

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: G: NEW DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No.1459/Del/2018  
Assessment Year: 2012-13

The ACIT, Central Circle-26, New Delhi	vs.	Devender Kumar, 1210, Village Tigaon, Post office- Tigaon, Ballabgarh, Faridabad, Haryana <b>PAN ATXPK 0143 N</b>
(Appellant)		(Respondent)

For Revenue :	Shri H K Choudhary, CIT(DR)
For Assessee :	Shri Dinesh Mohan, Adv.

Date of Final Hearing :	12.10.2023
Date of Pronouncement :	16.10.2023

**ORDER**

**PER CHANDRA MOHAN GARG, J.M.**

This appeal has been filed against the order of Ld. CIT(A)-29 New Delhi dated 01.12.2017 for AY 2012-13.

2. The grounds of revenue are as follows:-

*1. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 20,00,00,000/- made on protective basis in the hands of the assessee without verification of facts leading to such addition.*

*2. That on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 20,00,00,000/- on the grounds that similar addition has been confirmed in the hands of another assessee which has not been accepted by the said other assessee.*

3. The Id. CIT(DR) submitted that the Ld. CIT(A) has erred in law and on facts in deleting the addition of Rs. 20,00,00,000/- made on protective basis in the hands of the assessee without verification of facts leading to such addition. He further submitted that

the Id. CIT(A) has erred in law and on facts in deleting the addition of Rs. 20,00,00,000/- on the grounds that similar addition has been confirmed in the hands of another assessee viz Mr. Trilok Chand Chaudhary which has not been accepted by the said other assessee. The Id. CIT(DR) placed on record copy of the order of ITAT 'G' Bench, New Delhi dated 20.09.2018 in ITA No. 5871/Del/2017 for AY 2012-13 i.e. in the second appeal filed by Mr. Trilok Chand Chaudhary and submitted that the Tribunal has deleted the addition in the hands of Mr. Chaudhary by observing that the entire material on record clearly supports the statement of Shri Devender Kumar recorded by the Investigation Wing on 18.10.2013 and the subsequent statement of Shri Devender Kumar recorded by Assessing Officer on 11.03.2016 has not been corroborated by any evidence or material available on record. The Id. CIT (DR) drawing our attention towards page 26 of said Tribunal order dated 20.09.2018 (supra) submitted that the Tribunal has recorded a categorical finding that the assessee in that case Mr. Trilok Chand Chaudhary filed letter dated 12.10.2016 before Id. CIT(A) supported by affidavit of present assessee Shri Devender Kumar in which the present assessee has affirm his statement made to the Investigation Wing on 18.10.2013. Therefore the Id. CIT(DR) submitted that the assessee Shri Devender Kumar, on the one hand in order to support Mr. Trilok Chand Chaudhary, supported his statement recorded by the Investigation wing on 18.10.2013 by way of filing an affidavit before Id. CIT(A), on the other hand for taking and securing relief in his own appeal under consideration he wants to support and rely on his subsequent statement recorded on 11.03.2016 wherein he denied entire responsibility pertaining to transaction denying his earlier statement recorded by the Investigation Wing on 18.10.2013 which clearly establish his double face for use of misleading and contradictory statements and his opportunist conduct using the same to support his associate Mr. Chaudhary in his appeal and to support himself in the appeals filed by him.

4. The Id. CIT(DR) further drawing our attention towards pages 28 & 29 of said Tribunal order dated 20.09.2018 (supra) in the case of Shri. Trilok Chand Chaudhary submitted that the Tribunal has categorically held that the authorities below, on the basis subsequent statement of assessee Shri Devender Kumar and that the directors of

M/s. Newage Infra Build P. Ltd. have not been produced for examination before the Assessing Officer confirmed the addition and thus the entire material on record clearly justify explanation of assessee that the assessee Mr. Trilok Chand Chaudhary had not dealt with amount of Rs. 20 crores. The Id. CIT(DR) also submitted that at page 29 the Tribunal categorically recorded a finding that the present assessee Shri Devender Kumar has taken action against defaulter purchaser Smt Saroj Sharma etc. therefore there was no justification in making addition in the hands of Mr. Trilok Chand Chaudhary and the Tribunal deleted the substantial addition.

5. Drawing our attention towards para 5 & 5.1 of first appellate order of present assessee the Id. CIT(DR) submitted that the Id. first appellate authority deleted the addition merely observing that the Id. CIT(A)-31 New Delhi vide his order dated 27.06.2017 has decided the appeal in the case of Mr. Trilok Chand Chaudhary whose case substantive addition was made and therefore when the substantive addition has been confirmed then addition made on the protective basis in the case of present assessee does not survive and he directed to delete the addition in the case of present assessee. The Id. CIT(DR) vehemently pointed out that the Tribunal in the order dated 20.09.2018(supra) in the case of Mr. Trilok Chand Chaudhary has considered both the statements of present assessee Shri Devender Kumar and thereafter recorded findings in favour of Mr. Chaudhary relying on the statement of Shri Devender Kumar dated 18.10.2013 and his affidavit and his affidavit place before Id. CIT(A) in the case of Mr. Chaudhary therefore if substantive addition has been deleted by the Tribunal then the protective addition in the hands of assessee should have been confirmed but the Id. CIT(A) without dwelling on the merits of the addition merely considered the fact of substantive addition in the hands of Mr. Trilok Chand Chaudhary and deleted the addition in the hands of present assessee which is not valid and sustainable. The Id. CIT(DR) submitted that the Id. CIT(A) has granted relief to the assessee without any basis therefore first appellate order may kindly be set aside by restoring that of the Assessing Officer.

6. Replying to the above, the Id. counsel of assessee drawing our attention towards relevant paras of first appellate order submitted that the search action was carried out at the office premises of M/s CDR Estate P Ltd. wherein a MoU document dated 14.12.2011 between assessee and M/s. Newage Infrabuilder P Ltd. was found and seized. He further submitted that as per said MoU the appellant received a cash of Rs. 20 crore from M/s. Newage Infrabuilder P Ltd. towards purchase price of a land at Harchanpur therefore after being satisfied and recording the same the Assessing Officer of searched person handed over the copy of said MoU to the Assessing Officer of present assessee i.e. other person u/s. 153C of the Act. The Id. counsel submitted that the Id. CIT(A)-31, New Delhi vide order dated 27.06.2017 decided appeal in the case of Mr Trilok Chand Chaudhary, whose case substantive addition was made confirming the addition therefore Id. CIT(A) was right in deleting the protective to addition made in the hands of assessee.

7. Placing rejoinder to the above, the Id. CIT(DR) submitted that the assessee and Mr Trilok Chand Chaudhary are misrepresenting & misleading the department by submitting fabricated documentary evidences and placing contradictory and confusing submissions before the lower authorities as well as before the Tribunal therefore the Id. CIT(A) was not correct in deleting the addition. He vehemently contended that keeping in view conclusion recorded by the Tribunal in the case of Mr. Trilok Chand Chaudhary order dated 20.09.2018 (supra) the conclusion drawn by the Id. CIT(A) cannot be held as valid and sustainable thus the same may kindly be set aside by restoring that of the Assessing Officer.

8. On careful consideration of above submissions, first of all, we note that the Assessing Officer made additions in the hands of assessee amounting to Rs. 20 crores with following observations & findings:-

*8. In order to ascertain facts summon u/s. 131 was issued to Devender Kumar for personal appearance on 11.03.2016. On 11.03.2016, Sh. Devender Kumar appeared and his statement was recorded on oath, scanned copy of which is as under:-*

प्रश्न 1:- कृपया अपना परिचय दें ?

उत्तर :- मेरा नाम: श्री देवेन्द्र कुमार पुत्र श्री बदले राम, पता: गाँव/पो - तिगांव, जिला - फरीदाबाद, (हरियाणा) नोबल न. 9891938583 है। मेरा स्थायी खाता सं. ATXPK0143N है।

प्रश्न 2:- आपकी आय का स्रोत क्या है ?

