

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"A" JAIPUR

श्रीसंदीप गोसाई, न्यायिक सदस्य एव श्रीराठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 255/JP/2023  
निर्धारणवर्ष / Assessment Year : 2014-15

The ITO Ward 6(4) Jaipur	बनाम Vs.	Shri Gotam Agarwal 228, City Centre, S.C. Road Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AAMPA 1487 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl. CIT  
निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA

सुनवाई की तारीख / Date of Hearing : 26/10/2023  
उदघोषणा की तारीख / Date of Pronouncement: 02/1/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

The Revenue has filed an appeal against the order of the Id. CIT(A) dated 08-10-2022, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2014-15 wherein the Revenue has raised following grounds of appeal.

“1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A), NFAC, Delhi is justified ignoring the facts that sale consideration of all the flats/ units sold by the assessee was less

than the value assessed by Stamp Valuation Authority which is covered under the provisions of Section 43CA of the Act and accordingly an addition of Rs.28,32,901/- was made by the AO by invoking Section 43CA.

2. Whether on the facts and circumstances of the case and in law the Id. CIT(A), NFAC, Delhi is justified ignoring the facts that the sale consideration of Rs.62,00,500/- which was not shown in books of accounts of the assessee on which AO applied NP @ 20% by making addition of Rs.12,40,100/- also. Hence, the AO made addition of Rs.40,73,001/- on account of undisclosed sales.

3. Whether on the facts and circumstances of the case and in law the Id. CIT(A), NFAC, Delhi is justified in ignoring the facts that since the assessee could not explain the source of funds of capital addition, therefore, addition of Rs.1,62,84,553/- was made by the AO on account of unexplained cash credit u/s 68 in form of unaccounted money introduced in capital which was deleted by the Id. CIT(A), NFAC, Delhi.”

2.1 Brief facts of the case are that the assessee firm filed E-return of income on 27-11-2014 for the year under consideration declaring total income of Rs.5,70,650/-. The case of the assessee firm was selected for limited scrutiny under the CASS and accordingly notice/s 143(2) of the Act was issued on 28-08-2015 fixing the date of hearing on 16-09-2015. The notice was duly served upon the assessee for which the Id. AR of the assessee Shri V.K. Sharma appeared before the AO and requested for adjournment. Further due to change of incumbency, notice u/s 142(1) alongwith specific questionnaire was issued on 23-06-2016 and the case was fixed for hearing on 22-07-2016. The Id. AR of the assessee attended the proceedings before the AO from time to time and filed the requisite details and the

same was discussed before the AO. The Bench noted that the AO made the following additions in the case of the assessee

- (i) amounting to Rs.40,73,001/- and
- (ii) Rs.1,62,84,553/-

2.2 The observations of the AO as to the addition of Rs.40,73,001/- made by him at para 3.4 (f) to 3.6 are as under:-

“ 3.4 (f). The assessee however did not file/ produce the itemized details of opening and closing for the year under consideration with valuation even after repeated requests. Further, the assessee did not produce/ submit anything which can establish that the sale shown in books of accounts at Rs.21.25 lacs is actually from the opening stock. As mentioned above, the name of locations (maniramji ki kothi sand bumb sadan) are not appearing in the sale deeds of the sales which the assessee is claiming to have included in books. Hence, the assessee has failed to substantiate his submission that the sale shown in books at Rs. 21.25 is from with the opening stock. It appears that the assessee has not submitted the sale deeds of sale of Rs. 21.25 lacs shown in books and he has labeled few undisclosed sales as shown in books at Rs. 21.25 lacs. This conclusion arises from the fact that the assessee has told that he did not disclose/incorporate sale in books of accounts as the other partner Sh. Rakesh Singhal did not inform him about the sale. However, it is not acceptable as how is it possible that his partner would inform him about the few sales made and would not inform about others sale made out of the same location/stock. Further, the assessee has also signed all the sale deeds and received sale consideration of his share mentioned in all the sale deeds. Hence, In view of the above detailed discussion it is held that the sale shown in books of accounts at Rs. 21.25 lacs is not the same as the details of which are submitted by him. Hence, the same is also considered undisclosed made out of books. Hence, all 16 flats / units sold by the assessee have not been shown in books of accounts by the assessee.

