Delhi - Trib.)**

**Assessing Officer should record satisfaction in respect of each of the
assessment years:**

The appellant submits that the law in this regard is well settled by the decision of the Hon'ble Supreme Court in the case of Commissioner of Income Tax –III, Pune Vs Singhad Technical Education Society (397 ITR 344 SC) . The Hon'ble Supreme Court has held as under:

"16. In these appeals, qua the aforesaid four Assessment Years, the assessment is quashed by the ITAT (which order is upheld by the High Court) on the sole ground that notice under Section 153C of the Act was legally unsustainable. The events recorded above further disclose that the issue pertaining to validity of notice under Section 153C of the Act was raised for the first time before the Tribunal and the Tribunal permitted the assessee to raise this additional ground and while dealing with the same on merits, accepted the contention of the assessee.

17. First objection of the learned Solicitor General was that it was improper on the part of the ITAT to allow this ground to be raised, when the assessee had not objected to the jurisdiction under Section 153C of the Act before the AO. Therefore, in the first instance, it needs to be determined as to whether ITAT was right in permitting the assessee to raise this ground for the first time before it, as an additional ground

*18. The ITAT permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. In this behalf, **it was noted by the ITAT that as per the provisions of Section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were***

seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under Section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of Section 153C of the Act.

Para 9 of the order of the ITAT reveals that the ITAT had scanned through the Satisfaction Note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges there from is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred.

19. We, thus, find that the ITAT rightly permitted this additional ground to be raised and correctly dealt with the same ground on merits as well. Order of the High Court affirming this view of the Tribunal is, therefore, without any blemish. Before us, it was argued by the respondent that notice in respect of the Assessment Years 2000-01 and 2001-02 was time barred. However, in view of our aforementioned findings, it is not necessary to enter into this controversy Insofar as the judgment of the Gujarat High Court relied upon by the learned Solicitor General is concerned, **we find that the High Court in that case has categorically held that it is an essential condition precedent that any money, bullion or jewellery or other valuable articles or thing or books of accounts or documents seized or requisitioned should belong to a person other than the person referred to in Section 153A of the Act. This proposition of law laid down by the High Court is correct, which is stated by the Bombay High Court in the impugned judgment as well.** The judgment of the Gujarat High Court in the said case went in favour of the Revenue when it was found on facts that the documents seized, in fact, pertain to third party, i.e. the assessee, and, therefore, the said condition precedent for taking action under Section 153C of the Act had been satisfied."

Hon'ble High Court of Madras in the judgment dated 24.11.2020 in Tax Case appeal No 161 to 167 of 2020 in the case of Pr CIT Central -2 Chennai Vs M/s. S. R. Trust Madurai held as under:

" para 7- The law on the subject with regard to an assessment under section 153C of the Act qua the necessity to establish the correlation the document wise with the assessment years in question was considered by the Hon'ble Supreme Court in the case of CIT-III, Pune Vs Singhad Technical Education Society (reported in (2017) 84 Taxmann.com 290}

...

Para 10- The Tribunal further noted that the said Mr T John Rajasekhar approached the Income Tax Settlement Commission and submitted an application wherein the commissioner of Income Tax stated that there was no supporting evidence of returning cash withdrawn by the said Mr T John Rajasekhar to the hospital, which was established and being administered by the assessee Trust. The Tribunal rightly took note of the decision in the case of Singhad Technical Education Society that in proceedings under section 153C of the Act, in the absence of any incriminating documents or evidence discovered during the course of search under section 132 of the Act in the case of searched person against the assessee, the jurisdiction under the provisions of section 153C of the Act cannot be assumed..."

Hon'ble Delhi High Court in the case of Pr CIT (Central)-2 New Delhi Vs Panchmukhi Management Services Pvt Ltd in decision dated 26.09.2022 held as under:

" Para 7- Perusal of the satisfaction note reveals that no documents pertaining to Assessment year 2011-12 was seized during search. The Supreme Court in Commissioner of Income Tax –III Pune Vs Singhad Technical Education Society reported in (2017) 397 ITR 344 has held that seized material can be considered to be incriminating in terms of section 153C of the Act only if the said material pertains to the assessment year in question.

Para 8- With respect to Assessment year 2010-11 and 2012-13, this court is of the view that the recovery of the annual report and the share certificate of the Petitioner from premises of Minda Group cannot be considered to be incriminating documents. After all, the Minda group was not a third party but the issuing authority of the share certificates. In fact , both the appellate authorities below have given a concurrent finding that no incriminating material had been brought on record by the Assessing Officer to sustain the addition on merit. Also, the genuineness of the share capital has been accepted both by CIT (A) and ITAT and also there is no live link between seized material and the additions made. Therefore this court is of the view that assumption of jurisdiction in the present cases by the Assessing Officer was erroneous."

Reliance is also placed on the following decisions where various High Courts have held that in the absence of incriminating material powers u/s 153C cannot be exercised :

1. Decision dated 7th Feb 2017 of the Bombay High Court in ITA No 83 of 2014 in the case of CIT-Central-III, Mumbai Vs M/ Arpit Land Pvt Ltd and ITA No 150 of 2014 in the case of CIT-Central-III, Mumbai Vs M/ Ambit Realty Pvt Ltd.

2. Delhi High Court decision dated 25th April 2017 in WP(C) No 2768 & 2769 /2016 in the case of ARN Infrastructure India Ltd Vs ACIT.
3. Delhi High Court decision dated 18th April 2018 in ITA No 791/2017 in the case of Pr CIT Delhi-8 Vs M/s N.S. Software (Firm).
4. PCIT Vs Vikas Telecom Ltd ITA No 112/2020 dated 15/12/2021 (Delhi High Court).
5. CIT Kolkatta- III Vs Veer Prabhu Marketing Ltd ITA No 601 of 2008 Dated 4 August 2016 (Kolkatta HC)
6. CIT Vs IBC Knowledge Park (P) Ltd (2016) 69 Taxmann.com 108 (Karnataka High Court)
7. Decision dated 04.05.2022 of Hon'ble ITAT Delhi Bench in ITA No 365/Del/2018 in the case of M/s Heavens Suppliers Ltd Vs ACIT
8. M/s Green Range Farms (P) Ltd Vs DCIT (2018) Taxmann.com 249 Delhi Tribunal .
9. Hon'ble ITAT Ahmedabad Bench decision dated 22/04/2022 in IT (SS) A No 114 to 117/Ahd/2017 in the case of M/s Neesa Technologies (P) Ltd Vs DCIT
10. Hon'ble ITAT Ahmedabad Bench decision dated 09/11/2022 in IT (SS) A No. 248/Ahd/2018 in the case of ACIT Vs Ashrita Construction Pvt Ltd.