उत्तर:- मेरी आय का स्रोत कृषि, ट्रैक्टर से मात दुलाई करना एवं प्रोपर्टी डीलिंग है। मैंने सदैव NIL की इन्कम टैक्स रिटर्न फाइल की है।

प्रश्न 3:- श्री त्रिलोक चन्द चौधरी के ऑफिस की तलाशी के दौरान, दिनांक 17.09.2013 को कुछ दस्तावेज जप्त किए गए। जोकि मैं आपको दिखा रही हूँ, जोकि एनैक्जर-ए-8 है। जिसमें आपने श्रीमति सरोज शर्मा, पत्नी श्री वेद प्रकाश शर्मा एवं अन्य के साथ एक इकरारनामा बनवाया है। कृपया विस्तार से इस दस्तावेज की जानकारी दें?

उत्तर:- मैंने हरयन्दपुर, सोहना, की जमीन जिसका कुल क्षेत्रफल/एकड़ 527 एकड़ है श्रीमति सरोज शर्मा, पत्नी श्री वेद प्रकाश शर्मा एवं अन्य से खरीदी थी। जिसके संबंध में संबंधित इकरारनामा दस्तावेज बनवाया गया था।

प्रश्न 4:- आपने यह एग्जिमेंट किसके मार्फत/बीहाफ पर हस्ताक्षर किया था?

उत्तर - मैंने यह एग्जिमेंट श्री त्रिलोक चन्द चौधरी के कहने पर हस्ताक्षर किया था।

प्रश्न 5:- इस डील/सौदेबाजी में आपने श्रीमति सरोज शर्मा, पत्नी श्री वेद प्रकाश शर्मा एवं अन्य को कितना भुगतान किया था एवं इस भुगतान का स्रोत क्या था?

उत्तर - इस डील/सौदेबाजी में श्रीमति सरोज शर्मा, पत्नी श्री वेद प्रकाश शर्मा एवं अन्य को बीस करोड़ का भुगतान किया गया था। यह सभी ट्रांजक्शन श्री त्रिलोक चौधरी के कार्यालय में मेरे समक्ष हुआ। जब

*Qanada Ka*  
11/3/16

मैं उनके कार्यालय पहुँचा तब तक पहले से ही वहाँ पर मौजूद था। मेरे एग्जिमेंट पर हस्ताक्षर करने के पश्चात श्री त्रिलोक चौधरी ने श्रीमति सरोज शर्मा पत्नी श्री वेद प्रकाश शर्मा एवं अन्य को मेरे नाम से इस डील/सौदेबाजी का भुगतान कर दिया।

प्रश्न 6:- क्या आप न्यू ऐज इन्फॉरमेटिक्स प्रा. लि. नामक कंपनी को जानते हैं?

उत्तर - नहीं, मैं इस नाम की किसी कंपनी को नहीं जानता।

प्रश्न 7:- मैं, आपको पार्टी टी.ओ.ए. एनैक्जर-ए-11 सेज सं. 45-45 के विषय में आप क्या कहना चाहेंगे?

उत्तर - यह दस्तावेज मैंने श्री त्रिलोक चौधरी के कहने पर हस्ताक्षर किया था। यह दस्तावेज अंग्रेजी में है और मुझे अंग्रेजी का कोई ज्ञान नहीं है। इस दस्तावेज में लिखे कंटेन्ट्स का भी मुझे कोई ज्ञान नहीं है। मुझे न्यू ऐज इन्फॉरमेटिक्स प्रा. लि. नामक किसी कंपनी में मुझे कोई 20 करोड़ रुपये तक में नहीं दिये। इस दस्तावेज पर मेरे हस्ताक्षर हैं, परन्तु यह मैंने श्री त्रिलोक चन्द चौधरी के कहने पर हस्ताक्षर किया था, क्योंकि उन्होंने मुझे बताया कि वजीकरण के समय पर मुझे एक कंपनी से कमीशन दिया जावेगा।

प्रश्न 8:- क्या सरोज शर्मा एवं अन्य ने अंततः यह सौदा आपके नाम कर दिया?

उत्तर - नहीं, यह सौदा सरोज शर्मा एवं अन्य ने मेरे नाम नहीं किया यह प्रोपर्टी उन्होंने किसी तीसरे पक्ष को विक्री कर दी। इसमें संबंधित मैंने एवं श्री त्रिलोक चौधरी ने श्रीमति सरोज शर्मा एवं अन्य के खिलाफ पुलिस शिकायत भी दर्ज करायी एवं उनके विरुद्ध कोर्ट में भी याचिका दी।

प्रश्न 9:- मैं आपको पार्टी टी.ओ.ए. एनैक्जर-ए-8, सेज सं. 32-34 दिखा रही हूँ, इसके सन्दर्भ में आपका क्या कहना है?

उत्तर - यह दस्तावेज पुलिस कम्प्लेंट है जोकि श्री त्रिलोक चौधरी ने खींच करवाये थे और मैंने इनके कहने पर ही हस्ताक्षर किये।

प्रश्न 10:- आप कुछ और कहना चाहते हैं ?

उत्तर:- मैंने जो भी एग्जिमेंट हस्ताक्षर किये कमीशन के तालम में किये। इसके सिवा मुझे और कुछ नहीं कहना।

8.1 In his statement, Sh. Devender Kumar stated that said MoU was signed by him on the directions of Sh. Trilok Chaudhary and this cash was never handed over to him. He also stated that he is not aware of the company M/s Newage Infrabuilders Pvt. Ltd. The agreement with Ms Newage Infrabuilders Pvt. Ltd. was written in English whereas he stated that he can barely understand English. He was just a signing authority only on the directions of Sh. Trilok Chaudhary in lieu of commission income.

8.2 Hence, show caused dated 18.03.2016 was issued to Sh. Trilok Chaudhary, the relevant portion of the same is as under:

"2. As per page nos. 46-48, Annexure A-11 of Party TO-2 which was seized from your office premises, a MoU dated 14.12.2011 was made between Sh. Devender S/o Badle Ram and M/s New Age Infrabuilders Pvt. Ltd. for purchase of property. As per this MoU Sh. Devender received Rs. 20 crores in cash from MIs Newage Infrabuilders Pvt. Ltd. In this regard, summon was issued to Sh. Devender and his statement was recorded on oath on 11.03.2016. In his statement Sh. Devender stated the said MoU was signed by him on the direction of Sh. Trilok Chaudhary and these cash was never handed over to him. He also stated that he is not aware of the company Ms New Age Infrabuilders Pvt. Ltd. He was just a signing authority only on the directions of Sh. Trilok Chaudhary for a commission income. Copy of statement of the same is enclosed herewith. Further, on verification, it is found that the said company as well as the Directors are not traceable on its registered address and they did not appear in response to summon us 131 of the Act. From the above statement and fact that the said documents were found from your office premise, now the onus is on you to explain that the said cash amount does not pertain to you. Hence you are being show caused as to why the said cash amount involved in this transaction of Rs. 20 crore should not be added to your total income for the A. Y. 2012-13. In this regard, if you want to avail any opportunity of cross examination of Sh. Devender please intimate this office before 23.03.2016."

8.3 In reply to the above showcause notice, Sh. Trilok Chaudhary filed his reply on 28.03.2016, the relevant portion of the same is given as under:

"that as regard page no. 46 to 48 annexure A-11 of Party TO-2 regarding

MOU dated 14. 12.2011 between Sh. Devender Kumar and M/s. New Age Infrabuilders Pvt. Ltd. we have already submitted that the said document though found at our premises doesn't belong to us and it is a independent deal between Sh. Devender Kumar and M/s. New Age Infrabuilders Pvt. Ltd. and Mrs. Saroj Sharma & Others. As regard the statement given by him before you on oath 11.03.2016 I have to submit that statement given by him before ADIT at the time of Appraisal proceedings was also on oath in which he has already admitted that the said transaction is his independent transaction. Even in the complaint filed with Police Department and other authorities he has stated/confirmed the said transaction. Moreover no addition can be made merely on the basis of statement made by 3rd person. As such there is no reason/justification for

adding this sum of 20 crore to my income. Also it is difficult to say which of his statement is true and which is false."