The details of undisclosed sale are mentioned at pages 9 & 10 of the assessment order.

3.5 On going through the above details of sales made by the assessee (which is not shown in books of accounts), it is noticed that the sale consideration of the all flats/units sold by the assessee is less than the value assessed by the stamp valuation authority. The specifics and details have also been discussed in para 2.1, 2.2, 2.3 and para 5 of show cause notice dated 25-11-2016 (also reproduced at 3.1 of this order). The assessee was specifically asked, (Para 5 of show cause notice dated 25-11-2016) to explain as to why provisions of S. 43CA should not be applied. The assessee has not filed his reply in respect of application of provisions of S. 43CA of the I.T. Act. Therefore, it is assumed that the assessee has nothing to say or explain in this regard. Hence, the provisions of s. 43CA of I.T. Act are applicable on sale of all the flats/units which have not been disclosed in books of accounts.

As mentioned above, the total sale consideration (assessee's share) is Rs. 62,00,500/- and the stamp valuation of the same is Rs. 90,33,401/-. Hence, the sale consideration is less than stamp valuation by Rs. 28,32,901/- and the same is added to the total income of the assessee u/s 43CA of the IT Act

3.6 Now, the profits arising from the sale consideration of Rs. 62,00,500/- which is not shown in books of accounts is to be determined. The assessee has failed to furnish computation of profits from it with documentary evidences. The books of accounts have also been rejected u/s 145(3) of the I.T. Act as per detailed in discussion in foregoing paras. Therefore, the undersigned have no option but to estimate the profits earned by the assessee from the undisclosed sale made by him. **The assessee has also not furnished the itemized details of opening and closing stock with its valuation. Further, it has also been established that the assessee has tried to make the undisclosed sale as disclosed one in books.** Considering these facts and circumstances of the case, I am of the opinion that net profit rate of 20% would be appropriate on the sale consideration of Rs. 62,00,500/- received by the assessee. The same comes to Rs. 12,40,100/-. Hence, the total profits/income arising on the sale which has not been disclosed by the assessee is computed as under:

	Rs.	Rs.
Sale consideration received (not shown in books)	62,00,500/-	
Net profit@ 20% on sale consideration Rs.	6200500/-	12,40,100/-
Add: Addition u/s 43CA (para 3.5		<u>28,32,901/-</u>
Total income/ profits on undisclosed sale		40,73,001/-

It is seen that the AO made addition of Rs.40,73,001/- as mentioned hereinabove.

2.3 Further the observations of the AO as to the addition of Rs.,1,62,84,553/- made by him at para 4.3 to 4.4 are as under:-

“4.3 The written submission filed by the assessee is gone through carefully. However, the same is found not tenable. It has been mentioned by the assessee that he maintains two balance sheets i.e. M/s. Sunrise Enterprises capital a/c and Gotam Agarwal capital a/c in his name. The capital ledgers are as under:-

Sunrise Enterprises (capital account)

Particulars	Rs.	Particulars	Rs.
To withdrawals	45550000	By opening Balance	4482295
To drawings	219500	By net profit	504629
To drawings for marriage	737988	By additions	10265000
To closing balance	9744436		15251924
	15251924		15251924

Particulars	Rs.	Particulars	Rs.
To withdrawals	1157488	By net profit	4482295
To closing balance	11597551	By capital account	12179732
		By additions	169
		By interest on SB a/c	4492
		By profit from sunrise	504629
	12755039		12755039