No addition can be made in the assessments in the absence of incriminating material;

Without prejudice to the submissions, that initiation of proceedings u/s 153C of the Income Tax Act is absolutely illegal and without authority of law, the appellant submits that even after initiation of proceedings, addition to the returned income in respect of unabated assessments can only be made on the basis of incriminating material. In the absence of incriminating material no addition can be made in the assessments made u/s 153C of the Income Tax Act. In support of this proposition, the appellant relies on the following decisions of various high courts including the decision of the Hon'ble Jurisdictional High Court:

Pr. Commissioner of Income Tax-Central, Jaipur vs. Smt. Daksha Jain, Sirohi 2019 (8) TMI 474 (Rajasthan)

Commissioner of Income Tax (Central)-III Vs. Kabul Chawla (2016) 380 ITR 573 (Delhi)

Principal Commissioner of Income Tax, Central -2, New Delhi Vs. Meeta Gutgutia (2017) 395 ITR 526 (Delhi)

Chintels India Ltd. Vs. Deputy Commissioner of Income Tax –Circle -8, Delhi (2017) 397 ITR 416 (Delhi)

Principal Commissioner of Income Tax-4 Vs. Saumya Construction (2016) 387 ITR 529 (Gujarat)

Principal Commissioner of Income Tax, Ahmedabad Vs. Dipak Jashvantlal Panchal 2017 (2) TMI 862 (Gujarat)

Principal Commissioner of Income Tax-2 vs. Jay Infrastructure and Properties Pvt. Ltd. 2016 (10) TMI 1022 (Gujarat)

Commissioner of Income Tax-II, Thane vs. Continental Warehousing Corporation (Nhava Sheva) Ltd. (2015) 374 ITR 645 (Bombay)

Pr. Commissioner of Income Tax (Central), Bangalore and Ors Vs. M/s Delhi International Airport Pvt. Ltd. and Ors. (2022) 443 ITR 382 (Karnataka)

Sri S.M. Kamal Pasha vs. the Deputy Commissioner of Income-Tax Central Circle – 6 (3) (2) Bangalore (2022 (8) TMI 966 (Karnataka)

Smt. Jami Nirmala Vs. Principal Commissioner of Income Tax (2021) 437 ITR 573 (Orissa)

Smt. Smrutisudha Nayak Vs. Union of India (2021) 439 ITR 193 (Orissa)

Commissioner of Income Tax, Kolkata Vs. Veerprabhu Marketing Limited (2016) 388 ITR 574 (Calcutta)

Principal Commissioner of Income Tax-2, Kolkata Vs. M/s. Salasar Stock Broking Ltd. 2016 (8) TMI 1131 (Calcutta)

Dr. A.V. Sreekumar Vs. The Commissioner of Income Tax, Kochi and Assistant Commissioner of Income Tax, Calicut (2018) 404 ITR 642 (Kerala)

The appellant further submits that the above legal position with regard to the assessments u/s 153A/153C as enunciated by various high courts, has now been affirmed by the Hon'ble Supreme Court in the decision dated 20th April 2023 in **Civil Appeal No 6580 of 20021 in the case of Pr CIT Central-3 Vs Abhisar buildwel Pvt Ltd** laying down the following clear and unambiguous position of law:

“9. While considering the issue involved, one has to consider the object and purpose of insertion of Section 153A in the Act, 1961 and when there shall be a block assessment under Section 153A of the Act, 1961.

9.1 That prior to insertion of Section 153A in the statute, the relevant provision for block assessment was under Section 158BA of the Act, 1961. The erstwhile scheme of block assessment under Section 158BA envisaged assessment of 'undisclosed income' for two reasons, firstly that there were two parallel assessments envisaged under the erstwhile regime, i.e., (i) block assessment under section 158BA to assess the 'undisclosed income' and (ii) regular assessment in accordance with the provisions of the Act to make assessment qua income other than undisclosed income. Secondly, that the 'undisclosed income' was chargeable to tax at a special rate of 60% under section 113 whereas income other than 'undisclosed income' was required to be assessed under regular assessment procedure and was taxable at normal rate. Therefore, section 153A came to be inserted and brought on the statute. Under Section 153A regime, the intention of the legislation was to do away with the scheme of two parallel assessments and tax the 'undisclosed' income too at the normal rate of tax as against any special rate. Thus, after introduction of Section 153A and in case of search, there shall be block assessment for six years. Search assessments/block assessments under Section 153A are triggered by conducting of a valid search under Section 132 of the Act, 1961. **The very purpose of search, which is a prerequisite/trigger for invoking the provisions of sections 153A/153C is detection of undisclosed income by undertaking extraordinary power of search and seizure, i.e., the income which cannot be detected in ordinary course of regular assessment. Thus, the foundation for making search assessments under Sections 153A/153C can be said to be the existence of incriminating material showing undisclosed income detected as a result of search.**

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

- i) That in case of search under Section 132 or requisition under Section 132A, the AO assumes the jurisdiction for blocks assessment under section 153A;
- ii) All pending assessments/reassessments shall stand abated;

iii) in case any incriminating material is found/unearthed, even, in case of unabated/completed assessments, the AO would assume the jurisdiction to assess or reassess the 'total income' taking into consideration the incriminating material unearthed during the search and the other material available with the AO including the income declared in the returns; and

iv) in case no incriminating material is unearthed during the search, the AO cannot assess or reassess taking into consideration the other material in respect of completed assessments/unabated assessments. Meaning thereby, in respect of completed/unabated assessments, no addition can be made by the AO in absence of any incriminating material found during the course of search under Section 132 or requisition under Section 132A of the Act, 1961. However, the completed/unabated assessments can be re-opened by the AO in exercise of powers under Sections 147/148 of the Act, subject to fulfilment of the conditions as envisaged/mentioned under sections 147/148 of the Act and those powers are saved.

The Hon'ble Supreme court has clearly laid down that subject to fulfilment of the conditions as envisaged/mentioned there under, powers could only be exercised u/s 147/148 of the Act in case search and seizure action has not unearthed any incriminating material.

Thus, irrespective of the fact whether exercise of powers under section 153C of the Act by the AO in the present case suffers from illegality or not, no addition to the total income of the appellant could have been made by the AO as no incriminating material relating to the assessee was neither found during the course of search, nor has been relied upon by the AO in the assessments. Therefore, additions made by the AO to the total income of the assessee in the assessments completed u/s 153C of the Act deserve to be quashed in toto."