8.4 To ascertain the facts further a statement was recorded of Sh. Devender Kumar on 16.11.2016, scanned copy of which is as under:-

प्रश्न 2-आपकी आय का स्रोत क्या है ?

उत्तर- मेरी आय का स्रोत कृषि, ट्रेक्टर से माल बुलाई करना एवं प्रॉपर्टी डीलिंग है। मैंने सदैव NIL की इन्कम टैक्स रिटर्न फाइल की है।

प्रश्न 3- श्री देवेन्द्र कुमार जी आप श्री त्रिलोक चन्द चौधरी को कैसे जानते हैं?

उत्तर- श्री त्रिलोक चन्द चौधरी मेरे दूर के रिश्तेदार हैं। जिनके साथ मैं कमीशन लेकर जमीन खरीदने/बेचने का काम करता था।

प्रश्न 4- आपने श्री त्रिलोक चन्द चौधरी के साथ कितनी प्रॉपर्टी खरीद व बिकबायी है?

उत्तर- मुझे पूरी प्रॉपर्टी के बारे में याद नहीं है, परंतु मैं यह कह सकता हूँ कि हमारे बीच 2-4 प्रॉपर्टी की डील तो हुई ही है।

प्रश्न 5- मैं आपको श्री त्रिलोक चन्द चौधरी के ऑफिस की तलाशी के दौरान, दिनांक 17.09.2013 को कुछ दस्तावेज जबाब किए गए। जोकि मैं आपको दिखा रही हूँ, जोकि एनेक्चर-ए-6 ई के पेज नं. 46 से 48 दिखा रही हूँ। कृपया इसे देखें और देखकर यह बतायें कि इस पर किये गये हस्ताक्षर आपके ही हैं व यह दस्तावेज किसलिये बनवाये गये थे?

उत्तर- हाँ, मैंने ये दस्तावेज देख लिये हैं। यह दस्तावेज मैंने ही हस्ताक्षर किये थे। यह मेरे व न्यू एज इन्फ्राबिल्डर प्रा. लि. के बीच में हुआ एक इकरारनामा है। मुझे ब्रोकर ब्रहमपाल ने बताया था कि एक प्रॉपर्टी 400 एकड़ की हरवन्दपुर, गुडगाव में है, जो बिकने के लिये पड़ी है। इस प्रस्ताव को लेकर

Devender  
16/11/16

Devender  
16/11/16

N.K.B.  
16/11/16

मैं श्री त्रिलोक चन्द चौधरी के पास पहुँचा तब वे ही श्री के.बी. जैन को लेकर आये। मैं न्यू एज इन्फ्राबिल्डर प्रा. लि. को खुद से नहीं जानता हूँ। मैं श्री त्रिलोक चन्द चौधरी एवं के.बी. जैन को साथ बैठकर इसके दाम फाईनल किये। मुझे व श्री त्रिलोक चन्द चौधरी को मिलकर रु. 50,000 प्रति एकड़ मिलने वाले थे। श्री रामगोपाल शर्मा की ओर से श्री ब्रहमपाल थे और वे ही श्रीमति सरोज शर्मा, रामगोपाल शर्मा व सबको इस डील के लिये लेकर आये थे। श्री के.बी.जैन ये दस्तावेज लेकर मेरे पास जब आये तब मैंने इसमें हस्ताक्षर कर दिये व इसके बाद उन्होंने ले जाकर न्यू एज की तरफ से हस्ताक्षर करवा दिये। इस दस्तावेज के हस्ताक्षर होने के 2-3 दिन बाद सभी लोग इक्वेटा और उसी दिन श्री के.बी. जैन श्रीमति सरोज शर्मा, रामगोपाल शर्मा एवं अन्य को रु. 20 करोड़ की बन्सशि नकद में ली। परंतु जब इस डील को पंजीकरण/रजिस्ट्रेशन के लिये देख रहे थे तबनी हमें ज्ञात हुआ कि श्री रामगोपाल शर्मा ने इस जमीन का आधा हिस्सा किसी और को दे दिया है। इस संबंध में जब हमारी उनसे बात हुई और यह कुछ भी करने को तैयार नहीं हुए तब मैंने व श्री त्रिलोक चन्द चौधरी ने मिलकर बुकदना वावर कर दिया। इसके दस्तावेज मैं आपके सामने 2-3 दिन में प्रस्तुत कर दूँगा।

प्रश्न-6 क्या यह दस्तावेज जमाने पड़े थे व यह दस्तावेज किसने बनवाये थे?

उत्तर- यह दस्तावेज मैंने नहीं तैयार करवाये थे। यह श्री त्रिलोक चन्द चौधरी या के.बी. जैन ने तैयार करवाये थे। मुझे अंग्रेजी पढ़नी नहीं आती तो यह मैंने श्री त्रिलोक चन्द चौधरी के कहने पर किया, परंतु मैं यह सोहसना चाहूँगा कि मैंने ही समझौता-पत्र बनवाने के लिये कहा था।

प्रश्न-7 यह रु. 20 करोड़ कौन लेकर आये?

उत्तर- यह रु. 20 करोड़ श्री के.बी. जैन एक अन्य माहडी ने लेकर आये थे।

प्रश्न-8 मैं आपको पार्टी टी.ओ.ए. का एनेक्चर ए-6 पेज नं. 92 से 94 दिखा रही हूँ इसके संदर्भ में आप क्या कहेंगे?

उत्तर- यह दस्तावेज मेरे द्वारा किये गये पुलिस शिकायत है जोकि श्री त्रिलोक चन्द चौधरी ने तैयार करवायी थी। यह रु. 20 करोड़ देने के बाद भी प्रॉपर्टी किसी और के नाम पर करवा देने के कारण की गयी थी। मैं यह भी कहना चाहूँगा कि इस नकद के साथ दिये गये हमारे बैंक बालेंस होने पर हमने श्रीमति सरोज शर्मा व अन्य को रु. 2 करोड़ का डी.डी. भी दे दिया। मैं यह भी कहना चाहूँगा कि हमने उन्हें यह कहा था कि यह बैंक में कोस्ट को एन.ओ.सी. करवाने के बाद ही खाले परंतु उन्होंने यह पहले ही खाल दिये, जिसके कारण बैंक बालेंस हो गये।

प्रश्न-9 आप इसके अलावा कुछ और कहना चाहते हैं?

उत्तर- मुझे इस डील में कुछ नहीं मिला है। यह सौदा श्रीमति सरोज शर्मा व अन्य ने कहाँ और कर दिया है और दोनों तरफ के पैसे ले लिये हैं। यदि किसी प्रकार से कोई वावर मेरे से पूछ जायता है तो इसके लिये मैं हमेशा प्रस्तुत रहूँगा।

Devender  
16/11/16

N.K.B.  
16/11/16

8.5 On perusal of the contents of above mentioned statement it becomes clear that the document was signed by assessee on insistence of Sh. Trilok Caudhary. As has been stated by Sh. Trilok Chand Chaudhary and Sh. Devender Kumar that Sh. K.B.. Jain brought the party M/s. New Age Infrabuilders Pvt. Ltd., the investigation wing

in the post search enquiry asked Sh. K.B.. Jain to produced the party as summon to the party had remain unserved but Sh. K.B.. Jain showed his inability to produce the party/ director of M/s Newage Infrbuilders Pvt. Ltd.

8.6 It also need to be mentioned here that during the post search investigation Shri Devender Kumar was summoned us 131(1A) of the Income Tax Act, 1961 to examine and verify the documents seized. In his statement recorded us 131(1A) of the Income Tax Act, 1961, Shri Devender Kumar has said that he received Rs 20 Crore in cash from M/s Newage Infrbuilders Pt Ltd. This amount was given to him by M/s Newage Infrbuilders Pvt Ltd as per the Memorandum of Understanding (MoU) with M/g: Newage Infrbuilders Pvt Ltd (page no 46-48 of annexure A-11 Party TO2) and he was acting on behalf of the company to purchase a land at Harchanpur. It was said by Shri Devender Kumar that both he and Shri Trilok Chand Chaudhary together had tried to purchase the land at Harchanpur from Smt Saroj Sharma and others and accordingly paid Rs.20 Crores as received from M/s Newage Infrbuilders Pvt Ltd.