The capital ledgers of both (M/s Sunrise enterprises and Gotam Agarwal) are perused. It is noticed that in capital ledger of M/s Sunrise Enterprises, there is shown an addition of Rs. 1,02,65,000/- (except addition of Rs. 504628/- of net profit for the year). (Further, in capital ledger of Gotam Agarwal, there is no opening balance and a sum (in credit side i.e. addition) is shown as 'capital account' at Rs. 1,21,79,731/-. The assessee not furnished the details and explanations of these additions. The details and reasons of withdrawals in capital accounts have also not been explained. Further, the assessee mentioned about the addition that few are through some bank credit entries. However, the sources of the same have not been explained. During the year under consideration, as per books of accounts, the assessee has earned net profit of Rs. 5,04,628/- and Rs. 66,017/. Therefore, sources of additions in capital other than the addition of net profit are to be explained by the assessee in which the assessee failed or could not explain the same.

Further, at the cost of repetition, it is also mentioned that an individual is required and bound to furnish the true and correct balance sheet in return of income. Further, for an individual, only one and consolidated balance sheet can be furnished in return of income. Therefore, if an individual is running one or multiple proprietorship firms in whatever name called, same is accounted for in his own name and his PAN. Therefore, he is required to consolidate all his balances in

balance sheet. However, for the purpose of convenience and operationality, he may maintain separate accounts/balance sheets.

The assessee was asked to explain the effect of inter-transfers from one prop. Firm to another in point No 6.3 of the show cause notice dated 25-11-2016. However, the relevant extract of the same is reproduced as under:

*“Further, the argument put forth by the assessee that the addition of capital is only transfer from one (proprietorship) firm to another. However, it is not the case so. If some amount of capital is transferred from one firm to another, the final tally is not going to affect the picture. An increase in capital of one prop. firm by a particular sum would result into decrease by the equal amount in capital of the other prop. Firm. Therefore, the effect nullifies and there is no increase or decrease in final capital of the individual...”*

However, the assessee has not filed any explanation in respect in this regard. Therefore, it is assumed that the assessee has accepted the above argument it is also observed that books of accounts are maintained in a haphazard manner. The books of accounts have also been rejected u/s 145(3) of the I.T. Act. Further, the assessee has been afforded enough opportunities to explain his side. However, the assessee has not filed any satisfactory explanation in respect of the sources of capital additions.

4.4 In view of the above discussion, it is established that the assessee has not been able to explain the sources of the funds of capital addition. Therefore, unexplained cash credit (sec, 68) in form of unaccounted money introduced in capital is computed as under.

		Rs.
Capital as on 31-03-2-014 as per balance sheet furnished for A.Y. 2014-15		21341987
Less: (i)	504629	
(ii) Net profits Gotam Agarwal	66018	
(iii) Interest on S/b account	4492	
(iv) Opening capital as on 01-04-2013 as per ITR filed for A.Y. 2013-14	4482295	5057434
Unexplained increase in capital during the year under consideration (unexplained cash credit a/c 69)		16284553

Therefore, unexplained addition in capital of the assessee is unexplained cash credit in books of accounts of the assessee u/s 68 of the I.T. Act. Hence, addition of Rs. 16284553/- is made in total income.’’

2.4 Being aggrieved by the order of the AO, the assessee carried the matter before the Id. CIT(A) who firstly passed the order on 08-10-2022 allowing the appeal of the assessee u/s 250 of the Act. Subsequently, the Id. CIT(A) passed an order dated 8-10-2022 u/s 154 r.w.s. 250 of the Act by partly allowing the appeal of the assessee with following narration

‘‘The order was passed on 8-10-2022. However, it was found that due to inadvertent error of copy paste, a total different order was

uploaded. The mistake being apparent from record this order being passed as under: Ground of appeal.

“1. The Ld. AO has erred on fact and in law in making an addition of Rs 28,32,901/- u/s, 43CA being the difference in the actual sale consideration and value adopted by the sub registrar for stamp duty purposes. He has further erred in making this addition without making reference to the DVO. He has further erred in making the addition for the difference instead of applying the net profit rate on such amount.