7. On the other hand, the Id. D/R supported the order of the AO wherein he recorded finding that Shri Pooran Mal Kanwat is a retired government employee and he is showing his income from pension and interest. He has not filed any return of income for A. Y. 2011-12 to 2012-13. He is a person of no means as per his return of income filed for the A. Y. 2013-14 shows that his net income is at Rs. 3,65,130/-

whereas he purchased agricultural land amounting to crores of rupees. He has also not paid any single amount for purchase of property and consideration was paid by the assessee company. Further relying on the statement of Shri Pooran Mal Kanwat recorded on 24.10.2017 stated that the land under reference was belonging to Schedule Tribes and Schedule Tribe land cannot be purchased by the person of other community and therefore he has purchased the land in his name. The statement so recorded also support on the fact that Shri Ratan Lal Agarwal is close associates of Shri Charan Singh Khangarot and Shri Dipendra Singh is the cousin of Shri Charan Singh Khangarot who are the director of the assessee company. As the law does not permit to hold such land they hold the land to their close associates / employees and thereby they convert the land into non-agricultural land. After purchase of land, the same was converted into commercial and residential purpose and the person who was doing this work was also director in the company. The consideration was paid by the assessee company to buy the impugned land. Based on these set of facts the Id. AO has rightly hold that the assessee company is beneficial owner of the land. The Id. DR in addition also relied upon the orders of the Id. AO and Id. CIT(A) and has also filed a letter No. 369 dated 11.09.2023 issued by the ACIT, Central Circle-2, Jaipur enclosing therewith Satisfaction Note as required u/s 153C of the IT Act, 1961 in the case of M/s. Macro Township Pvt. Ltd. for the assessment years 2012-13 and 2018-19 which are reproduced as under:-

Satisfaction Note as required u/s 153C of the I.T. Act, 1961 in the case of M/s. Macro Township Pvt. Ltd. (PAN: AAHCM8947Q), AY 2012-13 & 2018-19.

"A search & seizure action u/s 132(1) of the I.T. Act, 1961 was carried out at residential premises of Shri Charan Singh Khangarot s/o Shri Mukut Singh Khangarot,

situated at M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur, on dated 02-08-2017 wherein certain documents were found and seized and inventorized as Annexure-AS, Exhibits 1 to 06. Exhibit AS-3 contains 102 pages. Page nos. 21 to 28 is a duly notarized sale agreement dated 25.05.2012 executed between Shri Tofan, Kalian s/o Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu s/o Shri Jagananth, Smt Naina Devi w/o Shri Jagannath Meena, R/o Vill. Naglaiya Manpur, Dhani Bainada, Tehsil- Sanganer, Jaipur (Sellers) & Shri Pooran Mal Kanwat S/o Shri Mahtab Singh kanwat (purchaser) for sale of immovable property of 26 khasra no. having total area 3.87 hectare khasras in village Ajayrajpura & Mathurawala, Tehsil-Sanganer, Jaipur at the sale consideration of Rs. 17,10,70,000/- for the land situated at aforementioned. These land were purchased by Shri Pooran Mal Kanwat through three sale deeds duly registered with the SR- Sanganer-1, Jaipur on 11.07.2012.

During the course of search proceedings at residence of Shri Ashok Singh situated at M-21, Income Tax Colony, Durgapura, Jaipur 3 sale deeds of these aforesaid land as mentioned in sale agreement were found and seized as as page no. no. 17-24, 25-33 & page no. 34-41 of Exhibit-4 of Annexure-AS, which reveals that sale consideration reported in these sale deeds is shown at much below the actual consideration reported in sale agreement. Details of these sale deeds are as under.

(a) 1st Registered Deed: Property admeasuring 80 hectare hectares of land purchased from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naini Devi w/o Shri Jagannath, Vill. Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur by Shri Pooran Mal Kanwat on 11/07/2012 for total sale consideration of Rs. 1,18,40,000/- out of land located at Village Mathurawala, Tehsil Sanganer, District Jaipur. However, the actual sale consideration of the land as per the duly notarized sale agreement dated 25.05.2012 is at Rs. 3,53,63,307/- whereas in the registered sale deed sale consideration reported to have been paid to the sellers at Rs. 1,18,40,000/-, thus there is difference in sale consideration amounting to Rs. 2,35,23,307/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468, which is found to be in the name of M/s Macro Township Private Limited. Hence it is also evident that the cash consideration of Rs. 2.35 crore was also paid by M/s M/s Macro Township Private Limited to the seller.

(b) 2nd registered deed: A property admeasuring 2.56 hectare hectares of land was purchased by Shri Pooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan s/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhotu s/o Shri Jagannath, Smt Naini Devi w/o Shri Jagannath, Vill. Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of land located at Village Mathurawala, Tehsil Sanganer, District Jaipur. For the consideration of Rs. 2,76,48,000/-. However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 11,31,62,583/- thus there is a difference in sale consideration amounting to Rs. 8,55,14,583/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468 & 0020301000001019, which are respectively found to be in the names of M/s Macro Township Private Limited & M/s Macro Developers Private Limited. Further, in the registered sale deed cheques related to both the companies are reflected, therefore the undisclosed investment in

the hands of both the companies in proportionate to the amount paid by them to the land owner. The contribution made in sale consideration as per registered sale deed is as under:

S.No.	Name of the company	Amount paid through cheques in Rs	Share in cash payment in Rs.	Percentage in total sale consideration
1	M/s. Macro Properties Private Limited	40,00,000	5,50,000 (being 50% share in cash amount of 11,00,000)	16.46%
2	M/s. Macro Township Private Limited	2,25,48,000	5,50,000 (being 50% share in cash amount of 11,00,000)	83.54%

Hence, it is also evident that the cash consideration of Rs. 8.55 crore was also paid by M/s Macro Township Private Limited and M/s Macro Properties Private Limited to the seller in accordance with the share of sale consideration paid by them as per registered sale deed which comes at Rs. 1,40,75,700/- (16.46% of 8,55,14,583/-) in the hands of M/s Macro Properties Private Limited and Rs. 7,14,38,883/- (83.54% of 8,55,14,583/-) in the hands of M/s Macro Township Private Limited.

(c) 3rd registered sale deed: A Property admeasuring 0.51 hectares of land purchased by Shri Pooran Mal Kanwat on 11-07-2012 from Shri Tofan, Shri Kalyan S/o Shri Mahadev, Shri Foolchand, Shri Mangi Lal, Shri Babulal, Shri Chhoti Lal S/o Shri Jagannath, Smt Naini Devi W/o Shri Jagananth, Vill Nangaliya Manpur, Dhani Bainada, Sanganer, Jaipur out of the land located at Village Ajayrajapura, Tehsil Sanganer, District Jaipur for sale consideration of Rs. 35,70,000/-. However, the actual sale consideration of the land as per aforesaid duly notarized sale agreement is at Rs. 2,25,44,209/-. Thus there is a difference in sale consideration amounting to Rs. 1,89,74,109/- between sale agreement and registered sale deed which has been paid to the sellers in cash by the purchaser out of his unaccounted income. However, the cheques numbers mentioned in the sale deed belong to the Malviya Urban Co-operative Bank account number 0020301000001468, which is found to be in the name of M/s Macro Township Private Limited. Hence it is also evident that the cash consideration of Rs. 1.89 crore was also paid by M/s Macro Township Private Limited to the seller.