8.7 During the post search inquiry, to examine the facts summons u/s 131(1A) of the ncome Tax Act, 1961 was issued to M/s Newage Infrbuilders Pvt. Ltd. with whom Shri Devender had signed MOU. On the given addresses summons were issued but stood unserved and returned back. Since the service of the summons could not be made through postal means, Shri Nikunj Kr. Goel and Shri Sanjeev Rawat, Inspectors of Income Tax posted with the office of ADIT(In), Unit -VI(3) were deputed to serve the summon on M/s Newage Infrbuilders Pvt. Ltd. Despite their best efforts Shri Nikunj Kr. Goel and Shri Sanjeev Rawat, Inspectors of Income Tax could not find the said company on the given address. The report of Inspector dated 01/11/2013 is placed as under:

To  
The Asst. Director of Income Tax (Inv.),  
Unit-VI(3)  
New Delhi.

Sir,

Sub: Inspector report – in the case of Shri Anil Verma, Director of M/s. Megatech Realtor Pvt. Ltd. and Shri Sumit Verma, Director of M/s New Age Infrbuilders Pvt. Ltd. – regarding –


Please refer to the above.

In this regard, it is submitted that as directed in respect of service of summons by hand issued u/s 131(1A) of the Income Tax, 1961 which has returned back with the postal remarks 'No such person' to Shri Anil Verma, Director of M/s Megatech Realtor Pvt. Ltd. and Shri Sumit Verma, Director of M/s New Age Infrbuilders Pvt. Ltd. at the address i.e. D-111, South Ganesh Nagar, Mandawali, New Delhi-110092.


I visited the said address on today i.e. 01.11.2013, the address found to be residence of Shri Praveen Sharma (Owner of the building D-111). I met Shri Praveen Sharma (Mobile No.9871104275), he is also General Secretary of Resident Welfare Association of the area, he told me that he is staying at this address for last forty years and he does not know any Shri Anil Verma and Shri Sumit Verma in this locality. Therefore, despite my best efforts, I could not serve the summons to Shri Anil Verma, Director M/s Megatech Realtor Pvt. Ltd. at the above mentioned address.

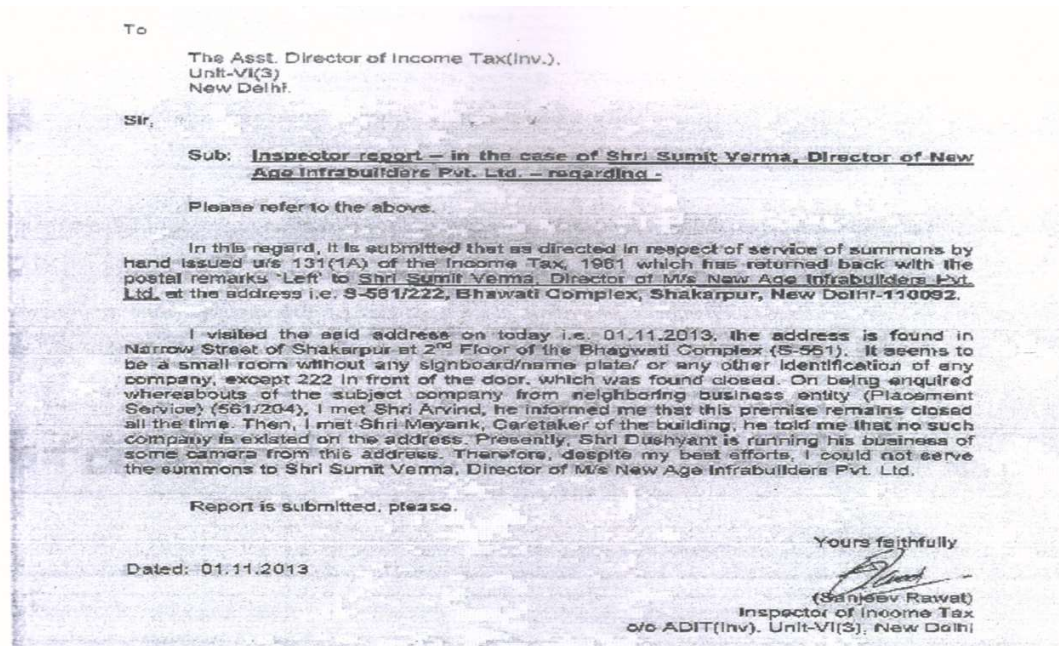
Report is submitted, please.

01.11.2013

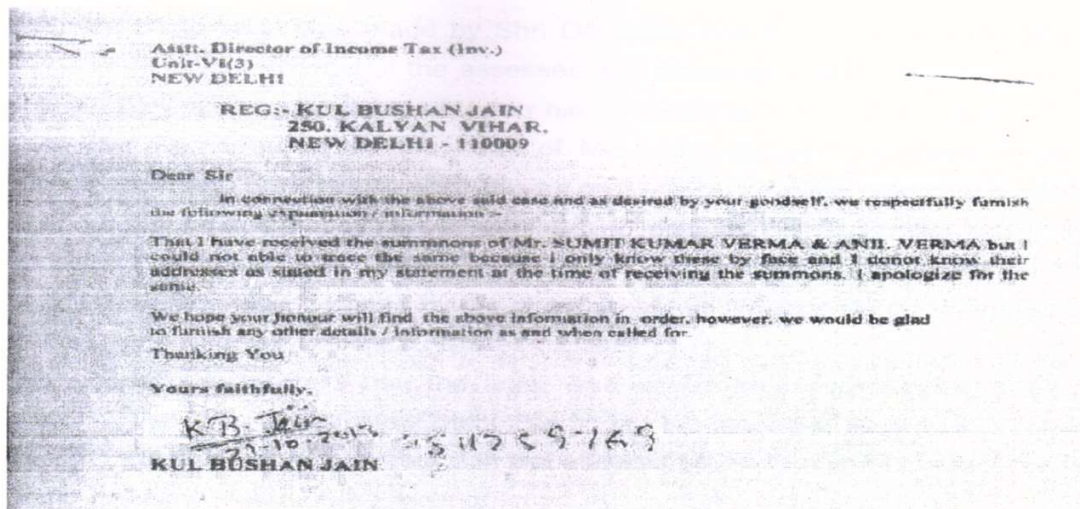
Yours faithfully  
  
(Nikunj Kumar Goel)  
Inspector of Income Tax  
o/o ADIT (Inv), Unit-VI(3), New Delhi

*Nieu*

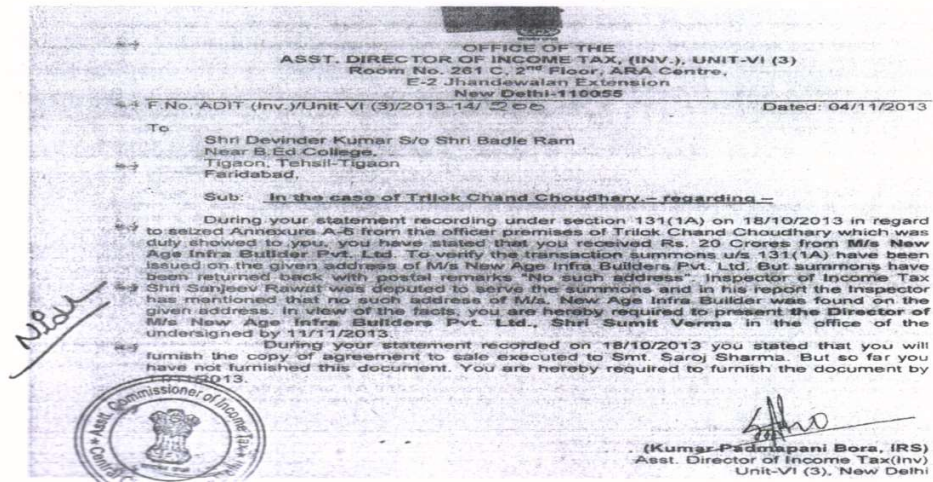




8.8 From the above two reports it is clear that at the given address the party is nonexistent. Further as Sh. Trilok Chand Chaudhary in his statement u/s 132(4) had stated that Mr. Jain had facilitated the above MoU between Devender Kumar and M/s Newage Infrabuilders Pvt. Ltd., So, to examine the facts Mr K.B. Jain was also Vice summoned u/s 131(1A) and his statements was recorded. Since, Mr K.B. Jain has admitted that he had facilitated the MoU between Devender Kumar and M/s Newage Infrabuilders Pvt Ltd, he was asked to get the summons served on the said company. Mr K.B. Jain vide his letter dated 21/10/2013 has showed his inability to get summons served on the said company.