2. The Ld. AO has erred on fact and in law in estimating the income from property dealings at Rs. 12,40,100/- by applying net profit rate of 20% on the sale consideration of Rs. 62,00,500/-, He has further erred in assuming that sales of Rs. 21,25,000/- recorded in the books of accounts is not a part of the sale consideration of Rs. 62,00,500/- and thus incorrectly applying net profit rate of 20% on sale consideration of Rs. 62,00,500/- instead of applying the same on sales of Rs.40,75,500/-.

3. The ld. AO has erred on fact and in law in making addition of Rs.1,62,84,553/ on account of **unexplained increase in capital by not appreciating the explanation of the assessee.**”

3.1 Apropos Ground No. 1 & 2 of the assessee, the facts as emerges from the order of the ld. CIT(A) are as under:-

“2.3 I have gone through the submissions filed by the assessee. Regarding ground No. 1 & 2 the assessee had jointly purchased Plot No. 401, situated at Thakur Pachewar, Chokdi Ghat Darwaja, Jaipur. The said plot was purchased by the assessee for total consideration of Rs. 74,85,200. Further, assessee also purchased two shops for total consideration of Rs. 16,00,000. Both the properties were purchased by the assessee in joint ownership of which assessee was a 50% owner. Thereafter, assessee, along with the joint owner, constructed office rooms on the plot of land so purchased by him. Out of the total office rooms so constructed, 16 office rooms were sold by the

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assessee, during the year under consideration. All the office rooms, 16 in number, of varying sizes, were sold by the assessee for total consideration of Rs. 1,24,01,000, out of which the consideration to which the assessee was entitled to, being 50% owner, was Rs. 62,00,500. Out of the 16 office rooms sold, assessee had already recorded sales of 6 office rooms in his books of accounts, resulting into total consideration to which the assessee was entitled to, amounting to Rs. 22,80,500. However, as per the assessee for sale of such 6 offices assessee declared sales of Rs. 21,25,000, instead of actual sale consideration of Rs.22,80,500 pertaining to the assessee's share of 50%. The balance amount of Rs. 1,55,500 [Rs. 22,80,500-Rs. 21,25,000), was inadvertently missed to have been reported, was subsequently offered for tax by the assessee, during the course of assessment proceedings. For the balance 10 office rooms, it has been accepted by the assessee that these office rooms were sold for a total consideration of Rs. 78,40,000, of which assessee was entitled to Rs. 39,20,000, assessee being 50% owner. It has been further accepted by the assessee that sale consideration pertaining to these offices, amounting to Rs. 39,20,000, was not recorded by the assessee in his books of accounts. AO, during the course of assessment proceedings, took note of the information available with him, of the assessee having sold 16 properties, in the form of office rooms. AO, thereafter, considered all the properties sold by the assessee, not having been reported by the assessee in the return filed for the relevant previous year. The reason for coming to such conclusion was that the addresses mentioned in the sale deed as provided by the assessee for the 6 office rooms, already disclosed by him, were not matching with the details of the properties sold by the assessee, which were available with the AO. Accordingly. AO was of the view that all the property sold by the assessee were not recorded by the assessee in his books of accounts. AO on the total consideration of Rs. 62,00,500 being the share to which the assessee was entitled to on sale of all the 16 office rooms, applied 20% Net Profit, to arrive at the income of the assessee. Resultantly, AO added Rs. 12,40,100, being 20% of the sale consideration of Rs. 62,00,500, to the income of the assessee during the assessment proceedings. In

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the submissions filed before me, assessee submitted that out of the total of 16 office rooms sold by the him, he had already shown sales for 6 office rooms against which the total consideration already shown was Rs. 21,25,000. As per the assessee, AO was not correct in contending that all the office rooms sold by the assessee were not disclosed by him. It has been submitted by the assessee that the office rooms sold by him, the addresses of which were available with the AO, as the sale deed for such 6 office rooms had already been submitted by the assessee during the course of assessment proceedings. In this regard, assessee submitted that the properties were part of the same locality, although, they were known with different names in the vicinity. Thus, as per the assessee out of the total sale consideration of Rs. 62,00,500 considered by the AO on sale of 16 offices rooms not to have been shown by the assessee, assessee had already shown sale consideration of Rs. 21,25,000 pertaining to 6 office rooms. Accordingly, it has been submitted by the assessee that, if at all additions are to be made on account of sale consideration, addition should only be of Rs. 39,20,000 as out of the total consideration of Rs. 62,00,500, considered by the AO, assessee has already shown Rs. 21,25,000 as part of the consideration.