Further, the cheque numbers mentioned in the sale agreement/registered sale deeds are related to M/s Macro Properties Private Limited & M/s Macro Township Private Limited and as admitted by Shri Pooran Mal Kanwat in his sworn statement recorded during the course of post search investigation that the land under reference was belonging to Schedule Tribes and Schedule Tribe land cannot be purchased by the persons of other community, therefore, Shri Charan Singh Khangarot has purchased these properties in his name whereas actual owner of the land under reference is M/s Macro Properties Private Limited & M/s Macro Township Private Limited. He has further admitted that he did not pay a single penny for purchase of above land and

his name was only used by Shri Charan Singh Khangarot and companies belong to him.

I am therefore, satisfied that the document seized belong to M/s Macro Township Pvt. Ltd. (PAN: AAHCM8947Q) other than the search person and have bearing on the determination of his total income. Hence notice u/s 153C of the I.T. Act, for the AYS 2012-13 to 2017-18 and notice u/s 142(1)/143(2) for AY 2018-19 are to be issued for the purpose of assessment and reassessment of income of Shri Pooran Mal Kanwat in accordance with provision of Section 153A."

8. We have heard both the parties and perused the material available on record and have also gone through the judicial decisions relied upon by both the parties to drive home to their contentions raised. The bench noted the Ground No. 3 and 3.1 is a ground raised for legal issue which is the main issue as to whether the satisfaction was recorded correctly and if so then whether the same is related to any material or documents relates or pertains to the assessee for the year under consideration. Thus, whether the provision of section 153C of the Act is applicable based on the facts of the case or not, in the case of the assessee and the assessee pressed vehemently to decide it first.

9. Brief facts of the case are that a search and seizure action 132 of the Act, 1961 and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Krian Fine Jewellers Group on 02-08-2017 on which the Assessee is one of the members. The jurisdiction over the case was assigned to Central Circle-2 Jaipur by the Id. Pr.CIT, Central, Jaipur by an order u/s 127 of the Act dated 08-08-2019. Thus being satisfied that the Books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out, Notice (s) under Section(s) 153C of the Act dated 14.08.2019 was issued and served upon the

assessee, requiring the assessee to file a true and correct return of income as prescribed under rule 12 of the Income Tax Rule 1962 within 15 days of the service of the said notice. From the assessment order, it is noted that in response to the said notice(s), a return declaring a loss of Rs. 2,18,000/- was filed by the assessee on 21-08-2019. In the return of income, originally filed by the assessee u/s 139(1) of the Act on 18-09-2013 at a loss of Rs.2,18,000/- was declared. However, in the return of income in response to notice u/s 153C of the Act, no undisclosed income pertaining to the relevant assessment year has been declared by the assessee. The proceeding of assessment of income was commenced by issue of notice u/s 143(2) of the Act on 29.08.2019. Later queries were raised vide notices u/s 142(1) and/or order sheet entries, wherever deemed fit by the AO. The information called were furnished by the assessee's counsel and placed on record.

10. It is notable from the copies of assessment orders served upon the assessee wherein it is seen that the Assessing Officer has made the following common observations in respect of all the assessment years in appeal :

“ A search and seizure action u/s 132 of the Income Tax Act 1961(“the Act”) and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02.08.2017 of which the assessee is one of the members.

The Jurisdiction over the case was assigned to Central Circle-2 Jaipur by the Pr Commissioner of Income Tax, Central, Jaipur, by means of an order u/s 127 of the Act circulated vide PCIT(C)/DCIT(Hq)/C-184/2019-20/1211 dated 08.08.2019.

Thus being satisfied that the Books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out. Notice (s) under Section(s) 153C of the Act dated 14.08.2019 was issued and served upon the assessee, requiring him to file a true and correct return of income as prescribed under rule 12 of the Income Tax Rule 1962 within 15 days of the service of the said notice.”

Though the Assessing Officer has mentioned that on being satisfied that the Books of accounts or documents found and seized during the course of search belonged to a person other than the person in the case of whom search u/s 132 of the Act was carried out, however, no such satisfaction is manifest in the assessment order. The Assessing Officer has neither referred to the specific person searched nor referred to any specific books of account or document. Thus from the plain reading of the facts noted by the Assessing Officer, it is crystal clear that the assumption of jurisdiction by the Assessing Officer in issuing Notice u/s 153C of the Income Tax Act was totally illegal and bad in law and thereby renders the assessments made pursuant thereto as illegal and void ab inito. The Assessing Officer in a completely arbitrary and illegal manner violated the statutory provisions of section 153C of the Income Tax Act and proceeded to complete the assessments without any authority legal or otherwise. Continuing with the illegal assumption of jurisdiction without complying with the statutory mandate of Section 153C of the Act, the Assessing Officer made huge additions to the total income of the Appellant without making any reference to any seized material belonging or related to the appellant for any of the assessment years, which are not in the nature of incriminating in nature. It is also noted that the Id. CIT(A) has not adjudicated upon the issue of Section 153 C of the Act very deeply but considered the assessment order and the documents narrated by the AO therein. In this case we note that the AO had recorded a satisfaction in his file but the satisfaction note was not provided to the assessee nor the fact of the same is disclosed in the order of the assessment. Even during the course of assessment proceedings, no seized documents / books of account belonging to or related to or

containing any information about the assessee was confronted to the assessee which are in the nature of incriminating in nature. No any such document formed the basis of making any addition to the total income of the assessee in the impugned assessment order, the addition or the amount disputed are already recorded in the books of accounts and the facts related to the case of the assessee all the payment found in the documents are duly recorded in the books of account of the assessee company. Thus it is evident that even if the AO had made a secret satisfaction note in his office, the same does not indicate any incriminating nature of documents/ books of accounts etc. It is also noted that AO in the assessment order has nowhere mentioned the fact of recording of any valid satisfaction which is clearly evident from the observation of the AO which is verbatim as under:-

“ A search and seizure action u/s 132 of the Income Tax Act 1961(“the Act”) and/or survey action u/s 133A of the Act was carried out by the Income Tax Department on the members of Kiran Fine Jewellers Group on 02.08.2017 of which the assessee is one of the members.

.....

Thus being satisfied that the Books of accounts or documents found and seized during the search belonged to a person other than the person in the case of whom the search u/s 132 of the Act was carried out, Notice (s) under Section(s) 153C of the Act dated 14.08.2019 was issued and served upon the assessee, requiring him to file a true and correct return of income as prescribed under rule 12 of the Income Tax Rule 1962 within 15 days of the service of the said notice.”

Thus it is noted that the AO has not recorded satisfaction in respect of each of the assessment years before issuing notice u/s 153C of the Act relating to seized books of accounts or documents to each assessment year separately. It also observed that AO has not recorded satisfaction about incriminating nature of books of account or documents belonging to the assessee for each of the assessment years i.e. seized

books of account or document having a bearing on the determination of total income of the assessee. The bench also noted the fact that the addition so made based on the search action for which all the transactions are already recorded and in respect of the other material found from the survey action.