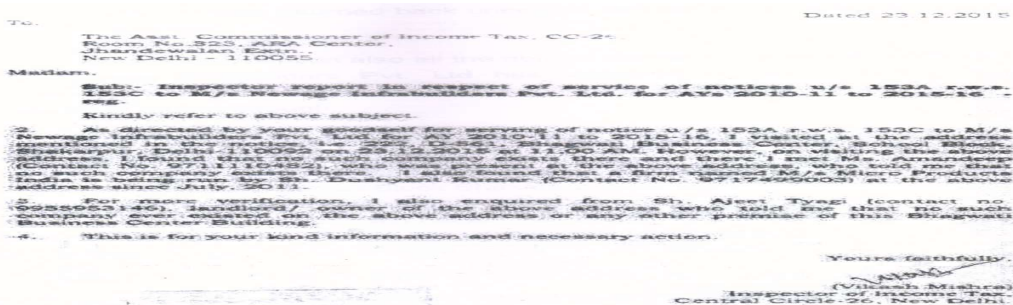


8.9 In view of the above facts and findings, during the post search proceedings Shri Devender Kumar was asked to produce the directors of M/s. Newage Infrabuilders Pvt Ltd vide notice dated 04.11.2013.



8.10 No compliance was made by Shri Devender Kumar to the above notice. In view of the non-compliance of the assesses was asked as to why the cash amount received by you should not be added to his. In response to the show cause notice Devender Kumar furnished the copy of Mol with the said company, copy of balance sheet and profit & loss accounts as on 31/03/2012 of the company but failed to produce the directors. It is also pertinent to note that when similar query was raised to Sh. Trilok Chand Chaudhary on 03/01/2014, a letter was received by from Trilok Chand Chaudhary signed by the directors of M/s Newage Infrabuilders Pt Ltd admitting of giving cash of Rs.20 Crores to Devendver Kumar out of share holder's money. It is relevant here that the letter was issued from address D-111, South Ganesh Nagar, Mandawali, New Delhi. But as per the Inspector Report as produced above no such company was found in the address of D-111, South Ganesh Nagar, Mandawali, New Delhi.

8.11 In this regard, it is also relevant to look into the notices and summon issued in the case of M/s Newage Infrabuilders Pvt. Ltd. which was also covered u/s 153C of the Act and notices us 153A r.w.s. 153C were also issued to M/s Newage Infrabuilders Pvt. Ltd. However, the same was returned back to the office of the undersigned with the remarks 'No such firm exists'. An inspector of this Circle was deputed to serve the notice to the above mentioned company. However, on the given address of the company no such entity existed. The complete report of the Inspectors dated 23-12-2015 is as following



8.12 Further in order to trace the where about of M/s. New Age Infrabuilders Pvt. Ltd. and the directors of the company, notice us 133(6) was sent to the Axis Bank, Derawal Nagar, New Delhi on 30.12.2015 where the said company had its bank account, for furnishing of account opening form and account statement for the period 01.04.2009 to 31.03.2015. In response to the notice, the bank sent the desired details on 14.01.2016. From the account opening form name and addresses of the directors of the said company were found. Summons us 131 were issued to Sh. Sukhbir Singh and Sh. Gopal Singh, director of M/s Newage Infrabuilders Pvt. Ltd. for personal appearance in the office of the ACIT, CC-26, New Delhi. However, in this case also the notices returned back unserved with the remarks 'No such person exists on this address'.

8.13 It is pertinent to mention also all the notices during its assessment proceeding of M/s Newage Infrabuilders Pvt. Ltd has remained unserved leading to the conclusion that such an entity is not existent/ dummy companies through which the cash has been routed through.

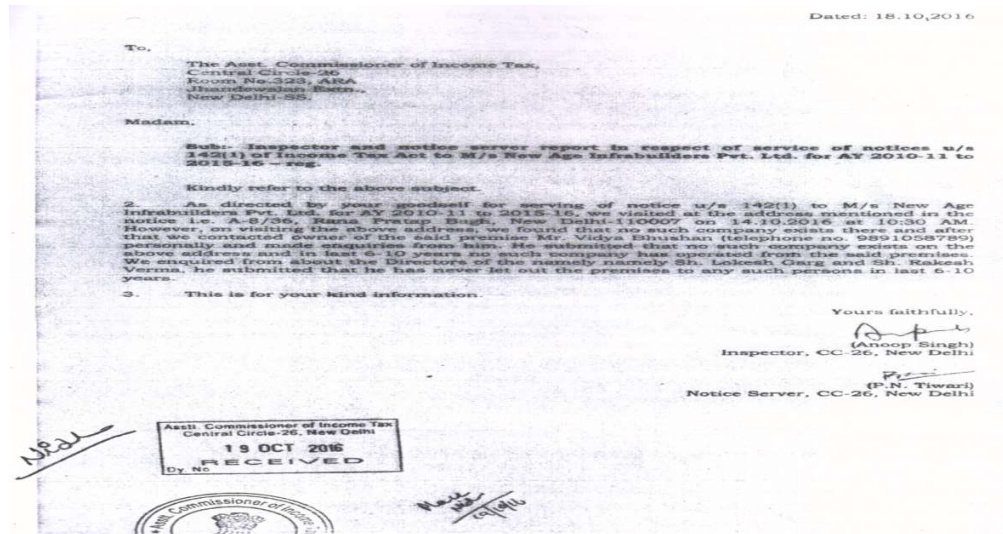
8.14 Following notices were issued to M/s. New Age Infrabuilders Pvt. Ltd. at the following address-

- 1.3317/2, Mahindra Park, New Delhi,
2. S-561/222, School Block Shakarpur, New Delhi,
- 3.A-8/36, Rana Pratap Bagh, New Delhi.
4. D-111, South Ganesh Nagar, Mandawali, New Delhi.

But from the table it is clear that no compliance has been made.

S. No.	Notice issued u/s	Date of issue	Date of Hearing	Remarks
1	142(1)	08.07.2016	15.07.2016	No one Appeared/Notice unserved
2	142(1)	21.07.2016	29.07.2016	Notice Affixed on the premises of the assessee on 22.07.2016 but in response to said notice no one appeared
3	274 r.w.s. 271	29.07.2016	05.08.2016	No one Appeared/Notice unserved
4	274 r.w.s. 271	04.08.2016	11.08.2016	Notice Affixed on premises of the assessee on 05.08.2016 but in response to said notice no one appeared.
5	Penalty u/s 271(1)(b) imposed	17.08.2016		
6	142(1)	17.08.2016	24.08.2016	No one Appeared/Notice unserved
7	142(1)	30.09.2016	04.10.2016	No one Appeared/Notice unserved

8.15 Further an inspector was deputed to serve notice at another known address. The inspector report as under has clearly stated that no such party exists at the given address:-



8.16 In light of the above discussion it is clear that M/s. New Age Infrabuilders Pvt. Ltd. is nonexistent company which is available only on papers.