Having gone through the relevant factual position and the evidences put forward by the assessee, it is evident that the assessee has already disclosed sale consideration pertaining to 6 office rooms amounting to Rs. 21,25,000. The balance consideration of Rs. 39,20,000 on account of sale of office rooms, being 10 in number should be considered for the purpose of determining profits earned by the assessee. AO has estimated Net Profit of 20% on the entire sale consideration. As per the assessee, the rate so applied by the AO is without any basis and AO should have applied the rate of 8% as provided under section 44AD. I find no fact in the assessment order which should warrant adoption of rate of 20%. On the other hand in view of few discrepancies as discussed above, the assessee has not maintained his books properly. Accordingly, taking a balanced approach I direct the AO that instead of applying 8% rate as provided in Section 44AD, rate of 10% should be applied on the sale consideration.

It is also seen that after applying Net Profit rate of 20% on the actual sale consideration received by the assessee, AO has considered the Circle Rate/DLC of the office rooms sold by the assessee and has, after invoking the provisions of Section 43CA, made addition of Rs. 28,32,894 to the income of the assessee. The said additions have been made over and above the Net Profit as estimated by the AO and added to the income of the assessee. The net profit percentage should have been applied by the AO on the DLC value/Circle Rate itself. In my view, AO was incorrect in first applying net profit rate of 20% and, thereafter, making separate addition to the income of the assessee by invoking Section 43CA. I am of the view that the Net Profit rate of 10% should be applied on the DLC Value/Circle Rate of all the office rooms sold by the assessee. A net profit of 10% should be applied on Rs. 90,33,394, being the DLC Value/Circle Rate of all the office rooms sold by the assessee, during the year under consideration. This would be the fair estimate of the profits earned by the assessee on the entire transaction. If out of the total net profits so calculated, assessee has already offered certain part of the income for tax then the same shall be reduced from the above estimated profit so computed. Separate additions of Rs. 28,32,894, made by the AO, by invoking Section 43CA are hereby deleted.

Ground is partly allowed.’’

3.2 Apropos Ground No. 3 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.3 I have gone through the submissions filed by the assessee. AO, during the course of proceedings noted the fact that the assessee had introduced capital during the year under consideration, which according to AO remained unexplained. Accordingly, AO made additions of Rs. 1,62,84,553 to the

income of the assessee. In the submissions filed before me, assessee explained the entire source from which the capital was introduced by the assessee during the year under consideration. As per the assessee, majority of the amount so received was through banking channel out of the cash credit account maintained of Sunrise Enterprises, the proprietorship concern of the assessee. It has also been contended by the assessee that out of the total capital of Rs. 1,62,84,553, Rs. 1,21,79,732 represented opening capital of the assessee accumulated by him in the preceding years. It has been submitted that such opening capital was not shown by the assessee in the preceding year, as income during such year was shown by the assessee under Section 44AD. Accordingly, the assessee was not required to disclose the capital balance. It has been further contended that capital balance of Rs. 1,21,79,732, representing the opening balance of such capital, was inadvertently shown by the assessee as capital having been introduced during the relevant year.