11. It is noted that the AO while making the assessment noted the unexplained investment in the immovable property at Ajayrajpura and Mathurawala, Tehsil Sanganer, Jaipur. The AO thus found that a search and seizure action u/s 132(1) of the Act was carried out at residential premises of Shri Charan Singh Khangarot S/o Shri Mukut Singh Khangarot, situated at M-28, Income Tax Colony, Durgapura, Tonk Road, Jaipur on 02-08-2017 wherein a duly notarized sale agreement dated 25-05-2012 executed between Shri Tofan, Kalian S/o Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu S/o Shri Jagananth, Smt Naina Devi W/o Shri Jagannath Meena, R/o Vill. Nagaliya Manpur, Dhani Bainada, Tehsil Sanganer, Jaipur (Sellers) and Shri Pooran Mal Kanwat S/o Shri Mehtab Singh Kanwat (Purchaser) for sale of immovable property of 26 Khasra No. having total area of 3.87 hectare khasras in village Ajayrajpura and Mathurawala, Tehsil-Sanganer, Jaipur at the sale of consideration of Rs.17,10,70,000/- for the land situated at the above places found and seized as page nos. 21 to 28 of Annexure-AS Exhibit-3. Further another copy of sale agreement dated 25-05-2012 duly notarized and signed by the concerned parties have been found and seized during the course of search action at the residential premises of Shri Charan Singh Khangarot S/o Shri Mukut Singh Khangarot situated at M-28, Income Tax Colony, Malviya Nagar, Jaipur which has been inventorized as page No. 1-8 of Annexure AS-6. The AO also noted that the contents

of the aforementioned sale agreement are duly tallied with this sale agreement in term of name of sellers, area of land, khasra nos. sale consideration and amount paid till date of agreement etc. but on the back side of page no. 8, it is written that on 02-07-2012 two post dated cheques 338706 and 338707 dated 10-07-2012 each of Rs.50,00,000/- were paid to Shri Tofan and Shri Kalyan S/o Shri Mahadev as sale consideration for sale of their land. Both the cheques were payable on account No. 1468 which belongs to M/s. Macro Township Private Ltd., held in Malviya Urban Cooperative Bank Ltd. Vasundhara, Tonk Road, Jaipur. At the end of this page Shri Charan Singh Khangarot, Shri Phool Chand Meena (Witness) have put their signature and Shri Tofan and Shri Kalyan S/o Shri Mahadev have put their thumb impressions. The AO has given a table at page 3 & 4 of assessment order wherein some payments amounting to Rs.51.00 lacs were made to sellers i.e. Shri Tofan (Rs.10 lacs), Shri Kalyan (Rs.10 lacs), Shri Foolchand (Rs.4.00 lacs), Shri Mangilal Rs.4.00 lacs), Shri Chhotu (Rs.4.00lacs), Shri Naini (Rs.4.00lacs), Shri Babu Lal (Rs.4.00 lacs) and all sellers (Rs.11.00 lacs) by the purchasers through cheques on various dates. The AO at para 7.3 of the assessment order noted that following post dated cheques were also received by the sellers from Shri Pooran Mal Kanawat on the date of agreement.

S.N.	Receiver name	Amount in Rs.	Cheque No.	Dated	Name of bank & account holder
1.	Shri Tofan	37,75,000	392001	28-05-12	MUCBL, Macro Township Private Ltd.
2.	Shri Kalyan	37,75,000	392003	28-05-12	Do
3.	Shri Fool chand	15,00,000	392004	28-05-12	Do

4.	Shri Mangilal	15,00,000	392005	28-05-12	Do
5.	Shri Chhotu	15,00,000	392006	28-05-12	Do
6.	Shri Naini	15,00,000	392007	28-05-12	Do
7.	Shri Babu Lal	15,00,000	392008	28-05-12	Do
	Total	1,50,00,000			

The AO further noted that following amounts received through post dated cheques on the date of agreement.

S.N.	Receiver name	Amount in Rs.	Cheque No.	Dated	Name of bank & account holder
1.	Shri Tofan	25,00,000	392009	10-07-12	MUCBL, Macro Township Private Ltd.
2.	Shri Kalyan	25,00,000	392010	10-07-12	Do
3.	Shri Fool chand	10,00,000	392011	10-07-12	Do
4.	Shri Mangilal	10,00,000	392012	10-07-12	Do
5.	Shri Chhotu	10,00,000	392013	10-07-12	Do
6.	Shri Naini	10,00,000	392014	10-07-12	Do
7.	Shri Babu Lal	10,00,000	392015	10-07-12	Do
	Total	1,00,00,000			

The AO further noted in the assessment order that as per notarized sale agreement the sellers had received a sum of Rs. 3,01,00,000/- till the agreement and it was agreed upon by them that the remaining payments will be paid by purchaser to sellers as under:-

50% excluding above advance payments	Till 15-08-2012 (and at the time of registration of sale deeds)
Remaining 50%	Till 20-01-2013 (through post dated cheques)

The AO further noted that a similar sale agreement dated 02-03-2012 duly notarized by the notary public on 02-03-2012 executed between Shri Tofan, Shri Kalyan S/o

Shri Mahadev, Shri Foolchand, Shri Mangilal, Shri Babulal, Shri Chhotu S/o Shri Jagannath, Smt Naina Devi W/o Shri Jagannath Meena, R/o Vill. Nagaliya Manpur, Dhani Bainada, Tehsil Sanganer, Jaipur (Sellers) and Shri Jitendra Meena S/o Shri Ram Kishore Meena, 8/7, Malviya Nagar, Jaipur (purchaser) for sale of immovable property situated at Vill. Mathurawala & Ajayrajpur, Teshsil-Sanaganer, Jaipur (same khasra as mentioned in the table depicted hereinabove) was also found and seized as annexure AS-3, Pages No. 13-2, during the course of search and seizure action at the residential premises of Shri Charan Singh Khangarot. The AO further mentioned in the assessment order that the contents of the sale agreement are same as mentioned in sale agreement executed between sellers & Shri Pooran Mal Kanwat in terms of value of land, mode of payment etc. This sale agreement was cancelled vide Ikrarnama Nirastikaran dated 25-05-2012 which was also duly notarized by the notary public. In this agreement, it is also mentioned that the advance amount of Rs.51,00,000 paid by Shri Jitendra Meena to the land owners will be adjusted in the name of Shri Pooran Mal Kanwat with whom a sale agreement had been executed for sale of land under reference. The entire amount paid in cash or through cheque as per sale agreement executed with the land owners by Shri Jitendra Meena are duly tallied with the sale agreement executed by Shri Pooran Mal Kanwat with the land owner. The AO noted that as the sale agreement executed by Shri Jitendra Meena was cancelled vide Ikrarnama nirstikaran dated 25-05-2012 and a new sale agreement dated 25-05-2012 was executed with Shri Pooran Mal Kanwat and sale consideration in both the sale agreement is same. Registered sale deeds of the land under reference were also executed in the name of Shri Pooran Mal Kanwat which makes it clear that the contents of the sale agreement dated 25-05-2012 are true.