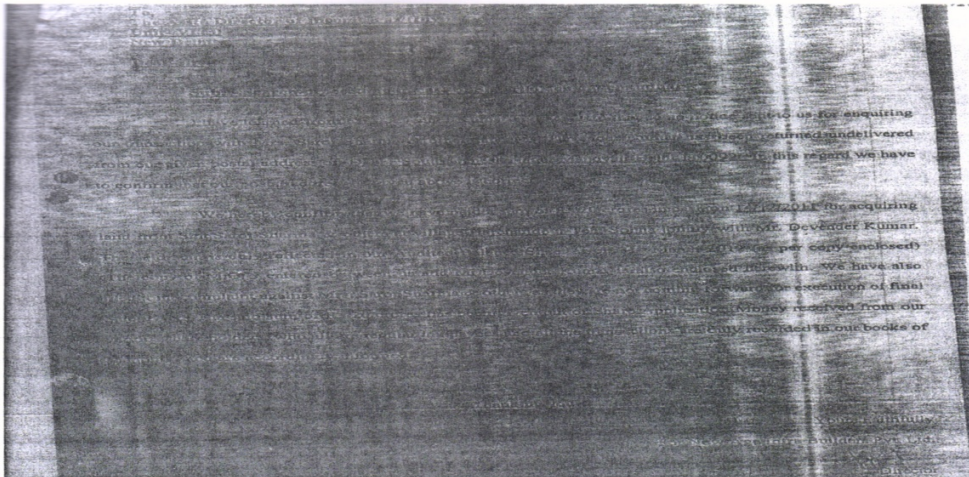
9. Considering all the above facts a show cause was issued to the assessee dated 21.11.2016 and the reply to the same was filed by the assessee vide his letter dated 28.11.2016 received in the dak of this office on 29.11.2016 which is reproduced below-

"Point No.3 (notice dt 30.09.2016), As already stated I had entered into an agreement for purchase of land at Village Harchandpur with Smt Saroj Sharma & Others on behalf of M/s New Age Infrabuilders Pvt. Ltd. I had received advance of Rs 20 crores from M/s New Age Infrabuilders Pvt. Ltd vide MOU dated 14.12.2011. The copy of MOU dated 14.12.2011 is annexed at Page No. 1-3. The copy of Agreement with Smt. Saroj Sharma & others is annexed at Page No. 4-16.

Before the due date as per Agreement, Smt. Saroj Sharma & others transferred the said land to others and as a result a dispute arose with them. I had filed a complaint with Commissioner of Police Gurgaon as per copy annexed at page no. 17-20 and also filed court case us 151 of CPC in the court of Civil Judge (Sr. division) Gurgaon and in the Hon'ble High Court of Punjab & Haryana at Chandigarh as per copy annexed at page no. 21-27 and also filed complaint with DCP (E.O.W) crime branch, New Delhi is annexed at page no. 28-30. The copy of confirmation from MIs New Age Infrabuilders Pvt. Ltd is annexed at page no. 31."

10. The reply filed by the assessee was duly considered. The assessee has stated that he had filed complaint with economic offence wing of Delhi police against Smt. Saroj Sharma and others. In this regard, it is observed that despite providing Rs.20 crores to

*Sh. Devender Kumar for the property M/s. New Age Infrabuilders Pvt. Ltd. did not take any step to recover the amount. It was only Devender Kumar and Sh. Trilok Chand Chaudhary who went ahead and filed complaint. It is out of human probabilities that a party paying Rs. 20 crores for a deal and when deal fails to take any step to recover the amount. This makes it clear that the amount was never of M/s. New Age Infrabuilders Pvt. Ltd. the assessee furnished a confirmation from the party which is pasted below:-*



*11. In this regard it can be easily noticed that this is the letter they filed before ADIT, Investigation during post search enquiries. Further, the letter is from the postal address D-111, South Ganesh Nagar, Mandawali, Delhi, where letters were issued in case of M/s. New Age Infrabuilders Pvt. Ltd. in its own case but has clearly remains unserved. Further, this is a undated letter whose veracity is clearly under question as in the show caused also it was clearly mentioned that the party is nonexistent at the address. The assessee could not produce the party in the office of the undersigned to even substantiate his claims.*

*12. In addition to post search enquiry by Investigation wing and assessment proceeding enquiry, it is also relevant and noteworthy to refer to the balance sheet filled by MIs Newage Infrabuilders Pvt. Ltd. on MCA which clearly shows that no such investment is made by the company. No funds is available with company to make such investments (enclosed as Annexure A-2). Further, the bank statement of Axis Bank available with this office does not show any balance with the bank of such amount before the transaction.*

*13. Further, vide his letter dated 20.12.2016 the assessee had also requested to summon to Sh. K.B. Jain to verify the facts. In this regard, the assessee also filed a copy of affidavit of Sh. K.B. Jain. Vide this office order sheet entry dated 20.12.2016 the assessee was directed to produce Sh. K.B. Jain as evidence in his case as he has obtain an affidavit from him. Till 26. 12.2016 the assessee did not produce him. It is worthwhile to note that the statement of Sh. K.B. Jain was recorded in by Investigation Wing but there also Sh. K.B. Jain failed to produce the party MIs. New Age Infrabuilders Pvt. Ltd.*

*14. In light of the above as the assessee had failed to prove the identity creditworthiness and genuineness of transaction with party M/s. New Age Infrabuilders*

*Pvt. Ltd. a substantive addition in this case is made in the hands of Sh. Trilok Chand Chaudhary, given cash of Rs. 20 crores to Mrs. Saroj Sharma and others and the assessee fail to prove that the transactions between him and M/s. New Age Infrabuilders Pvt. Ltd. is genuine. The onus was on the assessee to prove the genuineness of the transactions which he could not fulfil.*

*14.1 In this case a substantive addition is made in hands of eh Tilok chand Chaudhary for payment of Rs.20 crore in cash but in order to protect the interest of revenue a protective addition of Rs.20 crore is made to the income of the assessee. Based on the above discussion, an addition of Rs.20,00,00,000/- is made in the hands of the assessee.*

9. Further from the first appellate order we note that the Id. CIT(A) deleted the addition by passing a very brief/cryptic order as follows:-

*5. There is only one issue involved in all the grounds of appeal which relates to contention of the appellant against addition of Rs.20 crores made by the AO. The other grounds of appeal are either general or consequential in nature. The fact of the case is that a search action was carried out at the office premise of M/s CDR Estate P. Ltd. in which a document was found and seized. This document was a MOU dated 14.12.2011 between the appellant and M/s New Age Infrabuilders P. Ltd. As per MOU the appellant received a cash of Rs.20 crore from M/s New Age Ifrabuilder P. Ltd. towards purchase price of a land at Harchandpur. Therefore, after being satisfied and recording the same the AO of the searched person had handed over the copy of the impugned document belonged to the appellant to the A concerned who initiated proceedings under section 153C of the IT Act. As per statement given by the appellant, the MOU was signed by him on the direction of Sh. Trilok Chaudhary. On enquiries carried out by the Investigation Wing as well as the AO, M/s New Age Infrabuilder P Ltd. was afound to be non existed, therefore, a substantive addition was made in the case of Sh. Trilok Chand Chaudhary and a protective addition was made in the hands of the appellant of Rs.20 crore.*

*5.1 I have considered the facts and circumstances of the case, submission of the appellant and perused the assessment order. I find that the CIT(A)-31, New Delhi vide his order dated 27.06.2017 has decided the appeal in the case of Sh. Trilok Chand Chaudhary, whose case substantive addition was made. In his case the addition was confirmed. I agree with the findings given in the order of CIT(A)-31, New Delhi and since the addition made on substantive basis in the case of Sh. Trilok Chand has been confirmed, therefore, the addition made on protective basis in the appellant's case is directed to be deleted.*

10. At this juncture, we also note that the Assessing Officer made impugned addition on substantive basis in the hands of Mr. Trilok Chand Chaudhary and on protective basis in the hands of present assessee Shri Devender Kumar. The Id. CIT(A) deleted the addition in the hands of present assessee merely by observing that the substantive addition in the hands of Mr. Trilok Chand Chaudhary has been confirmed by Id. CIT(A)-31, New Delhi order dated 27.06.2017. Mr. Chaudhary carried the matter before the