After having gone through the factual matrix of the case, I am of the view that majority of the capital, which has been considered by the AO to have been introduced during the current year, was nothing but the opening capital of the assessee. Further, assessee has been able to furnish the relevant source from which the capital was introduced during the current year. Most of the capital, as has been introduced by the assessee, is out of the balance in the cash credit account maintained in the proprietorship concern of the assessee. Moreover, it is seen in Ground No. 1 and 2 that assessee further disclosed Rs. 39,20,000 as part of the consideration received by him on sale of 10 office rooms over the above the sale of office rooms as shown by him during assessment proceedings. This has further resulted into increase in the capital of the assessee. Furthermore, **AO has not been able to bring to the fore any evidence which could prove that the capital introduced by the assessee was nothing but cash amount belonging to the assessee channelized through banking channel in the form of capital introduction.**

In view of the above, Rs. 1,62,84,553 as part of the capital of the assessee is found to be explained. Additions in this regard made by the AO are hereby deleted.”

3.3 During the course of hearing, the ld. DR supported the order of the AO.

3.4 On the other hand, the ld.AR of the assessee relied upon the submissions made before the ld. CIT(A) and also relied upon order of the ld. CIT(A).

3.5 We have heard both the parties and perused the materials available on record. As regards the ground of appeals No. 1 & 2 of the Department, it is noted that the AO while making assessment in the case of the assessee noticed that the sale consideration of all flats/ units sold by the assessee is less than the value assessed by the stamp valuation authority. The assessee was specifically asked (para 5 of show cause notice dated 25-11-2016) to explain as to why provisions of Section 43CA should not be applied for which the assessee had not filed his reply as to invocation of Section 43CA of the Act. Thus the AO assumed that the assessee had nothing to say or explain in this regard. Hence according to the AO, the provisions of Section 43CA are applicable on sale of all the units/ flats being not disclosed in the books of accounts. He also noted that the sale consideration i.e. assessee's share is Rs.62,00,500/-and the stamp valuation of the same is Rs.90,33,401/- which according to the AO is less than the stamp valuation by Rs.28,32,901/- and the same had been added to the total income of the assessee u/s

43CA of the Act. The AO also noticed that profits arisen from the sale consideration of Rs.62,00,500/- which was not shown in the books of accounts was to be determined for which the assessee failed to furnish the computation of profits with documentary evidence and he further rejected the books of account u/s 145(3) of the Act. Thus the AO had no option except to estimate the profits earned by the assessee from the undisclosed sales made by the assessee. The AO also noted that the assessee failed to provide itemized details of opening and closing stock with its valuation. Hence, in these facts and circumstances of the case, AO opined that 20% net profit rate would be appropriate on the sale consideration of Rs.62,00,500/- received by the assessee which comes to Rs.12,40,100/-. Conclusively, the AO made an addition of Rs.40,73,001/- (Rs.28,32,901 + Rs.12,40,100). In first appeal, the Id. CIT(A) noted from the evidences put forward by the assessee that the assessee has already disclosed sale consideration pertaining to 6 office rooms amounting to Rs. 21,25,000. The balance consideration of Rs. 39,20,000 on account of sale of office rooms, being 10 in number should be considered for the purpose of determining profits earned by the assessee. Though the AO has estimated Net Profit of 20% on the entire sale consideration yet as per the assessee, the rate so applied by the AO is without any basis and AO should have applied the rate of 8% as provided under section 44AD. To this effect, the Id. CIT(A) found no fact in the assessment order which should warrant adoption of rate of 20%. It is

also noted by the Id. CIT(A) that the assessee has not maintained the books of account properly for which the Id. CIT(A) took a balance view and directed the AO that instead of applying 8% rate as provided in Section 44AD, rate of 10% should be applied on the sale consideration. The Id. CIT(A) has also seen that after applying Net Profit rate of 20% on the actual sale consideration received by the assessee, AO has considered the Circle Rate/DLC of the office rooms sold by the assessee and has, after invoking the provisions of Section 43CA, made addition of Rs. 28, 32,894/- to the income of the assessee. The said additions have been made over and above the Net Profit as estimated by the AO and added to the income of the assessee. According to the Id. CIT(A), the net profit percentage should have been applied by the AO on the DLC value/Circle Rate itself. However, in the view of the Id. CIT(A), the AO was incorrect in first applying net profit rate of 20% and, thereafter, making separate addition to the income of the assessee by invoking Section 43CA. Hence, the Id. CIT(A) was of the view that the Net Profit rate of 10% should be applied on the DLC Value/Circle Rate of all the office rooms sold by the assessee. A net profit of 10% should be applied on Rs. 90,33,394, being the DLC Value/Circle Rate of all the office rooms sold by the assessee, during the year under consideration and it would be the fair estimate of the profits earned by the assessee on the entire transaction. If out of the total net profits so calculated, assessee has already offered certain part of the income for tax then the same shall