The AO further noted that during the course of search at residence of Shri Ashok Singh situated at Khasra M-21, Income Tax Colony, Durgapura, Jaipur, copy of these sale deeds were found and seized and inventorized as page No. 17-41 of Exhibit-4 of Annexure AS. These copies reveal that the aforesaid sale agreement between the sellers and purchaser Shri Pooran Mal Kanwat was subsequently executed through 3 sale deeds duly registered with the SR-Sanganer-1, Jaipur on 11-07-2012 i.e. just 04 days before the date mentioned in the sale agreement. However, sale consideration reported in these sale deeds are shown at much below the actual consideration reported in the sale agreement. It is noted that the AO has elaborately discussed about these three Registered Sale Deeds in his order at pages 7 to 14, and further submitted at para 8.3 that statement of Shri Pooran Mal Kanwat establishes that the actual legal owner of the land is Shri Pooran Mal Kanwat but M/s. Macro Properties Pvt Ltd. and M/s. Macro Township Pvt. Ltd are the beneficial owner of the land. Based on these findings as recorded in the assessment order the Id. AO made following additions in the hands of the assessee company.

(1) **Rs.12,32,79,549/-** while making this addition, the AO observed that working of cash payment of Rs.8,55,14,583/- is being made in accordance with the share of sale consideration paid by them as per registered sale deed which comes at Rs.1,40,75,700/- (16.46% of 8,55,14,583/- in the hands of M/s. Macro Properties Pvt. Ltd. and Rs.7,14,38,883/- (83.54% of Rs.8,55,14,583/-) in the hands of M/s. Macro Township Private Ltd. The amount of unexplained investment in the hands of the assessee company is determined in the following manner :-

S.No.	Sale consideration as per sale agreement	Sale consideration as per report in registered deed	Difference	Amount which not debited from bank account	Name of purchaser actual beneficial owner from whom sale consideration has been paid.
1 st registered deed	35363307/-	11840000/-	23523307/-	4440000/-	M/s. Macro Township Pvt. Ltd.
2 nd registered deed	113162583/-	17648000/-	71438883/-	4100000/-	M/s. Macro Township Pvt. Ltd.
3 rd registered deed	22544209/-	3570000/-	18974109/-	803250/-	M/s. Macro Township Pvt. Ltd.
Total	171070000/-	43058000/-	113936299/-	9343250/-	

Accordingly, the same is held unexplained investment in the hands of the assessee company and a sum of Rs.12,32,79,549/- (Rs. 113936299/- plus Rs. 9343250/-) is added to the total income of the assessee u/s 69 of the Act and taxable at the rate of 30% as provision u/s 115BBE of the Act.

(2) **Rs.11,05,69,458/-** while making this addition, the AO observed that from the evidence brought on record it is evident that the land under consideration was purchased and sold in the name of Shri Pooran Mal Kanwat who is only name lender whereas the assessee is actual beneficial owner alongwith M/s. Macro Properties Pvt. Ltd. The assessee has earned short term capital gain in the transaction of land under reference which has not been disclosed by the assessee. Thus, short term capital gain so earned is held undisclosed short term capital gain of the assessee and addition of Rs.11,05,69,458/- is made as undisclosed income of the assessee for the year under consideration.

(3) **Rs.15,00,000/-** while making this addition, the AO observed that from the evidence brought on record it is evident that M/s. Gemini Commerce Pvt. Ltd. is a bogus/shell company, and not involved in any business activity. The assessee company has made sham transaction of Rs. 15,00,000/- with a shell company M/s. Gemini Commerce Pvt. Ltd. under garb of unsecured loan to introduce its unaccounted income which is held unexplained cash credit u/s 68 of the IT Act and added back to the total income of the assessee and taxable at the rate of 30% as per provisions u/s 115BBE.

(4) **Rs. 3,750/-** while making this addition, the AO observed that from the fact unearthed during the course of investigation and the evidence brought on record, it is evident that the beneficiaries have also paid commission @ 0.25% on acquiring accommodation entries. Therefore, it is justifiable that commission paid @ 0.25% which computes at Rs. 3,750/- is treated as unexplained expenditure which is added to the total income u/s 69C of the IT Act in the hands of the assessee and taxable at the rate of 30% as per provision u/s 115BBE.

(5) **Rs. 4,25,50,000/-** while making this addition, the AO observed that from the evidence brought on record it is evident that Shri Pooran Mal Kanwat does not had creditworthiness to advance the loan to the assessee through either their own fund or borrowed fund from other persons as is evident from below table and further strengthen the fact that he is a man with no means :-

Assessment Year	Total Income
2012-13	4,27,160/-
2013-14	No return filed
2014-15	3,57,460/-
2015-16	2,78,400/-
2016-17	2,11,580/-
2017-18	69,990/-
2018-19	3,64,710/-

Shri Pooran Mal Kanwat also admitted on oath that the bank account from which transaction has been made to the assessee is being used by other person and he has no information or knowledge for the same. Therefore, the AO held that the amount to the extent of Rs. 4,25,50,000/- shown in the books of accounts under the head Unsecured loan is non-genuine which is added to the total income of the assessee u/s 68 of the IT Act and taxable at the rate of 30% as per provisions of section 115BBE.

(6) **Rs. 2,18,000/-** while making this addition, the AO observed that from perusal of the Profit and Loss account of the company and from the evidence brought on record it is evident that the assessee has not shown any revenue from the business during the year as well as in any previous years. Therefore, commencement of the business has not been happened and expenditure incurred are capital in nature and the same cannot be claimed as revenue expenditure, and accordingly disallowed the same and added to the total income of the assessee.

12. Aggrieved from the aforesaid finding of the Id. AO the assessee preferred and appeal before the Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee. Since we are taking up the legal issue of applicability of section 153C of the Act for adjudication first, it is noted that the Id. CIT(A) has not entirely discussed this issue of Section 153C but rejected this ground holding that *the first ground of appeal that the appellant has raised a purely legal ground viz-a-viz the assessment completed u/s 153C. Based on whatever material is available on file, I do not find any infirmity in the assessment order as per Section 153C of the Act. This ground of appeal is rejected.*

13. At this stage, so as to decide the legal ground of the assessee, it would be better to deal with the provision of section 153C of the Act and have to analyze the law pursuant to the legal decisions. First of all, this section deals with the search assessment of person other than the searched person. This section was introduced by the Finance Act, 2003 w.e.f. 01-06-2002. It replaced the provisions relating to block assessment contained in Chapter XIVB. In this case as the assessment has been made as per provision of section 153C of the Act, we extract the provision of section 153C of the Act as under :

Provision of section 153C of the Act

Assessment of income of any other person.