Tribunal and the Tribunal by order dated 20.09.2018 deleted the substantive evidence by relying the earlier statement of assessee Shri Devender Kumar recorded by the Investigation Wing on 18.10.2013 and disbelieving the subsequent statement of present assessee dated 11.03.2016 recorded by the Assessing Officer. The Tribunal deleted the addition in the hands of Mr. Trilok Chand Chaudhary with following observations and findings:-

*14. In the instant case the authorities below have made and confirmed the addition of Rs. 20 crores in the hands of the assessee on the basis of recovery of MOU dated 14.12.2011 from the possession of the assessee, copy of the same is filed at page 101 of the PB. According to section 292C and 132(4A) of the IT. Act, when such document was found in possession or control of any person in the course of search, it may be presumed that such document belong to such person and that contents of such document are true and correct. However, such presumption is rebuttable and is not conclusive in nature. The MOU in question is executed in between Sh. Devender Kumar S/o Sh. Bade Ram and M/s Newage Infrabuilder P. Ltd., New Delhi. According to the MOU Sh. Devender Kumar is responsible to acquire the land at village Harchandpur, District Gurgaon and to hand-over the same to M/s Newage Infrabuilder P. Ltd. who has agreed to purchase 400 acres of the land from Smt. Saroj Sharma and others, Thus, Sh. Devender Kumar was responsible to acquire the land in question from Smt. Saroj Sharma and others and then transfer it to M/s Newage Infrabuilder P. Ltd. According to the MOU M/S Newage Infra Builder P. Ltd. has paid Rs. 20 crores in cash to Sh. Devender Kumar in consideration of the aforesaid MOU. The ultimate sale deed shall have to be registered in the office of Sub-registrar, Gurgaon. The MOU is attested by Notary public and also attested by the witnesses. PB 96 is agreement to sell between Smt. Saroj Sharma & others and Sh. Devender Kumar dated 17.12.2011, whereby Sh. Devender Kumar has paid Rs. 10 crores to Smt. Saroj Sharma etc. for purchase of land at Harchandpur, Gurgaon. Smt. Saroj Sharma and others have acknowledged receipt of Rs. 10 crores from Sh. Devender Kumar. Smt. Saroj Sharma and others have also executed receipt of Rs. 10 crores in favour of the purchaser Sh. Devender Kumar vide separate receipt dated 17.12.2011, copy of which is filed at page 100 of the PB. The assessee is not party to the aforesaid MOU, agreement to sell or the receipt. Even assessee is not witness to the MOU, agreement to sell or the receipt. Assessee thus, has not even remotely connected with the seized document found from possession of the assessee during the course of search. PB 146 is statement of Sh. Devender Kumar recorded on 18.10.2013 by ADIT Inv.). In this statement the investigation wing has confronted Sh. Devender Kumar of the aforesaid document seized during the course of search from possession of assessee which includes agreements to sell executed with Smt. Saroj Sharma and others and explanation of Sh. Devender Kumar was called upon. Sh. Devender Kumar on such question has explained that he has purchased land at Harchandpur from Smt. Saroj Sharma and others for a sum of Rs. 15,50,000/- per acre in which he was a commission agent on behalf of M/s Newage Infrabuilders P. Ltd. He has stated in his statement that he has paid Rs. 10 crores in cash to Smt. Saroj Sharma and others. Therefore, Sh. Devender Kumar in his initial statement before ADIT(In.) has confirmed execution of*

agreement to sell with Smt. Saroj Sharma and others and execution of the receipts copies of the same are filed in the PB at pages 96 - 100 above (supra). In his statement Sh. Devender Kumar has further stated that he has also executed one more agreement to sell with Smt. Saroj Sharma and others and paid Rs. 10 crores in cash and agreed to supply copy of the same agreement to sell to the investigation wing. He has further affirmed in his statement that this agreement to sell was also executed on behalf of M/s Newage Infrabuilders P. Ltd. The Investigation wing further asked for the explanation of Sh. Devender Kumar with regard to the documents recovered from the possession of the assessee on 17.09.2013 which is the MOU dated 14.12.2011 (PB 101). Sh. Devender Kumar in answer to this question has affirmed that he has executed the said MOU on behalf of M/s Newage Infrabuilders P. Ltd. for purchase of land at Harchandpur by acquiring the said land from Smt. Saroj Sharma and others. He has further affirmed that M/s Newage Infrabuilders P. Ltd. has paid Rs. 20 crores to him in cash for purchase of land at Harchandpur, Gurgaon from Smt. Saroj Sharma and others. In further statement Sh. Devender Kumar explained that he would get commission of Rs. 50,000/- per acre from M/s Newage Infrabuilder P. Ltd. Thus, in his initial statement also Sh. Devender Kumar affirmed that he has executed MOU in question with M/s Newage Infrabuilder (P) Ltd. for acquiring the land from Smt. Saroj Sharma and others and received Rs. 20 crores from M/s Newage Infrabuilder P. Ltd. He has also affirmed that he has paid Rs. 20 crores to Smt. Saroj Sharma and others vide two agreements to sell, one of them was recovered during the course of search and he agreed to supply copy of one more agreement to sell to the investigation wing. Commission was to be paid @ Rs. 50,000/- per acre. He has further stated in his statement that the aforesaid land could not be transferred to M/s Newage Infrabuilders P. Ltd. because Smt. Saroj Sharma and others sold the land to some other person and he has filed a case in the court in which Stay has been granted in his favour. He has further stated in his statement that assessee has also entered into an agreement to sell for some other portion of the property with Smt. Saroj Sharma and others and assessee was also cheated by them, therefore, he along with assessee have filed a case in the court against Smt. Saroj Sharma and others and due to this reason only the aforesaid documents were found during the course of search from the office premises of the assessee. In his statement Sh. Devender Kumar did not make any allegation, if money was paid by the assessee on his behalf. PB 110 is a letter dated 06.04.2012 filed by Sh. Devender Kumar to Sub-Registrar, Sohna in which he has explained that he has entered into an agreement to sell with Smt. Saroj Sharma and others for purchase of land at Harchandpur, Gurgaon and she has executed a sale deed of some portion in favour of others. Sh. Devender Kumar, therefore, requested Sub-Registrar not to register any sale deed in future. PB 116 is complaint made by Sh. Devender Kumar against Smt. Saroj Sharma and others dated 04.06.2012 to the Deputy Commissioner of Police, New Delhi for cheating and criminal breach of trust which is supported by the agreement to sell and receipt. PB 187 is also complaint lodge by Sh. Devender Kumar to the Commissioner of Police, Gurgaon against Smt. Saroj Sharma and others for cheating. PB 370 is a copy of the plaint filed by Sh. Devender Kumar against Smt. Saroj Sharma and others i.e. suit for specific performance of contract in the Court of Civil Judge, Gurgaon. All these material evidences clearly established that MOU in question is between Sh. Devender Kumar and M/s Newage Infrabuilder P. Ltd. and further agreement to sell were executed between Sh. Devender Kumar and Smt. Saroj Sharma and others. Assessee is not party to any of the MOU or agreement to sell and that on offence of cheating/ breach of trust committed by Smt. Saroj Sharma, Sh. Devender