be reduced from the above estimated profit so computed. Thus, the Id. CIT(A) observed that Separate additions of Rs. 28,32,894, made by the AO, by invoking Section 43CA are hereby deleted. The Bench has taken care of all the issues raised by the Department and decision made by the Id. CIT(A), we deeply noted that there is no infirmity in the order of the Id CIT(A) as we have elaborately discussed hereinabove and the ground raised by the Department as Ground No. 1 and 2 are dismissed.

3.6 As regards Ground No. 2 of the assessee, the AO, during the course of proceedings noted the fact that the assessee had introduced capital during the year under consideration, which according to AO remained unexplained. Hence, the AO made additions of Rs. 1,62,84,553 to the income of the assessee. The assessee filed the submissions before the Id. CIT(A) and explained the entire source from where the capital was introduced by the assessee during the year. The Id. AR submitted that majority of the amount so received was through banking channel out of the cash credit account maintained of Sunrise Enterprises, the proprietorship concern of the assessee. It has also been contended by the assessee that out of the total capital of Rs. 1,62,84,553/-, Rs. 1,21,79,732/- represented opening capital of the assessee accumulated by him in the preceding years. It has been submitted that such opening capital was not shown by the assessee in the preceding year, as income during such year was shown by the assessee under Section 44AD. Hence,

the Id. CIT(A) observed that the assessee was not required to disclose the capital balance. It has been further contended that capital balance of Rs. 1,21,79,732, representing the opening balance of such capital, was inadvertently shown by the assessee as capital having been introduced during the relevant year. It is also noted that after having gone through the factual matrix of the case, the Id.CIT(A) was of the view that majority of the capital, which has been considered by the AO to have been introduced during the current year, was nothing but the opening capital of the assessee. Further, assessee has been able to furnish the relevant source from which the capital was introduced during the current year. Most of the capital, as has been introduced by the assessee, is out of the balance in the cash credit account maintained in the proprietorship concern of the assessee. Moreover, it is seen by the Id.CIT(A), in Ground No. 1 and 2 that assessee further disclosed Rs. 39,20,000 as part of the consideration received by him on sale of 10 office rooms over the above the sale of office rooms as shown by him during assessment proceedings. This has further resulted into increase in the capital of the assessee. It is also noteworthy to mention from the available records wherein the **AO has not been able to bring to the fore any evidence which could prove that the capital introduced** by the assessee was nothing but cash amount belonging to the assessee channelized through banking channel in the form of capital introduction. Hence, according to the Id. CIT(A) as per the facts available before him, Rs. 1,62,84,553

as part of the capital of the assessee was found to be explained and he deleted the addition made by the AO. We also find from the submissions of both the parties and noted that the Id.CIT(A) has elaborately discussed the issue in question and we do not find any infirmity in the order of the Id. CIT(A) on the issue in question and thus it is sustained. Hence, the Ground No. 4 of the Revenue is dismissed.

4.0 In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 02 /01/2024.

Sd/-

(राठोडकमलेशजयन्तभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02/01/2024

\*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- The ITO. Ward 6(4), Jaipur
2. प्रत्यर्थी / The Respondent- Shri Gotam Agarwal, Jaipur
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.255/JP/2023)

आदेशानुसार / By order,

सहायकपंजीकार / Asstt. Registrar