153C. (1) Notwithstanding anything contained in [section 139](#), [section 147](#), [section 148](#), [section 149](#), [section 151](#) and [section 153](#), where the Assessing Officer is satisfied that,—

(a) any money, bullion, jewellery or other valuable article or thing, seized or requisitioned, belongs to; or

(b) any books of account or documents, seized or requisitioned, pertains or pertain to, or any information contained therein, relates to,

a person other than the person referred to in [section 153A](#), then, the books of account or documents or assets, seized or requisitioned shall be handed over to the Assessing Officer having jurisdiction over such other person and that Assessing Officer shall proceed against each such other person and issue notice and assess or reassess the income of the other person in accordance with the provisions of [section 153A](#), if, that Assessing Officer is satisfied that the books of account or documents or assets seized or requisitioned have a bearing on the determination of the total income of such other person for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years referred to in sub-section (1) of [section 153A](#) :

Provided that in case of such other person, the reference to the date of initiation of the search under [section 132](#) or making of requisition under [section 132A](#) in the second proviso to sub-section (1) of [section 153A](#) shall be construed as reference to the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person :

Provided further that the Central Government may by rules⁶⁹ made by it and published in the Official Gazette, specify the class or classes of cases in respect of such other person, in which the Assessing Officer shall not be required to issue notice for assessing or reassessing the total income for six assessment years immediately preceding the assessment year relevant to the previous year in which search is conducted or requisition is made and for the relevant assessment year or years as referred to in sub-section (1) of [section 153A](#) except in cases where any assessment or reassessment has abated.

(2) Where books of account or documents or assets seized or requisitioned as referred to in sub-section (1) has or have been received by the Assessing Officer having jurisdiction over such other person after the due date for furnishing the return of income for the assessment year relevant to the previous year in which search is conducted under [section 132](#) or requisition is made under [section 132A](#) and in respect of such assessment year—

(a) no return of income has been furnished by such other person and no notice under sub-section (1) of [section 142](#) has been issued to him, or

(b) a return of income has been furnished by such other person but no notice under sub-section (2) of [section 143](#) has been served and limitation of serving the notice under sub-section (2) of [section 143](#) has expired, or

(c) assessment or reassessment, if any, has been made,

before the date of receiving the books of account or documents or assets seized or requisitioned by the Assessing Officer having jurisdiction over such other person, such Assessing Officer shall issue the notice and assess or

reassess total income of such other person of such assessment year in the manner provided in [section 153A](#).

⁷⁰[(3) Nothing contained in this section shall apply in relation to a search initiated under [section 132](#) or books of account, other documents or any assets requisitioned under [section 132A](#) on or after the 1st day of April, 2021.]

14. Now understanding the provision of section 153C of the Act, it would also be appropriate to understand that before issuing notice u/s 153C of the Act, the TO (Tax Officer) of the searched person must be "satisfied" that inter alia, any document seized or requisitioned "belongs to" a person other than the searched person. On this issue Apex Court holds that a satisfaction note prepared by the TO (Tax Officer) of the other person is sufficient for initiating proceedings u/s 153C of the Act, where the Tax Officer of the searched person and other person is the same. The Apex Court further held that when the Tax Officer (TO) of a searched person is different from the TO (Tax Officer) of the other person as referred u/s 153C of the Act, there shall be a satisfaction note by the TO of the searched person. Thereafter, the TO of the searched person is required to transmit the documents so seized to the TO of the other person. When the TO of the searched person and the other person is the same, there can be one satisfaction note prepared by the TO and there would be no requirements of transmitting documents so seized. When proceedings are proposed to be initiated under section 153C of the Act against the "other person" it has to be preceded by a satisfaction note recorded by the TO of the "searched person".

15. On going through the satisfaction note so presented by the Id. D/R, the Bench observed that there is no finding of the assessing officer so as to material relied

upon and thereby also the same is in the nature of incriminating in nature or not so far as it relates to the assessee company. Thus, in **this case section 153C plays a vital role whether it is applicable on the assessee or not.** Here in the case, on perusal of the satisfaction note of the assessing officer though not provided to the assessee nor discussed in the order of the assessment, but when the record called for by the bench, we note that the recording of the satisfaction note does not speak to any incriminating material related to the assessee company. The transactions mentioned in the said satisfaction note are duly recorded in the books of the assessee company. Not only that the alleged deed mentioned as in the nature of incriminating in nature is already cancelled and thereafter whatever transaction referred in the order of the assessment are duly recorded transaction and for that the Id. AO is not permitted to assess the same u/s 153C of the Act for the year under consideration. Therefore, *here it the important question as to whether the revenue consequent to the search make the de novo assessment* regardless of any incriminating material found during the course of search. The issue is no longer *res integra* as the same has already been decided **by a Division Bench of the Hon'ble Supreme Court in the case of *CIT v. Sinhgad Technical Education Society* [2017] 84 taxmann.com 290/250 Taxman 225/397 ITR 344.** In the case of ***Sinhgad (supra)***, the disputed questions for adjudication were primarily two fold :-

- A.** Whether the additional ground raised for the first time before the Hon'ble Income-tax Appellate Tribunal ("ITAT") questioning the validity of the notice u/s 153C of the Act (in the case of a person other than that searched) on the

ground that satisfaction was not properly recorded and also that the said notice was time barred in respect of AYs 2000-01 to 2003-04, could be permitted or not?

- B.** Whether as per the provisions of section 153C of the Act, the incriminating material which was seized had to pertain to the assessment years (*i.e.* completed assessments for the AYs 2000-01 to 2003-04) in question and the same constituted a jurisdictional requirement which is essential for assessment under the provisions of section 153C of the Act?

In respect of the first question, the Hon'ble Supreme Court **at para-19** of their order concluded that the ITAT had correctly permitted the additional ground to be raised and correctly dealt with the same on merits as well. As regards the second question, the Hon'ble Supreme Court held, *inter alia*, that the existence of incriminating material for interfering with completed assessments on the date of search was a jurisdictional fact failing which, no assessment was possible for those years u/s 153C of the Act. It was further affirmed that the incriminating material had to pertain to the four assessment years in question *i.e.* A.Ys 2000-01 to 2003-04 and since the finding of the facts **at para-9 of the order of ITAT** revealed that the material as per the satisfaction note belonged to A.Y. 2004-05 or thereafter which were not the four assessment years in question, no addition could be made in respect of the said assessment years. The *ratio decidendi* of the Hon'ble Supreme Court's judgement appears **at para-18** of their order and the same is reproduced as under :-

*"18. The Income-tax Appellate Tribunal (ITAT) permitted this additional ground by giving a reason that it was a jurisdictional issue taken up on the basis of facts already on the record and, therefore, could be raised. **In this behalf, it was noted by the Income-tax Appellate Tribunal (ITAT) that as per the provisions of section 153C of the Act, incriminating material which was seized had to pertain to the Assessment Years in question and it is an undisputed fact that the documents which were seized did not establish any co-relation, document-wise, with these four Assessment Years. Since this requirement under section 153C of the Act is essential for assessment under that provision, it becomes a jurisdictional fact. We find this reasoning to be logical and valid, having regard to the provisions of section 153C of the Act. Para 9 of the order of the ITAT reveals that the Income-tax Appellate Tribunal (ITAT) had scanned through the satisfaction note and the material which was disclosed therein was culled out and it showed that the same belongs to Assessment Year 2004-05 or thereafter. After taking note of the material in para 9 of the order, the position that emerges therefrom is discussed in para 10. It was specifically recorded that the counsel for the Department could not point out to the contrary. It is for***

this reason the High Court has also given its imprimatur to the aforesaid approach of the Tribunal. That apart, learned senior counsel appearing for the respondent, argued that notice in respect of Assessment Years 2000-01 and 2001-02 was even time barred."