*Kumar filed a police complaint against her as well as filed suit for specific performance before the court. Thus, the Revenue Department has failed to attribute any sale consideration of Rs. 20 crores to the assessee. PB 294 is assessment order in the case of Sh. Devender Kumar dated 28.12.2016 u/s 153A read with section 153C/143(3) of the I.T. Act for AY 2012-13 in which the AO on the same set of facts made addition of Rs. 20 crores in the hands of Sh. Devender Kumar on protective basis. Thus, it established that AO has also recorded satisfaction u/s 153C against Sh. Devender Kumar that he was connected with amount of Rs. 20 crores in question. The AO ignored all these above material evidences on record and merely relied upon the later statement of Sh. Devender Kumar recorded on 11.03.2016 at the assessment stage in which Sh. Devender Kumar has stated that he has signed the agreement in question at the instance of the assessee. However, he has admitted that he has purchased land from Smt. Saroj Sharma and others on the basis of the agreement to sell. In this statement also he has stated that police complaint was prepared at the instance of assessee. From this statement, it appears that the A.O. deliberately recorded this statement without any justification against the statement recorded by the investigation wing immediately after search on 18.10.2013. Sh. Devender Kumar tried to contradict the contents of MOU and the agreement to sell without any justification. The AO has not explained as to what was necessity to record statement of Sh. Devender Kumar subsequently, at the fag end of the assessment proceedings. The statement would also show that AO put the words in the mouth of Sh. Devender Kumar so as to he may contradict his earlier statement recorded by the investigation wing. No question was put to him as to why the documents were prepared in his name, if he was not party to be agreement to sell or MOU. The entire material on record clearly support the statement of Sh. Devender Kumar recorded by the investigation wing on 18.10.2013. The statement of Sh. Devender Kumar recorded by AO on 11.03.2016 is not corroborated by any evidence or material on record. Thus, there was no justification for the AO or CIT(A) to rely upon subsequent statement of Sh. Devender Kumar dated 11.03.2016. It may also be noted here that the assessee filed letter dated 12.10.2016 before Ld. CIT(A) supported by affidavit of Sh. Devender Kumar (PB 166-176) in which he has affirmed his statement made to the investigation wing on 18.10.2013. It is also stated in the affidavit that subsequently notice u/s 153C dated 08.02.2016 was issued to him by Ms. Preeti Singh, ACIT, Central Circle-26, New Delhi and she told him that huge liability to the extent of Rs. 20 crores would fall on him, if he strict to his original statement made before investigation wing on 18.10.2013. He has, therefore, disowned his statement recorded before AO on 11.03.2016. In this affidavit also he has confirmed all the transactions recorded in his name on behalf of M/s Newage Infrabuilders P. Ltd. The Ld. CIT(A) without any justification ignored the affidavit of Sh. Devender Kumar. Though in this case Ld. CIT(A) called for the remand report from the AO, copy of which is filed at page 256 of the PB dated 04.05.2017 but the AO has not rebutted the explanation of the assessee above. Therefore, contents of the affidavit shall have to be read in the evidence in favour of the assessee. It appears that the authorities below merely on the basis of subsequent statement of Sh. Devender Kumar and that the Directors of M/s Newage Infrabuilders P. Ltd. have not been produced for examination before AO confirmed the addition against the assessee. It is admitted fact that during the course of search no cash was found or seized. There is no recovery of any incriminating material against the assessee to connect him with the addition of Rs. 20 crores. Even if the Directors of M/s Newage Infrabuilders P. Ltd. were not produced for examination before AO, the entire material on record clearly justify explanation of the assessee that*

*assessee had not dealt with amount of Rs. 20 crores. The contents of the document speak against the Revenue- Department. The presumption against the assessee that the document belong to him have been rebutted by the above material on record including the seized material found during the course of search which is corroborated by statement of Sh. Devender Kumar recorded on 18.10.2013 in ADIT(In.). Sh. Devender Kumar has taken action against Smt. Saroj Sharma etc., therefore, there was no justification to make addition of Rs. 20 crores against the assessee. Whatever reasons have been given by the authorities below for making addition against the assessee are irrelevant on the face of the evidences brought on record. Therefore, the decisions relied upon by the Ld. DR would not support case of the Revenue. In view of the above discussion, we are of the view that addition of Rs.20 crores against the assessee is wholly unjustified.*

11. In view of above, basis taken by the Assessing Officer for making addition in the hands of assessee, the fundamentals taken by the Id. CIT(A) for deleting the addition and the conclusion drawn by the Tribunal by considering the totality of the facts and circumstances of the cases pertaining to Mr. Trilok Chand Chaudhary and present assessee Shri Devender Kumar it is clear that the assessee Shri Devender Kumar and Mr. Chaudhary are misleading the facts before the authorities below as well as before the Tribunal as in the case of Mr. Chaudhary present assessee Shri Devender Kumar files his affidavit dated 12.10.2016 before Id. CIT(A) supporting his earlier statement dated 18.10.2013 which favour the case of Mr. Chaudhary and Mr. Chaudhary in the case of present assessee before the Assessing Officer in reply to show cause notice dated 18.03.2016 vide his reply dated 28.03.2016 (assessment order para 8.2 & 8.3, supra) supported the case of present assessee.

12. The Id. counsel of assessee could not controvert the contention of Id. CIT(DR) recorded in the earlier paragraphs no. 3 to 5 (supra) based on the facts and circumstances of the case and conduct of present assessee corroborated by the findings of the Tribunal in the case of Mr. Trilok Chand Chaudhary particularly in para 14 of Tribunal order dated 20.09.2018 (supra). Thus we are in agreement with the contention of Id. CIT(DR) that the Id. CIT(A) has deleted addition, without dwelling on the merits of the addition, merely by observing that the Id. CIT(A)-31, New Delhi by order dated 27.06.2017 has confirmed the addition in the hands of Mr. Trilok Chand Chaudhary therefore protective addition in the hands of present assessee Shri Devender Kumar

does not survive but on the appeal filed by Mr. Trilok Chand Chaudhary the Tribunal by order dated 20.09.2018 has recorded clear findings and deleted the addition in the hands of Mr. Chaudhary by relying on the statement of present assessee Shri Devender Kumar recorded on 18.10.2013 supported by affidavit of present assessee dated 12.10.2016 affirming said statement recorded by the Investigation Wing on 18.10.2013.

13. It is surprising that in the present case the assessee Shri Devender Kumar is totally deviating from the statement dated 18.10.2013, in the statement before the Assessing Officer recorded on 11.03.2016 replying to question no. 3 to 9 submitted that he was working under the instruction of Mr. Trilok Chand Chaudhary and except commission he has no relation with the impugned transaction. This conduct clearly show that the assessee in the case of Mr. Trilok Chand Chaudhary supports his statement dated 18.10.2013 in favour of Mr. Chaudhary wherein he has taken over entire liability of transaction giving clean position to Mr. Chaudhary and the present assessee in his own appeal before the Id. CIT(A) taken support of confirmation of addition in the hands of Mr. Trilok Chand Chaudhary without informing the Bench about the subsequent order dated 20.09.2018 (supra) in the case of Mr. Chaudhary wherein the Tribunal has deleted the addition by recording clear findings that the statement of Shri Devender Kumar recorded by the Investigation Wing on 18.10.2013 is supported by the entire material on record and the statement of Shri Devender Kumar recorded by the Assessing Officer on 11.03.2016 is not corroborated by any evidence and material on record. Before recording said findings the Tribunal also took note of the affidavit of present assessee filed in the case of Mr. Chaudhary before Id. CIT(A). On being asked by the bench the Id. counsel of assessee except placing reliance on para 5 & 5.1 of first appellate order could not controvert the contentions of Id. CIT(DR) as noted above, supported by the findings recorded by the Tribunal in the order dated 20.09.2018 in the case of Mr. Chaudhary. Therefore we are inclined to hold that the findings recorded by the Id. CIT(A) deleting the addition are not valid and sustainable particularly in view of totality of facts and circumstances of the case and contradictory statements and stands of assessee.

14. In view of foregoing discussion we reach a logical conclusion that the Id. CIT(A) was not correct and justified and deleting the addition merely by noting that the addition in the hands of Mr. Chaudhary has been confirmed by Id. CIT(A)31 New Delhi without considering the merits of the case. Therefore findings recorded by the Id. CIT(A) are reversed restoring the assessment order dated 28.12.2016. Accordingly, grounds no. 1 & 2 of Revenue are allowed.

15. In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 16.10.2023.

Sd/-  
(DR. B.R.R. KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER

Dated:16<sup>th</sup> October, 2023.

NV/-

Copy forwarded to :

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

// By Order //

Asstt. Registrar, ITAT, New Delhi