As it is evident from the provision of section 153C, which provides for assessment/ reassessment to be made as per section 153A of the Act. The requirement of the existence of incriminating material to interfere and assess or reassess the income of the assessment years that stand completed/are not pending on the date of search, is a mandatory requirement as per the provisions of section 153A of the Act and this mandatory requirement comes into play under section 153C of the Act due to the provision of sub-section (1) of section 153C according to which once the initial requirements for the invocation of section 153C have been complied with, the assessment u/s 153C shall be made in accordance with the provisions of section 153A of the Act. Section 153C of the Act comes into play when any money, bullion, jewellery or other valuable article or thing or any books of account or documents seized or requisitioned belongs or belong to a person other than the person referred to in section 153A of the Act. This implies that if a person is searched u/s 132(1) of the Act and there are documents found on him which lead to the inference that the **same belong to** any other person, the provisions of section 153C of the Act would be invoked for making an assessment on such other person. Drawing of a satisfaction note by the Assessing Officer of the person searched by

listing and describing the documents belonging to the other person is a pre-condition for initiation of the proceedings u/s 153C of the Act. After having recorded the satisfaction, as per the requirement of section 153C(1) of the Act, the books of account or documents or assets seized shall be handed over to the Assessing Officer having jurisdiction over the other person and **the said officer shall issue notice and assess or re-assess the income of the other person in accordance with the provisions of section 153A of the Act.** It will thus be seen that once the requirement of satisfaction wherein the Assessing Officer of the searched person records that documents **belong to** the other person is met, the assessment or re-assessment of the income of the other person shall have to take place in accordance with section 153A of the Act. Various high courts held that the existence of incriminating material, in respect of the assessment years whose assessment stood completed on the date of the search, is a mandatory requirement to assess or reassess those years. Now the issue is finally decided by the Apex Court so far as the section 153A of the Act in the case of **Pr. Commissioner of Income Tax ... vs. Abhisar Buildwell P. Ltd. and so far as regards the issue of section 153C is concerned, same is decided in the case of DCIT Vs. M/s. U. K. Paints (Overseas) Limited.**

16. Thus, as it has been observed that the AO did not bring anything on record stating the fact that there exist any document found in the search and seizure operation conducted so as to prove that how the transaction recorded in the seized material with that of the transactions already recorded are in the nature of incriminating in nature. Merely the company has advanced the money which is lying

in the books of account and the person to whom money paid by the assessee has entered into agreement for sale and there is no reference of cash trail flowing to or from the assessee company. The finding are purely based on the presumptions and assumptions basis and against the real transaction that has taken place between the buyer and seller and the same are already registered as per the Transfer of Property of Act and Bench observed that neither in the Transfer of Property Act nor in the Income Tax concept of beneficial owner and that too without bringing any evidence on record. In view of the above facts and circumstances of the case, the Bench is of the view that in absence of a valid satisfaction note recorded clearly justifying the material that the same are in the nature of incriminating in nature qua the assessee, we are of the considered view that the notice issued u/s 153C of the I.T. Act 1961 is bad in law and consequently whole proceedings including the assessment order passed u/s 143(3) r.w.s. 153C of the Act is void ab initio and liable to be quashed. To this effect, we rely upon the decision of Hon'ble Supreme Court in the case of DCIT vs. M/s. U.K. Paints (Overseas) Ltd. (Civil Appeal No. 6634 of 2021 dated 25-04-2023 wherein the Hon'ble Supreme Court held as under:-

“In this batch of appeals, the assessments in case of each Assessee were under Section 153-C of the Income Tax Act, 1961 (for short, `the Act'). As found by the High Court in none of the cases any incriminating material was found during the search either from the Assessee or from third party. In that view of the matter, as such, the assessments under Section 153-C of the Act are rightly set aside by the High Court. However, Shri N Venkataraman, learned ASG appearing on behalf of the Revenue, taking the clue from some of the observations made by this Court in the recent decision in the case of Principal Commissioner of Income Tax, Central -3 Vs. Abhisar Buildwell P. Ltd., Civil Appeal No. 6580/2021, more particularly, paragraphs 11 and 13, has prayed to observe that the Revenue may be permitted to initiate re-assessment proceedings under

Section 147/148 of the Act as in the aforesaid decision, the powers of the re-assessment of the Revenue even in case of the block assessment under Section 153-A of the Act have been saved.

As observed hereinabove, ***as no incriminating material was found in case of any of the Assessee either from the Assessee or from the third party and the assessments were under Section 153-C of the Act, the High Court has rightly set aside the Assessment Order(s). Therefore, the impugned judgment and order(s) passed by the High Court do not require any interference by this Court.*** Hence, all these appeals deserve to be dismissed and are accordingly dismissed.”

17. Further, we find that the case of the assessee is fully covered by the recent decision of the Coordinate Bench of the Tribunal in the case of assessee's sister concern M/s. Macro Properties Pvt. Ltd. in ITA Nos. 174 to 177/JP/2023 for the assessment years 2013-14 to 2016-17 dated 17.07.2023 wherein exactly on the similar facts, as involved in the present appeals, after discussing elaborately provision of section 153C and the various judicial pronouncements, in paras 10 to 20 at pages 47 to 77, allowed the appeals of the assessee.

18. In view of the above discussion and for the reasons stated above and considering the binding decisions of the Apex Court resting the issue that no addition can be made de hors the incriminating material in the proceeding u/s. 153C of the Act and thus by considering the totality of the facts, circumstances of the case and the decisions cited supra, we do not concur with the findings of the Id. CIT(A). Thus the appeal of the assessee for the assessment year 2013-14 is allowed.

19. Since we have decided the appeal of the assessee in ITA No. 397/JP/2023 for the assessment year 2013-14, therefore, the decision taken therein, being similar case of the assessee, shall apply mutatis mutandis in the appeals of the assessee in ITA Nos. 398/JP/2023, 399/JP/2023 and 367/JP/2023 for the assessment years 2014-15 to 2016-17. Thus the appeals of the assessee are allowed.

20. In the result, the appeals of the assessee are allowed

Order pronounced in the open court on 05/12/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 05/12/2023.

Das/

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

1. अपीलार्थी / The Appellant- M/s. Macro Township Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, CC-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 397, 398, 399 & 367/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

